

**OSTEOPATHIC MEDICAL
BOARD
OF CALIFORNIA**

**Board Meeting, Thursday, September 17, 2015
10:00 a.m.**

**Department of Consumer Affairs
Headquarters Building 2
1747 North Market Blvd.
Hearing Room
Sacramento CA 95834**

OMBC Phone (916) 928-8390

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LEGISLATION

- AB 85 – Open Meetings (Passed)
- AB 159 – Investigational drugs, biological products, and devices (Passed)
- AB 179 – Healing Arts (Passed)
- AB 266 – Medical Cannabis (Passed)
- AB 333 – Healing Arts: Continuing Education (Enrolled)
- AB 483 – Healing Arts: Initial License fees: Proration (Passed)
- AB 637 – Physician Orders for Life Sustaining Treatment Forms (Chaptered)
- AB 1351 – Deferred entry of Judgment: Pretrial Diversion
- AB 1352 – Deferred entry of Judgment: Withdrawal of Plea
- SB 396 – Health and Care Facilities: Outpatient Settings and Surgical Clinics (Chaptered)
- SB 643 – Medical Marijuana (Passed)
- SB 738 – Pupil Health: Epinephrine Auto-Injectors: Liability Limitation (Chaptered)
- ACR 97 – Medical Training: Osteopathic Students (Passed)

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TABLE I



OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

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OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

BOARD MEETING

Date: Thursday, September 17, 2015
Time: 10:00 a.m. – 5:00 p.m. (or until the end of business)

Location: Department of Consumer Affairs
Headquarters Building 2 (HQ2)
1747 North Market Blvd.
Hearing Room
Sacramento CA 95834
(916) 928-8390

AGENDA

Action may be taken on any items listed on the agenda and may be taken out of order.

Open Session

1. Call to Order and Roll Call / Establishment of a Quorum
2. Review and Approval of Minutes – May 7, 2015 Board Meeting
3. Regulations - Public Hearing
Regulation hearing regarding amendments to sections 1661.2 (Diversion Evaluation Committee Duties and Responsibilities) and 1663 (Disciplinary Guidelines) of Title 16 of the California Code of Regulations relating to the discipline of substance abusing licensees.
4. President's Report
5. Executive Director's Report – Angie Burton
 - Licensing
 - Staffing
 - CURES
 - Budget
 - Legislation – Information and Possible Action
AB 483, AB 1351, AB1352, AB 159
AB 179, AB 333, AB 637, AB 266
SB 396, SB 643, SB 738, ACR 97
 - Enforcement Report / Discipline (Corey Sparks)
6. Update from the Department of Consumer Affairs – Christine Lally

7. Telemedicine for Medicare Act of 2015 (TeleMed Act, H.R. 3081) – Discussion and possible action.
8. Administrative Hearings: 1:00 p.m.
 - a. Daniel Brubaker, D.O. – Petition for Modification of Probation
 - b. John Fosbinder, D.O. – Early Termination of Probation
 - c. Renee Kilmer, D.O. - Early Termination of Probation
9. Closed Session
 - a. The Board will meet in closed session to deliberate on disciplinary matters pursuant to Government Code section 11126(c)(3).
 - b. Adjourn Closed Session
10. Reconvene Open Session
11. Agenda Items for Next Meeting
12. Future Meeting Dates and discussion and action on scheduling meeting with Federation of State Medical Board (FSMB) liaison.
12. Public Comment for Items Not on the Agenda
Note: 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).)
13. Adjournment

For further information about this meeting, please contact Machiko Chong at 916-928-7636 or in writing 1300 National Drive, Suite 150 Sacramento CA 95834. This notice can be accessed at www.ombc.ca.gov

Government Code section 11125.7 provides the opportunity for the public to address each agenda item during discussion or consideration by the Board prior to the Board taking any action on said item. Members of the public will be provided appropriate opportunities to comment on any issue before the Board, but the Board President may, at his or her discretion, apportion available time among those who wish to speak. Individuals may appear before the Board to discuss items not on the agenda; however, the Board can neither discuss nor take official action on these items at the time of the same meeting. (Gov. Code, sections 1125, 1125.7(a).)

In accordance with the Bagley Keene Open Meeting Act, all meetings of the Board are open to the public and all meeting locations are accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting, may make a request by contacting Machiko Chong, ADA Liaison, at (916) 928-7636 or via e-mail at Machiko.Chong@dca.ca.gov or may send a written request to the Board's office at 1300 National Drive, Suite 150, Sacramento, CA 95834-1991. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

TABLE 2



DRAFT

**OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
BOARD MEETING MINUTES**

Thursday, May 7, 2015

BOARD MEMBERS PRESENT: Joseph Zammuto, D.O., President
Keith Higginbotham, Esq., Vice President
Michael Feinstein, D.O., Secretary Treasurer
David Connett, D.O., Board Member
Alan Howard, Board Member
James Lally, D.O., Board Member
Cheryl Williams, Board Member
Jane Xenos, D.O., Board Member

STAFF PRESENT: Angelina Burton, Executive Director
Francine Davies, Assistant Executive Director
Corey Sparks, Enforcement Analyst
Ileana Butu, Esq., DCA Legal Counsel
Michael Santiago, Esq., DCA Legal Counsel

BOARD MEMBERS ABSENT: Claudia Mercado, Board Member

The meeting of the Osteopathic Medical Board of California was called to order by President Joseph Zammuto, D.O., at 10:01 AM via teleconference at the noticed site of 2287 Mowry Ave., Suite C, Fremont, CA 94538. Staff was in the Board's conference room at 1300 National Drive, Suite 150, Sacramento, CA 95834.

1. Roll Call:

Dr. Zammuto asked Keith Higginbotham to call the roll. Each of the attending Board Members gave their name and teleconference address:

- Keith Higginbotham, Esq., 255 South Grand Ave., Suite 2109, Los Angeles CA 90012-3045;
- Michael Feinstein, D.O., 1100 Adella Ave., #26, Coronado CA 92118;
- David Connett, D.O., Western University of Health Sciences, Vice Deans Office, 309 E 2nd Street, Pomona CA 91766;
- Alan Howard, Naval Postgraduate School, 281 Stone Road, Monterey CA 93943;
- James Lally, D.O., Chino Valley Medical Center, 5451 Walnut Ave., Chino CA 91710;
- Cheryl Williams, 1636 50th Street, San Diego CA 92102;

- Jane Xenos, D.O., 1100 Quail Street, Ste. #114, Newport Beach CA 9266. Claudia Mercado was excused from the meeting due to an unnoticed change in her teleconference site location. A quorum was declared.

2. Public Comment for Items Not on the Agenda:

There were no public comments.

3. Review and Approval of Minutes – January 22, 2015 Board Meeting

A motion was made to accept the minutes:

Motion – K. Higginbotham, **Second** – M. Feinstein: No discussion. No corrections. Dr. Zammuto asked for public comments: none offered.

Roll call vote: **Aye** – D. Connett, M. Feinstein, K. Higginbotham, A. Howard, J. Lally, C. Williams, J. Xenos, J. Zammuto. **Nay** – None. **Abstentions** – None. **Absent** - Claudia Mercado.

Motion carried to approve minutes.

4. Introduction of New Legal Counsel

Ileana Butu was introduced by Michael Santiago to the Board members as the new legal counsel. Michael Santiago, the Board's outgoing legal counsel, stated he was working with Ileana during the transition and would be attending a total of two meetings of the Board. He will be available to answer her questions and she has the full backing of the entire (DCA) Legal Office. Ms. Butu introduced herself and invited the Board members to e-mail or call her if they want to discuss anything.

5. President's Report

Dr. Zammuto gave a summation of the Federation of State Medical Boards annual meeting held in Fort Worth, Texas April 23rd to the 25th:

The theme of the conference was Collaboration and Communication: Rules for Success in Today's Complex Regulatory Environment. This meeting represented 70 licensing boards comprised of 50 states which include composite boards (MD & DO Boards) and 16 independent DO Boards, and representation from Guam, U.S. Virgin Islands, Puerto Rico, and Northern Marianas.

There was a meeting the day before of the American Association of Osteopathic Examiners which was April 22nd, and was chaired by outgoing president Dr. Geraldine O'Shea. There was representation from the National Board of Osteopathic Medical Examiners who are represented by Janice Kanogle and Sandra Waters. They discussed the changes and improvements upcoming on the COMLEXUSA. They also discussed there would be an additional center for testing which would be 2016 or 2017. The new site will be in the Midwest in the Chicago area and there is future consideration for a West Coast testing center, as well. Also during that meeting we discussed the Northern Carolina Ford Dental Exam versus the Federal

Trade Commission which was a case that led to a Supreme Court decision on how licensing boards function and we discussed issues as they may pertain to the structure and function of other boards. They also discussed potential changes to state laws and regulations required by state board functions as they relate to GMA accreditations for residents.

The annual meeting of the Federation, which was held the 23rd thru the 25th, was packed with an extensive amount of educational information. Keynote speaker for one of the luncheons was Mr. Michael Bonacelli who was Director of the National Drug Control Policy for the United States out of Washington D.C. Also speaking was Dr. Kent Brantly who was the physician doing work in Liberia treating Ebola. He himself contracted Ebola and came back to the United States for treatment and curing of the Ebola; it was a very intense and moving speech. There were also a number of workshops and lectures.

One of the most powerful speeches came from one of the directors of the DEA, Ranna Zzisi who gave an amazing presentation on the problem regarding the misuse and overuse in prescribing opiates. He showed a vignette of surveillance of a clinic where when the manager of the clinic opens up the clinic people come outpouring from the neighborhood lining up to get all their drugs. He also talked about a number their sting operations. He brought forward the severity of the narcotic drug situation (the United States represents 5% of the world's population and consumes 99% of the narcotics) and he also talked about up and coming drugs that are hitting the streets.

There was also a representation by the osteopathic profession, a number of osteopathic physicians were involved in different committees, and the outgoing chairman was Dr. Donald Polk, D.O.

Angie Burton asked if there was any public comment on Dr. Zammuto's report. Dr. Connett asked Dr. Zammuto if they talked about the four states that have mandatory AOA internships as part of their licensure. Dr. Zammuto responded that he didn't remember anything being discussed. What he did remember was something relevant to NBOME that COMLEXUSA is the only test DO's will be required to take for state licensure. They won't need to take both boards.

6. Executive Director's Report

Director Angie Burton sent an amended version of the Director's Report to the Board members this morning via e-mail. The report is provided Board members an update on licensing, staffing, and other functions of the Osteopathic Medical Board of California. The report was provided as information only and no action was required.

Licensing statistics: Applications received in the 1st quarter - January 64, February 61, and March 46, totaling 171. Licenses issued 1st quarter: January 63, February 65, and March 35, totaling 163. The current licensee population as of March 31: Active licenses: 6924; Inactive licenses: 606; for a total of 7529. In addition to the

7529 licensees there are 978 licenses in a Delinquent status. Licenses can remain delinquent five years; during these five years, licensees can pay back license fees and a one-time delinquency fee, submit the required AOA CME hours, and reactivate their license without going through the full licensing process. For the five years the license remains delinquent, the Board still has jurisdiction therefore the enforcement staff will follow-up on any out of state discipline information we receive on these licensees. Ms. Kathleen Creason asked how many of the Active licensees reside in California. Director Burton stated probably close to all of them but she can probably get an exact number for her after the meeting.

Staffing: The OMBC currently has eleven full-time positions and one half-time position with one vacancy. The cashier left the OMBC for a promotion at another agency and the Staff Services Manager, Ms. Francine Davies, has assumed the cashiering duties until the cashier position is refilled. Due to the tight budget, Director Burton will wait until July 1 to fill the position. The administrative analyst is on leave until September 1st.

The OMBC is not going to be relocating at this time due to the budget. The real estate representatives from Department of General Services successfully negotiated with the current landlord a new two year hard lease and two year soft lease with a rent decrease in monthly cost of \$666.00 per month. The rent will continue to be shared with the Naturopathic Medicine Committee. A hard lease means the OMBC can't break the lease and is committed to staying an additional two years; a soft lease can be broken at any time with the agreement of both the lessor and lessee.

Director Burton reported at the last Board meeting that DCA SOLID (Training) staff was going to assist OMBC staff in early March in creating a Licensing Desk Procedure Manual which would help define work processes and timelines. Unfortunately, the SOLID staff was tasked with assisting with Release Two of the Breeze System so they had to reschedule our project. OMBC received communication from SOLID staff and hope to reschedule the project later this month. Additionally, the DCA Strategic Planning Unit has OMBC scheduled for a September planning session which means they will be contacting Board staff in early July to schedule a staff focus group and will be contacting individual board members for phone interviews. The SOLID staff will then attend the September Board Meeting to present the plan.

Diversion Program: There are currently fifteen participants, four of which are self-referrals and the remaining are Board-ordered through probationary terms. There were no new entries to the program in the 1st quarter. In January there was one participant that was terminated from the program and in March two successfully completed their program. Participants still appear before the DEC at least once per year up to four times per year. The DEC consists of osteopathic physicians who are experts in addiction medicine and one public member. Dr. Krpan, our medical expert, has been attending these meetings representing the Board staff.

Budgets: Director Burton submitted a Budget Change Proposal for fiscal year 2016-2017. OMBC will be seeking an increase to the personnel budget and the enforcement budget; specifically, the Board is seeking an increase in the amounts budgeted for the Attorney General and Office of Administrative Hearings.

Breeze: Of the 138 triages written since Breeze “went live”, there are twelve remaining that require resolution. Of those twelve triages, four are related to on-line processes, three are one-time anomalies, and two will need to be rewritten as a Work Authorization due to the complexity of the request. The Work Authorization would create an interface and add the Osteopathic Medical Board to the DCA Remittance Processing system so that renewals could be cashiered in an automated fashion freeing up a large percentage of in-office cashiering duties at the Board. There will likely be additional triages in the future as we see opportunities to reconfigure the system to meet OMBC needs as well as system modifications required by legislation.

Ms. Davies will begin shortly to triage several on-line applications for release into production next year. Director Burton stated that although on-line applications will be a convenient option for payment of fees, it will not shorten the actual processing timelines for renewals or initial applications for licensure. As an example, she stated the Board will still be required to receive and review CME prior to approving renewal applications. Similarly, original applications for licensure will still require filing of an original, notarized application and all the documentation now required for licensure will continue to be required. The Director said that releasing programs on-line will require the Board to provide a “help-desk” as evidenced by all other boards who offer on-line services; this means on-line processing will require the addition of a new staff person thereby increasing Board costs rather than reducing them. Likewise, costs to the Board will increase due to credit card service fees, making on-line processing a drain on the Boards budget while reaping no time savings.

The DCA is currently sponsoring monthly user groups related to licensing, enforcement, reports, and cashiering. The Board actively participates in all user groups which has provided an opportunity to resolve processing issues and identify system needs for implementation of legislation. The OMBC looks forward to refining processes as functionality becomes available.

At a March 6th telephone meeting with DCA Director Awet Kadane, Breeze staff, and Legal Affairs Deputy Director Doreatha Johnson, Director Burton was informed that regulation was required to implement the birth month expiration date calculation into Breeze. The Director prepared language for the proposed regulation. DCA received authorization to enter into a contract amendment to terminate the contract with Accenture after Release 2 and to also increase the project costs by \$17.5 million. Mr. Taylor Schick from the DCA Budget Office was present to answer any questions regarding the documents regarding Breeze costs. Alan Howard asked if he could have the background on terminating the contract after Release 2 and increasing budget costs. Mr. Schick explained that was more of a Project based question but from his understanding of the Special Project Report (SPR) 3.1 based on the design

change to make sure that the project was implemented for all the programs it was determined that continuing on and launching phase three under the same contractor would not be reasonable. Ms. Creason asked how the costs were specifically allocated across the boards; Mr. Schick explained the costs were divided based on transaction counts based on the ATS & CAS (legacy) systems. Ms. Creason stated the OPSC is supportive of online applications and renewals.

Interstate Licensing Compact: Director Burton stated six boards are onboard and seven more are seeking enabling legislation. The document provided to the Board was shared by the Medical Board of California and changed to reflect the Osteopathic Medical Board licensing requirements. The document is being shared so the Board may possibly take a position at a future board meeting.

Public Comment: Doreatha Johnson, Deputy Director, DCA Legal Affairs. Ms. Johnson clarified that the regulations are required regardless of the Breeze implementation. The Business & Professions code relating to the birth month expiration date requires the Board to adopt regulations for the administration of a birth date renewal program.

Enforcement Report: Corey Sparks reviewed the written report provided to the Board. The report is based on Breeze system reports. There are currently four reports in development in Breeze. Complaint Intake: OMBC received 440 complaints in the last four quarters, 22 of these cases were conviction arrests; 338 cases were assigned for investigation, and the average number of days to assign and close was 26. Pending cases increased during this time period. Due to staff training, illness, and holidays in December, the average number of days to assign cases rose to 66 in February. Mr. Sparks reviewed each page of the report for the Board. Dr. Zammuto and Keith Higginbotham thanked Mr. Sparks for his thorough report. There was no public comment.

7. Legislation

Director Burton stated the attached legislation provided is for information only at this time. Dr Zammuto asked how these bills were selected. Director Burton stated the DCA Legislative Unit provides us with information on bills that may have an impact to the Board or DCA wide impact and these are the bills they are tracking for us. Dr Zammuto asked if they will form an opinion relative to any concerns they may have. Director Burton stated that we follow the bills and if we feel may have a substantial impact to the Board, we do write to the author of the bill to let them know there will be an impact, whether we want to support or oppose it. Dr. Zammuto asked if any of the Board members had questions or concerns.

Keith Higginbotham had general questions. Regarding AB 159: Who initiated the bill – was it a manufacturer or is this from a doctor's point of view? Ms. Creason stated she thought it was written from a patient's point of view and it was public driven. Patients would like availability to potentially life-saving medications but do not have access to them. Regarding SB 538: How does this come into play with the

Osteopathic Board? Director Burton stated the Osteopathic Medical is taking a neutral stand on this bill because the Naturopathic Medicine Committee is under the Osteopathic Medical Board.

Jane Xenos inquired on the temperature regarding SB 277. Ms. Creason gave a status on the bill, stating that it has been the most highly contested legislation the association's advocates have seen in twenty years.

8. Discussion and Possible Action on Promulgating Regulations Pertaining to the Renewal of Licenses.

Director Burton stated these regulations were needed in order to implement the renewal process the Board has been using for the last several years. She stated language was created for the proposed regulation and is bringing it forth to the Board today for approval.

Keith Higginbotham made a motion to approve this regulation. Michael Santiago made a recommendation as to the motion: that the Board adopt the proposed regulatory language and initiated the rulemaking package with the Office of Administrative Law, set for hearing after the 45 day comment period, and delegate authority to the executive director to make any technical, non-substantive changes to the proposed regulatory text.

Motion – K. Higginbotham, **Second** – D. Connett: No discussion. No corrections. Roll call vote: **Aye** – D. Connett, M. Feinstein, K. Higginbotham, A. Howard, J. Lally, C. Williams, J. Xenos, J. Zammuto. **Nay** – None. **Abstentions** – None. **Absent** - Claudia Mercado.

Motion was passed 8-0.

9. Guidelines for Prescribing Controlled Substances for Pain – Discussion and Possible Action Regarding Outreach.

Director Burton submitted the Guidelines for Prescribing Controlled Substances for Pain document to the Board for their opinion as to whether or not to adopt the guidelines for the Osteopathic Medical Board. Dr. Connett was initially involved with the task force along with Dr. Zammuto and the Board's consultant, Dr. Reimer. The consultant's opinion is to approve the guidelines and, if approved, they will be placed on the web site for licensees.

Dr. Zammuto stated this was very comprehensive and thorough document and that the Osteopathic Board played a part in its development and the Board owes great thanks to Dr. Reimer for opinions and testimony on this project, and that it represents the current standard of care and expectations relative to prescriptions for pain medication and any controlled substance by osteopathic physicians. He stated we are very fortunate to have this document and hopes other Board members see the value of this project.

Dr. Feinstein stated these are guidelines, not regulations or statute; if the Board tries to use this as community standard now, you would find less than 3% of all the DOs in the state are using anything close to this. We must keep this in mind if someone comes up with narcotics that they aren't following the guideline because they were trained in it. Dr. Zammuto stated guidelines were guidelines and they are used for education and he thought no one was planning to use this as a disciplinary piece, but it has to be used to explain the depth of current guidelines for use of these substances. Dr. Feinstein said it was stated earlier they could be used as standard of care. Michael Santiago stated that although they are only guidelines and are not standard of care, your expert consultant who reviews your cases can utilize as a basis for standard of care taking into account all factors; this would be just one factor your expert could consider. It could contribute to community standards but not be the standard of care. Director Burton said they would be posted on the website for licensees.

Motion to adopt Guidelines for Prescribing Controlled Substances for Pain – D. Connett, **Second** – K. Higginbotham: No public comment. No discussion. Roll call vote: **Aye** – D. Connett, M. Feinstein, K. Higginbotham, A. Howard, J. Lally, C. Williams, J. Xenos, J. Zammuto. **Nay** – None. **Abstentions** – None. **Absent** - Claudia Mercado.
Motion was passed 8-0.

10. Controlled Substance Utilization Review and Evaluation System (CURES) – Discussion and Possible Action Regarding Outreach.

Director Burton stated CURES system 2.0 is moving along and is scheduled to go live in July (2015). All licensees with a DEA Permit are required to register to the PDMP or CURES by January 1, 2016. We are currently working on outreach to notify licensees. We asked DOJ to notify OPSC and I would ask Kathleen Creason to include this information in their newsletters and maybe on their web site. We will be posting this on our website; we thought about putting it on our renewal forms but that would reach only a small percentage of licensees by January 1st. DOJ and DCA are preparing a flyer on how to register; as soon as that flyer is available, I think we should mail a flyer to each of our licensees. Director Burton asked the Board members for any other suggestions on reaching out to licensees. Not every licensee provides the Board an e-mail address. Director Burton asked for the Board's approval for posting to the web site, sending e-mail information, and mailing a flyer to each licensee. Dr. Connect suggested adding the web address of the new pain guidelines to the flyer.

Dr. Zammuto asked for a motion for the Executive Director to move forward with the outreach and notification of licensees by e-mail and by US Mail: D. Connett, **Second** – K. Higginbotham: No discussion. Public comment: Kathleen Creason stated OPSC would be happy to support; however they do have significant concerns about the CURES System at this point to be able to accept the number of registrations and subscribers. Director Burton stated DOJ said the system should be available to

register in August, should be easier to register than it was on the previous CURES system, and there will be staff at DOJ to assist.

Roll call vote: **Aye** – J. Zammuto, C. Williams, J. Lally, A. Howard, K. Higginbotham, M. Feinstein, D. Connett. **Nay** – None. **Abstentions** – None. **Absent** - Claudia Mercado, J. Xenos.

Motion was passed 7-0.

11. D.O. Student Protection Against Discrimination – Discussion and Possible Action

Director Burton stated this was on a prior agenda and OPSC states that there is already a statute that pertains to anti-discrimination so there is not going to be a request to carry a new bill. Kathleen Creason stated legal counsel advised that existing statute is sufficiently encompassing. Having said that, there have been new cases of discrimination against osteopathic medical students so OPSC is moving forward to develop a legislative resolution that is being authored by Assemblyperson Susan Bonilla. OPSC has draft language. Kathleen Creason asked if the Board's previous approval of in concept of a legislative language change could be used by OPSC on the final legislative resolution language. Michael Santiago stated that since OPSC will be addressing this issue with a legislative resolution, the Board will need to see the actual language before they can vote to adopt. Michael Santiago stated it was up to the Board if they want to make a motion to approve future language for a legislative resolution.

Motion – D. Connett, **Second** - J. Lally. K Higginbotham asked a technical language question – Ms. Creason stated final language and definitions are not yet available; Mr. Higginbotham suggested clarification of language regarding “where the offense occurred”. Roll call vote: **Aye** – J. Zammuto, C. Williams, J. Lally, A. Howard, K. Higginbotham, M. Feinstein, D. Connett. **Nay** – None. **Abstentions** – None. **Absent** - Claudia Mercado, J. Xenos.
Motion was passed 7-0.

12. Closed Session

Present: All Board members and both legal counsel.

Return to Open Session

Item 1: The Board discussed and voted on this disciplinary item.

13. Agenda Items for Next Meeting

Update on DO student discrimination and CURES System. Possible regulations regarding license renewal. Strategic Plan

14. Future Meeting Dates

September 17, 2015 – Sacramento – for purposes of Strategic Planning.
January 21, 2016 - Sacramento

15. Adjournment: 11:52 AM

TABLE 3

**Disciplinary Guidelines
& Model Terms of Probation**

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DISCIPLINARY GUIDELINES AND
MODEL TERMS OF PROBATION

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INTRODUCTION

The Osteopathic Medical Board is charged with protecting the consumers of osteopathic physician's services within the State of California. In keeping with its mission and obligation to ensure the safe and qualified practice of Osteopathic Medicine, the Osteopathic Medical Board of California has adopted the following recommended guidelines for disciplinary orders and model conditions of probation for violations of the Osteopathic and Medical Practice Acts.

Each disciplinary matter must be considered on a case-by-case basis. The Board carefully considers the totality of the facts and circumstances of each case, with the safety of the consuming public for medical services being paramount. Consequently, in reaching a resolution via a Stipulated Settlement and Disciplinary Order, or a Proposed Decision following an administrative hearing, the Board requests that the factual basis for each resolution be clearly delineated.

Except as provided in the Uniform Standards for Substance Abusing Licensees ("Standards"), the Board recognizes that an individual case may necessitate the departure from these standards. If there are deviations from the standards, the Board requests that the Administrative Law Judge ("ALJ") hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

The Board takes very seriously any violations that involve drugs or alcohol. In addition, the Legislature has specifically codified within Business and Professions Code section 315 various requirements in the event that a licensee is determined to be a "substance abusing licensee."

Nothing in these guidelines shall prohibit the Board from imposing, or an ALJ from proposing, terms and conditions of probation that may relate to drugs and alcohol, such as random bodily fluid testing, counseling, and abstention from use of drugs and alcohol regardless of the outcome of the clinical diagnostic evaluator.

ORGANIZATION OF DISCIPLINARY GUIDELINES

These Disciplinary Guidelines first address the General Considerations that administrative law judges and other users of this document should consider when a matter is being resolved. Those general considerations are followed by a description of the types of discipline and some definitions that appear throughout the Guidelines.

The Model Probationary Conditions section of this document contains the recommended language for probationary orders. It is divided into three categories of conditions, each of which is explained in more detail in that section – some that are standard, some that are specific to the violation, and some that must be applied when the violation involved the use of drugs or alcohol.

The Recommended Discipline section of this document sets forth, for each specified violation, the recommended discipline, including which model conditions should be considered. Although not all conditions will be applicable, significant deviations should be explained to the Board.

GENERAL CONSIDERATIONS

The Board requests that Proposed Decisions following administrative hearings include the following:

1. Specific code sections violated with their definitions.
2. Clear description of the violation.
3. Respondent's explanation of the violation if he/she is present at the hearing.
4. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
5. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

In determining whether revocation, suspension or probation is to be imposed in a given case, the following factors should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

TYPES OF DISCIPLINE AND DEFINITIONS

Revocation: Permanent loss of a license. Respondent may take affirmative action to petition the Board for reinstatement of his/her license and demonstrate to the Board's satisfaction that he/she is rehabilitated.

Suspension: Invalidation of a license for a temporary, fixed period of time. The licensee may not practice during any period of suspension.

Stayed Revocation: Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Stayed Suspension: Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Probation: A period during which a respondent's discipline is stayed in exchange for respondent's compliance with specified conditions relating to the violation(s). The Board may impose any stayed discipline if respondent fails to comply with the probationary conditions.

Uniform Standards for Substance Abusing Licensees ("Uniform Standards"). The standards adopted pursuant to Business and Professions Code section 315 by the Substance Abuse Coordination Committee in April, 2011, relating to substance-abusing licensees. These provisions must be included in any order granting probation where the violation involved drugs or alcohol. In such cases, every Respondent must be evaluated, although certain probationary conditions may be waived depending on the outcome of the evaluation.

**OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA
DISCIPLINARY GUIDELINES OF ~~2007~~ 2014**

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1. DISCIPLINARY PENALTIES

The following disciplinary penalties for selected Business and Professions Code violations are guidelines for use by administrative law judges at hearings as well as for use in the settlement of cases. Individual penalties may vary depending upon the particular circumstances of the case resulting in aggravation or mitigation of the offenses alleged. If probation is imposed as part of a penalty, the probation should include: (1) standard conditions, which will appear in all cases; and (2) the optional conditions, which will be tailored according to the nature of the offense.

MODEL PROBATIONARY TERMS AND CONDITIONS

Unless otherwise specified, the use of the term "Board" in these conditions includes the Board itself or its designee. The model probationary conditions are divided into three general categories:

(A) Standard Terms and Conditions of Probation. Those conditions of probation that will generally appear in all cases involving probation as a standard term and condition;

(B) Optional Terms and Conditions of Probation. Those conditions that address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case; and

(C) Terms and Conditions of the Uniform Standards for Substance – Abusing Licensees. Those conditions that must be used in cases where the misconduct found involved the use of drugs or alcohol.

A list of the model conditions appears below, followed by the model text for each condition.

A. STANDARD TERMS AND CONDITIONS OF PROBATION

The standard of probation conditions are as follows:

- (1) Obey all Laws (1)*;
- (2) File Quarterly Reports (2);
- (3) Probation Surveillance Program (3);
- (4) Interviews with Medical Consultants (4);
- (5) Cost Recovery (5);
- (6) License Surrender (6);
- (7) Tolling of probation, if out of state (7); and Extension of Probation
- (8) Probation Violation/Completion of Probation (8);
- (9) Notification to Board of Employers/Notification to Employers

** The number in the parentheses refers to the sample model orders found in Part II: Sample Model Orders.*

B. OPTIONAL TERMS AND CONDITIONS OF PROBATION

The following conditions of probation, generally listed by statute or set forth by the Business and Professions Code, are recommended by the Board for proven or stipulated violations. In all circumstances, the maximum penalty for any violation of the Business and Professions Code will be revocation. Additionally, violations of Business and Professions Code sections 2235 (obtaining license by fraud), 2288 (impersonation of an applicant in an examination), and 2306 (practice under suspension) shall all result in an order of revocation.

- (10) Actual Suspension
- (11) Controlled Drugs – Total Restriction
- (12) Controlled Drugs – Surrender of DEA Permit
- (13) Controlled Drugs – Partial Restriction
- (14) Controlled Drugs – Maintain Record
- (15) Pharmacology Course
- (16) Education Course
- (17) Medical Ethics Course

- (18) Clinical Assessment and Training Program
- (19) Written Examination
- (20) Third Party Presence
- (21) Prohibited Practice
- (22) Psychiatric Evaluation
- (23) Psychotherapy
- (24) Medical Evaluation
- (25) Medical Treatment
- (26) Community Service
- (27) Restitution
- (28) Monitoring – Billing/Practice
- (29) Solo Practice Prohibition/Supervised Structure

C. TERMS AND CONDITIONS OF THE UNIFORM STANDARDS FOR SUBSTANCE –ABUSING LICENSEES

- (30) Clinical Diagnostic Evaluation
- (31) Diversion Program – Alcohol and Drugs
- (32) Drugs – Abstain from Use
- (33) Alcohol – Abstain from Use
- (34) Notification to Employer
- (35) Biological Fluid Testing
- (36) Group Support Meetings
- (37) Worksite Monitor
- (38) Results of Biological Fluid Tests
- (39) Major and Minor Violations
- (40) Request by a Substance-Abusing Licensee to Return to Practice
- (41) Request by a Substance-Abusing Licensee for Reinstatement of a full and unrestricted license – Petition for Reinstatement

~~B&P 725 – EXCESSIVE PRESCRIBING~~

Minimum penalty: Stayed revocation, 5 years probation

- _____ 1. Drugs _____ Total DEA restriction (10)
- _____ Surrender DEA permit (11)
- _____ (or) _____ Partial DEA restriction (12)
- _____ 2. Pharmacology course (18)
- _____ 3. If warranted, education course (19)
- _____ 4. If warranted, supervised structured environment (29)
- _____ 5. If warranted, oral/practical examination (22)
- _____ 6. If warranted, suspension of at least 90 days (9)
- _____ 7. If warranted, maintain drug records for review (13)

~~B&P 725 – EXCESSIVE TREATMENTS~~

Minimum penalty: Stayed revocation, 5 years probation

- _____ 1. Education course (20)
- _____ 2. If warranted, supervised structured environment (29)
- _____ 3. If warranted, oral/practical examination (22)
- _____ 4. If warranted, suspension of at least 90 days (9)

~~B&P 726 – SEXUAL MISCONDUCT~~

Minimum penalty: Stayed revocation, 10 years probation

- _____ 1. Education course (19)
- _____ 2. Psychiatric evaluation (25)
_____ or, psychotherapy (26)
- _____ 3. If warranted, supervised structured environment (29)
- _____ 4. Require third party present when examining patients (23)

~~B&P 820 – MENTAL OR PHYSICAL ILLNESS~~

Minimum penalty: Stayed revocation, 5 years probation

- _____ 1. If warranted, restricted practice (24)
- _____ 2. If warranted, monitoring (29)

~~B&P 2234(b) – GROSS NEGLIGENCE~~

~~B&P 2234(c) – REPEATED NEGLIGENT ACTS~~

~~B&P 2234(d) – INCOMPETENCE~~

Minimum penalty: Stayed revocation, 5 years probation

- _____ 1. Pharmacology course (18)
- _____ 2. Education course (19)
_____ clinical training program (21) (where deficiency is noted but the physician is not a present danger to the public)
- _____ 3. Oral/practical examination (22)
- _____ 4. If warranted, supervised structured environment (29)
- _____ 5. If warranted, restricted practice (24)
- _____ 6. If warranted, medical evaluation (27)
- _____ 7. If warranted, medical treatment (28)

~~B&P 810 – INSURANCE FRAUD~~

~~B&P 2234(e) – DISHONESTY~~

~~B&P 2261 – MAKING OR SIGNING FALSE DOCUMENT~~

~~B&P 2262 – FALSE MEDICAL RECORDS~~

~~B&P 2263 – VIOLATION OF PROFESSIONAL CONFIDENCE~~

Minimum Penalty: Stayed revocation, 5 years probation.

- _____ 1. If warranted, community service program (30)
- _____ 2. If warranted, actual suspension (9)
- _____ 3. If warranted, restitution (31)
- _____ 4. Education course (19)

~~B&P 2236 – CRIMINAL CONVICTION~~

Minimum Penalty: Stayed revocation, 5 years probation.

Terms and conditions depend on the underlying facts of the criminal offense.

~~**B&P 2237 DRUG RELATED CONVICTION**~~

~~**B&P 2238 VIOLATION OF DRUG STATUTE**~~

~~**B&P 2241 FURNISHING DRUGS TO AN ADDICT**~~

~~**B&P 2242 PRESCRIBING DRUGS WITHOUT PRIOR EXAMINATION**~~

Minimum penalty: Stayed revocation, 5 years probation

- ~~_____ 1. Drugs – total DEA restriction (10)~~
- ~~_____ or _____ surrender DEA permit (11)~~
- ~~_____ partial DEA permit (12)~~
- ~~_____ 2. Pharmacology course (18)~~
- ~~_____ 3. Education course (19) and/or a clinical training program (21)~~
- ~~_____ 4. If warranted, oral/practical examination (22)~~
- ~~_____ 5. If warranted, supervised structured environment (29)~~
- ~~_____ 6. If self user of drugs: See B&P 2239~~
- ~~_____ 7. If warranted, suspension of at least 90 days (9)~~
- ~~_____ 8. If warranted, maintain drug records for review (13)~~
- ~~_____ 9. If warranted, monitoring (29)~~

NOTE: Unless there is extensive mitigation, outright revocation for conviction of illegal sales of controlled drugs is the proper penalty.

~~**B&P 2239 SELF ABUSE OF DRUGS OR ALCOHOL**~~

~~**B&P 2250 FAILURE TO COMPLY WITH STERILIZATION CONSENT PROVISIONS**~~

~~**B&P 2251 USE OF SILICONE**~~

~~**B&P 2252 ILLEGAL CANCER TREATMENT**~~

Minimum penalty: Stayed revocation, 5 years probation

- ~~_____ 1. If warranted, period of actual suspension (9)~~
- ~~_____ 2. Community service (30)~~
- ~~_____ 3. Education (19)~~
- ~~_____ 4. If warranted, monitoring (29)~~

~~**B&P 2264 AIDING AND ABETTING UNLICENSED PRACTICE**~~

Minimum penalty: Stayed revocation, at least 3 years probation

- ~~_____ 1. If warranted, suspension of at least 60 days (9)~~
- ~~_____ 2. If warranted, oral/practical or written examination (22)~~
- ~~_____ 3. If warranted, monitoring (29)~~
- ~~_____ 4. If warranted, restricted practice (24)~~

~~B&P 2265 – USE OF QUALIFIED PHYSICIAN ASSISTANT WITHOUT APPROVAL~~

Minimum penalty: ~~90 days stayed suspension, one year probation~~

- ~~1. If warranted, period of actual suspension (9)~~
- ~~2. If warranted, community service (30)~~

~~B&P 2271, 651 – DECEPTIVE ADVERTISING~~

~~B&P 2272 – ANONYMOUS ADVERTISING~~

~~B&P 2273 – EMPLOYMENT OF RUNNERS, CAPPERS AND STEERERS~~

~~B&P 2274 – MISUSE OF TITLE~~

~~B&P 2275 – USE OF “M.D.”~~

~~B&P 2276 – MISUSE OF “D.O.”~~

~~B&P 2280 – INTOXICATION WHILE TREATING PATIENTS~~

Minimum penalty: ~~Stayed revocation, 5 years probation~~

- ~~1. If drugs – total DEA restriction (10)~~
~~or – surrender of DEA permit (11)~~
~~partial DEA restriction (12)~~
- ~~2. If alcohol – abstain from alcohol (16)~~
- ~~3. If warranted, in case of drug abuse, abstain from alcohol (16)~~
- ~~4. Drugs – abstain from use (15)~~
- ~~5. Biological fluid testing (17)~~
- ~~6. Psychiatric evaluation (25)~~
- ~~7. If warranted, psychiatric treatment (26)~~
- ~~8. If warranted, drug or alcohol rehabilitation program (14)~~
- ~~9. Medical evaluation (27) and/or medical treatment (28)~~
- ~~10. Pharmacology course (18)~~
- ~~11. Education Course (19)~~
- ~~12. If warranted, oral/practical examination (22)~~
- ~~13. If warranted, supervised structured environment (29)~~
- ~~14. If warranted, maintain drug records for review (13)~~

~~B&P 2285 – USE OF FICTITIOUS NAME WITHOUT PERMIT~~

Minimum penalty: ~~90 days stayed suspension, 3 years probation~~

- ~~1. If warranted, actual suspension (9)~~
- ~~2. If warranted, community service (30)~~
- ~~3. If warranted, restitution (31)~~
- ~~4. If warranted, education course (19)~~

~~B&P 2305 – DISCIPLINE BY ANOTHER STATE OR FEDERAL AGENCY~~

Minimum penalty: ~~add actual period of suspension~~

Maximum penalty: ~~impose penalty that was stayed~~

~~A repeated similar offense or a violation of probation evidencing an unreformed attitude should call for the maximum penalty. Other violations of probation should call for at least a meaningful period of actual suspension, preferably 90 days or more.~~

~~H. SAMPLE MODEL ORDERS~~

A. STANDARD TERMS AND CONDITIONS OF PROBATION

1. Obey all Laws -

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California, and remain in full compliance with any court ordered criminal probation, payments and other orders.

2. Quarterly Reports -

Respondent shall submit quarterly reports to the Board ~~quarterly declaration under penalty of perjury on the~~ using the Quarterly Report of Compliance Form, OMB 10 (5/97) (07/08) which is hereby incorporated by reference, stating declaring under penalty of perjury whether there has been compliance with all the conditions of probation.

3. Probation Surveillance Program -

Respondent shall comply with the Board's probation surveillance program. Respondent shall, at all times, keep the Board informed of his or her addresses of business and residence which shall both serve as addresses of record for purposes of service of process. Changes of such addresses shall be immediately communicated in writing to the Board. ~~Under no circumstances shall a post office box serve as an address of record.~~

Respondent shall also immediately inform the Board, in writing, of any travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) days.

4. Interviews with Medical Consultants -

Respondent shall appear in person for interviews with the Board's medical consultants upon request at various intervals and with reasonable notice.

5. Cost Recovery -

~~The R~~espondent is hereby ordered to shall reimburse the Board the amount of \$ _____ within 90 days from the effective date of this decision for its investigative and prosecution costs. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probation order, unless the Board agrees in writing to payment by an installment plan because of financial hardship.

6. License Surrender -

Following the effective date of this decision, if respondent ceases practicing due to retirement, health reasons, or is otherwise unable to satisfy the terms and conditions of probation, respondent may voluntarily tender his/her certificate to the Board. The Board reserves the right to evaluate the respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the tendered license, respondent will no longer be subject to the terms and conditions of probation.

7. Extension of Probation.

In the event respondent should leave California to reside or to practice outside the State or for any reason should respondent stop practicing medicine in California, respondent shall notify the board or its designee in writing within ten days of the dates of departure and return or the dates of non-practice within California. Non-practice is defined as any period of time exceeding thirty

days in which respondent is not engaging in any activities defined in Section 2051 and/or 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the Board or its designee in or out of state shall be considered as time spent in the practice of medicine. Periods of temporary or permanent residence or practice outside California or of non-practice within California, as defined in this condition, will ~~not apply to the reduction of~~ extend the probationary period by the period of out-of-state residence or non-practice. Respondent's period of non-practice while on probation shall not exceed two (2) years.

8. Probation ~~V~~iolation/Completion of ~~P~~robation -

If respondent violates probation in any respect, the Board may revoke probation and carry out the disciplinary order that was stayed after giving respondent notice and the opportunity to be heard. If an Accusation and/or Petition to revoke is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be automatically extended until the matter is final. Upon successful completion of probation, respondent's ~~certificate~~ license will be fully restored.

9. Notification to Board of Employers; Notification to Employers of Discipline

~~Respondent shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers, and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.~~

Respondent shall notify any employer of the terms of this probation by providing a copy of this decision to each and every employer within 30 days of this effective date of the decision, asking each employer to acknowledge receipt in writing, and submitting such acknowledgement to the Board.

B. OPTIONAL TERMS AND CONDITIONS OF PROBATION

~~9~~.10. Actual suspension -

Respondent shall be suspended from the practice of medicine for _____ beginning the effective date of this decision.

[Optional: Respondent shall be suspended from the practice of medicine until terms _____ are completed and evidence of the completion is received and acknowledged by the Board.]

~~10~~.11. Controlled ~~D~~rugs - Total ~~R~~estriction -

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined in the California Uniform Controlled Substance Act except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

~~11~~.12. Controlled ~~D~~rugs - Surrender of DEA ~~P~~ermit -

Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Board or its designee that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Board.

~~12~~.13 Controlled ~~D~~rugs - Partial ~~R~~estriction-

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined by the California Uniform Controlled Substances Act (Act), except for those drugs listed in Schedule(s) _____ of the Act and prescribed to respondent for a bona fide illness or condition by another practitioner.

(or)

Respondent is permitted to prescribe, administer, dispense or order controlled substances listed in Schedule(s) _____ of the California Uniform Controlled Substances Act for in-patients in a hospital setting, and not otherwise.

NOTE: Use the following additional paragraph only if there is an actual elimination of the authority to prescribe a Scheduled Controlled Substance.

[OPTION]

Respondent shall immediately surrender his/her current DEA permit to the Drug Enforcement Administration for cancellation and reapply for a new DEA permit limited to those Schedules authorized by this order.

~~13.14. Controlled D~~r~~ugs - M~~m~~aintain R~~r~~ecord -~~

Respondent shall maintain a record of all controlled substances prescribed, dispensed or administered by respondent during probation, showing all the following: (1) the name and address of the patient; (2) the date; (3) the character and quantity of controlled substances involved; and (4) the pathology and purpose for which the controlled substance was furnished. Respondent shall keep these records in a separate file or ledger, in chronological order, and shall make them available for inspection and copying by the Board or its designee, upon request.

~~14. Diversion program—alcohol and drugs—~~

~~Within 30 days of the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that further treatment and rehabilitation is no longer necessary. Quitting the program without permission or being expelled for cause shall constitute a violation of probation by respondent.~~

~~15. Drugs—abstain from use—~~

~~Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined by the Business and Professions Code, or any drugs requiring a prescription except for ordering or possessing medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.~~

~~16. Alcohol—abstain from use—~~

~~Respondent shall abstain completely from the use of alcoholic beverages.~~

~~17. Biological fluid testing—~~

~~Respondent shall immediately submit to biological fluid testing, at respondent's cost, upon the request of the Board or its designee.~~

~~18.15. Pharmacology C~~e~~ourse -~~

~~Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in pharmacology/prescribing practices course equivalent to the Prescribing Practices Course at the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine ("Program"), approved in advance by the Board or its designee. Respondent shall provide the Program with any information and documents that the program may deem pertinent. Respondent and shall participate in and successfully complete the classroom component of the course during the first year of probation not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices/pharmacology course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirement for renewal of licensure.~~

~~A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board.~~

~~Respondent shall submit written evidence of successful completion of the course to the Board within fifteen (15) calendar days after successful completion.~~

19.16. Education Course -

Within 90 calendar days of the effective date of this decision, and on an annual basis thereafter, Respondent shall enroll in submit to the Board for its prior approval an educational program or course (i.e., medical records keeping, professional boundaries, professionalism, etc.) related to the violations charged in the Accusation that would be equivalent the similar courses offered by the physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine ("Program"), approved in advance by the Board or its designee. Respondent shall provide the Program with any information and documents that the program may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent This shall successfully be completed any other component of the course within one (1) during the first year of probation enrollment. This All courses shall be at Respondent's expense and program shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision, may, in the sole discretion of the Board, or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board.

~~Following the completion of each course, the Board or its designee may administer an examination to test the respondent's knowledge of the course. Respondent shall provide proof of attendance for both continuing medical education requirements and education course on a yearly basis submit written evidence of successful completion of the course to the Board within fifteen (15) days after successful completion.~~

20.17. Medical Ethics Course -

Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval a course in medical ethics which respondent shall successfully complete during the first year of probation.

24.18. Clinical Assessment and Training Program -

Within 90 days of the effective date of this decision, respondent shall submit to the Board for its prior approval, an intensive clinical assessment and training program ("Program") equivalent to the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine. The exact number of hours and the specific content of the program shall be determined by the Board or its designee and shall be related to the violations charged in the accusation. Respondent shall successfully complete the training Program within six (6) months from the date of enrollment, and may be required to pass an examination administered by the Board or its designee related to the program's contents.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Respondent's physical and mental health, basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to the area of practice to which the violation(s) related and, at a minimum, a 40 hour program of clinical education in the area of practice to which the violations related and which takes into account the assessment, Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. Respondent shall pay all expenses associated with the Program.

Based upon Respondent's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional education or training, treatment needed for any medical or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the recommendations of the program.

The Board may immediately order Respondent to cease the practice of medicine without a hearing if the Respondent should fail to enroll, participate in, or successfully complete the Program within the time specified. The respondent may not resume the practice of medicine until enrollment or participation in the Program is complete.

Respondent shall submit written evidence of successful completion of the course to the Board within fifteen (15) calendar days after successful completion.

22. Written Examination -

~~Within 60 days of the effective date of this decision, (or upon completion of the required education course) (or upon completion of the required clinical training program) respondent shall take and pass a written examination to be administered by the Board or its~~

~~designee. Written examination will be the Comvex. If respondent fails this examination, respondent must wait three months between reexaminations, except that after three failures respondent must wait one year to take each necessary reexamination thereafter. The respondent shall pay the costs of all examinations.~~

~~(Use either of the following two options with the above paragraph.)~~

~~OPTION #1: Condition precedent~~

~~Respondent shall not practice medicine until respondent has successfully passed this examination and has been so notified by Board in writing, enrolled, participated in, and completed the Program, submitted written evidence of successful completion to the Board has confirmed receipt of such evidence.~~

~~NOTE: The condition precedent option is preferred in all cases involving findings of gross negligence or incompetence or repeated acts of negligence where the physician is a present danger to the public or incompetence or repeated acts of negligence where the physician's fitness to practice should be evaluated before he or she may practice to ensure the public is protected..~~

~~OPTION #2: Condition subsequent Additional Professional Enhancement Program~~

~~If respondent fails to take and pass this examination by the end of the first six months of probation, respondent shall cease the practice of medicine until this examination has been successfully passed and respondent has been so notified by the Board in writing.~~

~~Within 60 days after Respondent has successfully completed the clinical assessment and training program, Respondent shall participate in a professional enhancement program ("Enhanced Program") equivalent to the one offered by the Physician Assessment and Clinical Education Program, University of California, San Diego School of Medicine, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in such Enhanced Program at Respondent's own expense during the term of probation, or until the Board, or its designee, determines that further participation is no longer necessary.~~

~~22-19. Written Examination -~~

~~Within 60 days of the effective date of this decision, (or upon completion of the required education course) (or upon completion of the required clinical training program) respondent shall take and pass a written examination to be administered by the Board or its designee. Written examination will be the Comvex. If respondent fails this examination, respondent must wait three months between reexaminations, except that after three failures respondent must wait one year to take each necessary reexamination thereafter. The respondent shall pay the costs of all examinations.~~

~~(Use either of the following two options with the above paragraph.)~~

~~OPTION #1: Condition precedent~~

~~Respondent shall not practice medicine until respondent has passed this examination and has been so notified by the Board in writing.~~

~~NOTE: The condition precedent option is preferred in all cases involving findings of gross negligence or incompetence or repeated acts of negligence where the physician's fitness to practice should be evaluated before he/she may practice, or any other case where public protection requires confirmation of respondent's skills prior to a return to practice.~~

~~OPTION #2: Condition subsequent~~

~~If respondent fails to take and pass this examination by the end of the first six months of probation, respondent shall cease the practice of medicine until this examination has been successfully passed and respondent has been so notified by the Board in writing.~~

~~23-20. Third Party Presence –sexual violations–~~

~~During probation, respondent shall have a third party present while examining or treating _____ patients. Respondent shall, within 30 days of the effective date of the decision, submit to the Board or its designee for its approval name(s) of persons who will~~

act as the third party present. The respondent shall execute a release authorizing the third party(s) present to divulge any information that the Board may request during interviews by the probation monitor on a periodic basis.

NOTE: Sexual transgressors should normally be placed in a supervised structured environment contact, as defined, requires revocation without probation. This term should be used where public protection requires monitoring of a licensee's contact with specific patient populations.

24-21. Prohibited Practice -

During probation, respondent is prohibited from practicing _____.

25-22. Psychiatric Evaluation -

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a psychiatric evaluation by a Board appointed psychiatrist who shall furnish a psychiatric report to the Board or its designee. The respondent shall pay the cost of the psychiatric evaluation.

In the event further treatment is recommended by the evaluating psychiatrist to ensure public protection, if respondent is may be required by the Board or its designee to undergo psychiatric treatment, Respondent shall within 30 days of the requirement notice by the Board, submit to the Board for its prior approval the name and qualifications of a psychiatrist of respondent's choice to provide the further treatment. Upon approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment until further notice from the Board. Respondent shall have the treating psychiatrist submit quarterly status reports to the Board indicating whether the defendant is capable of practicing medicine safely.

(OPTIONAL)

Respondent shall not engage in the practice of medicine until notified by the Board of its determination that respondent is mentally fit to practice safely.

26-23. Psychotherapy -

Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a psychotherapist of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further psychotherapy is necessary. Respondent shall have the treating psychotherapist submit quarterly status reports to the Board. The Board may require respondent to undergo psychiatric evaluation by a board appointed psychiatrist. Respondent shall pay all costs of the psychiatric evaluation.

NOTE: This condition is for those cases where the evidence demonstrated suggests that the respondent has had impairment (for example, impairment by mental illness, alcohol abuse and drug self-abuse) that related to the violations but is not at present a danger to his/her patients.

27-24. Medical Evaluation -

Within 30 days of the effective date of this decision, and on a periodic basis thereafter as may be required by the Board or its designee, respondent shall undergo a medical evaluation by a Board appointed physician who shall furnish a medical report to the Board or its designee. Respondent shall pay all costs of the medical evaluation.

In the event further treatment is recommended by the evaluating physician to ensure public protection, if respondent is may required by the Board or its designee to undergo medical such further treatment, Respondent shall, within 30 days of the requirement written notice submit to by the Board, submit to the Board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval of the treating physician, respondent shall undergo and continue medical treatment until further notice from the Board. Respondent shall not engage in the practice of medicine until notified by the Board of its determination that respondent is medically fit to practice safely. Respondent shall pay the costs of such medical treatments.

NOTE: This condition is for those cases where the evidence demonstrates drug or alcohol impairment or medical illness or disability was a contributing cause of the violations.

[OPTION]

Respondent shall not engage in the practice of medicine until notified by the Board of its determination that respondent is medically fit to practice safely.

~~28-25. Medical Treatment -~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval the name and qualifications of a physician of respondent's choice. Upon approval, respondent shall undergo and continue treatment until the Board deems that no further medical treatment is necessary. Respondent shall have the treating physician submit quarterly status reports of the periodic medical evaluations by a Board appointed physician. Respondent shall pay the costs of such medical treatments. Respondent shall comply with any treatment recommended by the physician that the physician determines is required to ensure that respondent may continue to practice safely.~~

~~29. Supervised structured environment -~~

~~Respondent is prohibited from engaging in solo practice. Within 30 days of the effective date of this decision, respondent shall submit to the Board and receive its prior approval, for a plan of practice limited to a supervised structured environment in which respondent's activities will be overseen and supervised by another physician, who shall provide periodic reports to the Board.~~

~~30-26. Community Services -~~

~~Within 60 days of the effective date of this decision, respondent shall submit to the Board for its prior approval a community service program in which respondent provides free medical services on a regular basis to a community or charitable facility or agency for at least _____ hours a month for the first _____ months of probation.~~

~~NOTE: Not for quality of care issues.~~

~~31-27. Restitution -~~

~~Respondent shall provide restitution to _____ in the amount of _____ prior to the completion of the first year of probation.~~

~~NOTE: Restitution should be issued to For patients only.~~

28. Monitoring – Practice/Billing

Within 30 days of the effective date of this Decision, Respondent shall submit to the Board or its designee for approval a _____ [insert: practice, billing or practice and billing] monitor(s), the name and qualifications of one or more licensed physicians (D.O. or M.D.) whose licenses are valid and in good standing. A monitor shall have no prior business relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to be neutral and objectively monitor the respondent. Respondent shall pay for all monitoring costs. The monitor shall be provided with copies of all Decision(s), Accusations(s) and other information deemed relevant by the Board or its designee. Failure to comply with this term and condition may result in an automatic order from the Board for the respondent to cease the practice of medicine until such a monitor has been approved by the Board.

29. Solo Practice Prohibition/ Supervised Structure

Respondent shall not engage in the solo practice of medicine, and shall be employed as a physician in which there is a supervised structure and environment, and wherein respondent reports to another licensed physician (D.O. or M.D.). Notice of changes to respondent's employment or nature of practice must be provided to the Board or its designee within five (5) days of such change. Respondent shall cease the practice of medicine if respondent is no longer in a supervised environment.

**C. TERMS AND CONDITIONS OF THE UNIFORM STANDARDS
FOR SUBSTANCE-ABUSING LICENSEES**

(NOTE: These conditions must be included in any probationary order where the violation
involved drugs or alcohol.)

30. Clinical Diagnostic Evaluation

Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. The board or its designee shall select or approve the evaluator(s) holding a valid, unrestricted license to practice, with a scope of practice that includes the conduct of clinical diagnostic evaluations and at least three (3) years' experience in providing evaluations of health professionals with substance abuse disorders. The evaluator shall not have any financial relationship, personal relationship, or business relationship with the licensee with the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion: whether the licensee has a substance abuse problem; whether the licensee is a threat to himself/herself or others; and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. If the evaluator determines during the evaluation process that a licensee is a threat to himself/ herself or others, the evaluator shall notify the Board within 24 hours of such a determination. For all evaluations, respondent shall cause the evaluator to submit to the Board a final written report no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed thirty (30) days. The cost of such evaluation shall be borne by the licensee.

Respondent shall cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the Board. While the results of the clinical diagnostic evaluation are pending, the licensee shall be randomly drug tested at least two (2) times per week.

The Board will review the results of the clinical diagnostic evaluation to determine whether or not respondent is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on respondent after considering the following criteria: license type; licensee's history; documented length of sobriety; time that has elapsed since substance use; scope and pattern of use; treatment history; licensee's medical history and current medical condition; nature, duration, and severity of the substance abuse; and whether the licensee is a threat to himself/herself of others.

Respondent's license shall remain suspended until the Board determines that he or she is able to safely practice either full-time or part-time, and has had at least 30 days of negative drug test results.

31. Diversion Program – Alcohol and Drugs

Within thirty (30) days of the effective date of this decision, respondent shall enroll and participate in the Board's Diversion Program until the Board determines that further treatment and rehabilitation is no longer necessary. Quitting the Diversion Program without permission or being expelled for cause shall constitute a violation of probation by respondent. Such diversion program shall utilize the Uniform Standards for Substance-Abusing Licensees, as set forth below:

A vendor that provides diversion services must report to the board any major violation, as defined in Uniform Standard #10 within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10 within five (5) business days.

A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

Specimen Collectors:

- The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.

- The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- The provider or subcontractor must provide collection sites that are located in areas throughout California.
- The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check-in daily for drug testing.
- The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- The provider or subcontractor must have a secure, HIPAA compliant website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours per day.
- The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- Must undergo training as specified in Uniform Standard #4.

Group Meeting Facilitators

- A group meeting facilitator for any support group meeting:
 - (1) Must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
 - (2) Must be licensed or certified by the state or other nationally certified organization;
 - (3) Must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year;
 - (4) Shall report any unexcused absence within 24 hours to the board; and
 - (5) Shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

Work Site Monitors

The worksite monitor must meet the following qualifications:

- The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the worksite monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
- The worksite monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no worksite monitor with like practice is available, or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
- Shall have an active, unrestricted license, with no disciplinary action within the last five (5) years.
- Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, or at least once per week.
- Interview other staff in the office regarding the licensee's behavior, if applicable;
- Review the licensee's work attendance.

Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours, the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within forty-eight (48) hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include the following:

- The licensee's name and license number;
- The worksite monitor's name and signature;
- The worksite monitor's license number;
- The worksite location(s);
- The dates licensee had face-to-face contact with the monitor

- Staff interviewed, if applicable;
- Attendance report;
- Any change in behavior and/or personal habits;
- Any indicators that can lead to suspected substance abuse.

Treatment Providers

Treatment facility staff and services must have the following:

- Licensure and/or accreditation by appropriate regulatory agencies;
- Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
- Professional staff who are competent and experienced members of the clinical staff;
- Treatment planning involving a multidisciplinary approach and specific aftercare plans;
- Means to provide treatment/progress documentation to the provider.

General Vendor Requirements

The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

- The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to subcontractors.
- If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within thirty (30) business days of notification of failure to provide adequate services.
- The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

External Independent Audits

If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection. The board and the department shall respond to the findings in the audit report.

Disclosure

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral:

- The licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction(s) imposed.

This disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

32. Drugs – Abstain from Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in the California Business and Professions Code, or any drugs requiring a prescription except for ordering or possessing medications lawfully prescribed to respondent by another practitioner, for a bona fide illness or condition.

33. Alcohol – Abstain from Use

Respondent shall abstain completely from the use of alcoholic beverages.

34. Notification to Employer

If a licensee whose license is on probation has an employer, the licensee shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the Board, the worksite monitor, and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

35. Biological Fluid Testing

Respondent shall submit to and pay for any random and directed biological fluid or hair sample, breath alcohol, or any other mode of testing required by the Board. Biological fluid testing may be required on any day, including weekends and holidays. The scheduling of biological fluid testing shall be done on a random basis, preferably by a computer program, so that respondent can make no reasonable assumption of when he/she will be tested. Respondent shall be required to make daily contact to determine if drug testing is required.

Respondent shall be subject to at least fifty-two (52) random tests per year within the first year of probation, and at least thirty-six (36) random tests per year for the duration of the probationary term, up to five (5) years. If there have been no positive biological fluid tests in the previous five (5) consecutive years of probation, testing may be reduced to one (1) time per month. Nothing precludes the Board from increasing the number of random tests for any reason.

The board or its designee may require less frequent testing if any of the following apply:

- Previous Testing/Sobriety. In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the Board's own testing schedule so that the combined testing is equivalent to the requirements of this section.
- Violation(s) Outside of Employment. Where the basis for probation or discipline is a single incident or conviction involving alcohol or drugs, or two incidents or convictions involving alcohol or drugs that were at least seven (7) years apart, that did not occur at work or on the way to or from work, the board or its designee may skip the first-year testing frequency requirements.
- Not Employed in Health Care Field. Where respondent is not employed in any health care field, frequency of testing may be reduced to a minimum of twelve (12) tests per year. If respondent wishes to thereafter return to employment in the health care field, respondent shall be required to test at least once a week for a period of sixty (60) days before commencing such employment, and shall thereafter be required to test at least once a week for a full year, before he/she may be reduced to a testing frequency of at least thirty-six (36) tests per year.
- Tolling. Respondent's testing requirement may be suspended during any period of tolling of the period of probation.
- Substance Use Disorder Not Diagnosed. Where respondent has a demonstrated period of sobriety and/or non-use, the board or its designee may reduce the testing frequency to no less than twenty-four (24) tests per year.

Any detection through testing of alcohol, or of a controlled substance, or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment, may cause the board or its designee to increase the frequency of testing, in addition to any other action including but not limited to further disciplinary action.

Respondent shall have the test performed by a Board-approved laboratory certified and accredited by the U.S. Department of Health and Human Services on the same day that he or she is notified that a test is required. This shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a positive drug screen and constitutes a violation of probation. If a test results in a determination that the urine admission was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If an "out of range result" is obtained, the Board may require respondent to immediately undergo a physical examination and to complete laboratory or diagnostic testing to determine if any underlying physical condition has contributed to the diluted result and to cease practice. Any such examination or laboratory and testing costs shall be paid by respondent. An "out of range result" is one in which, based on scientific principles, indicates the respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and

respondent must cease practicing. Respondent shall not resume practice until notified by the board. If respondent tests positive for a banned substance, respondent shall be ordered by the Board to cease any practice, and may not practice unless and until notified by the board. If respondent tests positive for a banned substance, respondent shall be ordered by the Board to cease any practice, and may not practice unless and until notified by the Board. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Nothing herein shall limit the Board's authority to reduce or eliminate the penalties herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that contains different provisions for reinstatement or reduction of penalty.

36. Group Support Meetings

[OPTIONAL – If the Board requires respondent to participate in group support meetings then the following applies:]

Respondent shall participate in group support meetings. When determining the frequency of group support meetings to be attended, the Board shall give consideration to the following: the licensee's history; the documented length of sobriety/time that has elapsed since substance use; the recommendation of the clinical evaluator; the scope and pattern of use; the licensee's treatment history; and the nature, duration, and severity of substance abuse.

The group meeting facilitator must have the following qualifications and meet the following requirements:

1. The meeting facilitator must have a minimum of three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last year.
3. The meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The meeting facilitator shall report any unexcused absence within 24 hours.

Verified documentation of attendance shall be submitted by respondent with each quarterly report. Any costs associated with attending and reporting on group support meetings shall be paid by respondent.

37. Worksite Monitor

[OPTIONAL – If the Board requires respondent to use a worksite monitor then the following applies:]

Respondent shall obtain a worksite monitor. Respondent shall submit the name of the proposed worksite monitor within twenty (20) days of the effective date of the decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding respondent and the worksite monitor's requirements and reporting responsibilities. If the worksite monitor terminates the agreement with the Board and respondent, respondent shall not resume practice until another worksite monitor is obtained by respondent and approved by the Board.

The worksite monitor must meet the following criteria to be considered for approval by the Board:

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional if no monitor with like practice is available or as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.
3. If the worksite monitor is a licensed health care professional, he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a. Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b. Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c. Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall comply with the following:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer or supervisor within one (1) business day of the occurrence. If the occurrence is not during the board's normal business hours, the verbal report must be made to the board within one (1) hour of the next business day. A written report must be submitted to the board within forty-eight (48) hours of the occurrence.
2. The worksite monitor must complete and submit a written report monthly or as directed by the Board. The report shall include:
 - a. The licensee's name and license number;
 - b. The worksite monitor's name and signature;
 - c. The worksite monitor's license number, if applicable;
 - d. The worksite location(s);
 - e. The dates the licensee had face-to-face contact with the worksite monitor;
 - f. The names of worksite staff interviewed, if applicable;
 - g. An attendance report;
 - h. Any change in behavior and/or personal habit; and
 - i. Any indicators that can lead to suspected substance abuse.

38. Results of Biological Fluid Tests

If the results of a biological fluid test indicate that a licensee has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order the licensee to cease practice and contact the licensee and instruct him or her to leave work immediately. The Board shall also immediately notify the licensee's employer that the licensee may not work.

Thereafter, the board should determine whether the positive test result is in fact evidence of prohibited use by consulting the specimen collector and the laboratory, communicating with the licensee and/or any physician who is treating the licensee, and communicating with any treatment provider, including group facilitators. If the board confirms that a positive test result is evidence of use of a prohibited substance, the licensee has committed a major violation, and the Board shall impose any or all of the consequences of committing a major violation, in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance the rehabilitation of the licensee.

If no prohibited use exists, the board shall immediately lift the cease practice order. If the board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation.

39. Major and Minor Violations

Major Violations include, but are not limited to the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluations;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the California Business and Professions Code, or other state or federal law;
6. Failure to obtain biological fluid testing for substance abuse when ordered;
7. Testing positive for a prohibited substance;
8. Knowingly using, making, altering, or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

The consequences for committing a Major Violation include, but are not limited to the following:

1. A Board's order to cease practice. The Board may also order the licensee to undergo a new clinical diagnostic evaluation. The Board's order may state that the licensee must test negative for at least a month of continuous drug testing before being allowed to return to work.
2. The termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to the following:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;

3. Failure to contact a monitor when required;
4. Any other violation that does not present an immediate threat to the violator or to the public.

The consequences for committing a Minor Violation include, but are not limited to the following:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of a citation and fine or a warning notice;
6. Required re-evaluation or testing;
7. Other action as determined by the board.

40. Request by a Substance-Abusing Licensee to Return to Practice

Before determining whether to authorize the return to practice after the issuance of a cease-practice order, or after the imposition of practice restrictions following a clinical diagnostic evaluation, the Board in conjunction with the evaluator shall ensure that the licensee meets the following criteria:

1. Demonstrated sustained compliance with the current recovery program;
2. Demonstrated ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse;
3. Negative biological fluid tests for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

41. Request by a Substance-Abusing Licensee for Reinstatement of a full and unrestricted license – Petition for Reinstatement

“Petition for Reinstatement” as used here is an informal request (“petition”) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act. The licensee must meet the following criteria to request (“petition”) for a full and unrestricted license:

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable;
2. Demonstrated successful completion of recovery program, if required;
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities;
4. Demonstrated that he or she is able to practice safely;
5. Continued sobriety for three (3) to five (5) years.

RECOMMENDED DISCIPLINE **(BY VIOLATION)**

The following discipline, including conditions of probation, generally listed by statute order as set forth in the Business and Professions Code, is recommended by the Board for proven or stipulated violations. In all circumstances, the maximum penalty for any violation of the Business and Professions Code will be revocation. Additionally, violations of Business and Professions Code sections 2235 (obtaining license by fraud), 2288 (impersonation of an applicant in an examination), and 2306 (practice under suspension) shall all result in an order of revocation.

The following disciplinary penalties for selected Business and Professions Code violations are guidelines for use by administrative law judges at hearings as well as for use in settlement of cases. Individual penalties may vary depending upon the particular circumstances of the case resulting in aggravation or mitigation of the offenses alleged. If probation is imposed as part of a penalty, the probation should include: (1) standard terms and conditions, which will appear in all cases; (2) the conditions specific to violation, which will be tailored according to the nature of the offense; and, (3) if the violation involved the use of drugs or alcohol, terms and conditions of the Uniform Standards for Substance – Abusing Licensees.

B&P 725 - EXCESSIVE PRESCRIBING OR TREATMENTS

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Drugs - Total DEA restriction
Surrender DEA permit

- (or) - Partial DEA restriction
2. Pharmacology course
 3. Education Course
 4. Work-site Monitor
 5. Written Examination
 6. Clinical Assessment and Training Program
 7. Monitor – Practice
 8. If warranted, suspension – 30 days or more

B&P 726 - SEXUAL MISCONDUCT

Minimum discipline: Stayed revocation, 10 years probation, standard terms, and

1. Suspension – 90 days or more
2. Education course
3. Clinical Assessment and Training Program
4. Psychiatric Evaluation/ Psychotherapy
5. Third Party Presence
6. Worksite Monitor

Note: if the violation constitutes sexual contact, as defined in title 16, California Code of Regulations, section 1663, subsection (b), revocation must be ordered and not stayed.

B&P 729 – SEXUAL EXPLOITATION

Minimum discipline: Revocation

See Business and Professions Code section 2246. Revocation may not be stayed by the administrative law judge or the Board.

B&P 810 – INSURANCE FRAUD

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Suspension – 30 days or more
2. Education Course
3. Clinical Assessment and Training Program
4. Worksite Monitor
5. Monitor – Practice/Billing
6. Solo Practice Prohibition/Supervised Structure
7. Ethics Course
8. Restitution

Note: Suspension or revocation may be mandated by law's provisions. See Business and Professions Code section 810, subdivision (c).

B&P 820 - MENTAL OR PHYSICAL ILLNESS

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Psychiatric Evaluation/ Psychotherapy
2. Written or Oral Examination
3. Worksite Monitor
4. Solo Practice Prohibition/ Supervised Environment
5. Prohibited Practice
6. Monitoring – Practice/ Billing

7. Clinical Assessment and Training Program

B&P 2234(b) - GROSS NEGLIGENCE

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Suspension – 30 days or more
2. Education Course
3. Pharmacology Course [if warranted]
4. Written Examination
5. Clinical Assessment and Training Program
6. Worksite Monitor
7. Monitor – Practice/ Billing
8. Solo Practice Prohibition/Supervised Structure
9. Prohibited Practice
10. Ethics Course

B&P 2234(c) - REPEATED NEGLIGENT ACTS

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Suspension – 30 days or more
2. Education Course
3. Pharmacology Course [if warranted]
4. Written Examination
5. Clinical Assessment and Training Program
6. Worksite Monitor
7. Monitor – Practice/ Billing
8. Solo Practice Prohibition/Supervised Structure
9. Prohibited Practice
10. Ethics Course

B&P 2234(d) - INCOMPETENCE

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Suspension – 30 days or more
2. Education Course
3. Pharmacology Course [if warranted]
4. Written Examination
5. Clinical Assessment and Training Program
6. Worksite Monitor
7. Monitor – Practice/ Billing
8. Solo Practice Prohibition/ Supervised Structure
9. Prohibited Practice
10. Ethics Course

B&P 2234(e) - DISHONESTY

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Suspension – 30 days or more
2. Education Course
3. Clinical Assessment and Training Program
4. Worksite Monitor
5. Monitor – Practice/Billing

6. Solo Practice Prohibition/Supervised Structure
7. Ethics Course
8. Community Service
9. Restitution

B&P 2236 - CRIMINAL CONVICTION – FELONIES/ MULTIPLE MISDEMEANORS

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Suspension – 30 days or more
2. Psychiatric Evaluation/ Psychotherapy
3. Education Course
4. Clinical Assessment and Training Program
5. Worksite Monitor
6. Monitor – Practice/Billing
7. Ethics Course
8. Community Service
9. Restitution

B&P 2236 - CRIMINAL CONVICTION – SINGLE MISDEMEANOR

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Education Course
2. Psychiatric Evaluation/ Psychotherapy
3. Worksite Monitor
4. Monitor – Practice/Billing
5. Ethics Course
6. Community Service
7. Restitution

B&P 2237 - DRUG RELATED CONVICTION

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

If warranted,

1. Actual Suspension – 10 days or more
2. Psychiatric Evaluation/ Psychotherapy
3. Clinical Diagnostic Evaluation
4. Worksite Monitor
5. Monitor – Practice
6. Ethics Course
7. Conditions Applying the Uniform Standards, including:
 - 7.a. Substance Abuse and Addiction Evaluation
 - 8.b. Drugs – Abstain from Use
 - 9.c. Alcohol – Abstain from Use
 - 10.d. Random Bodily Fluid Testing
 - 11.e. Diversion Program

B&P 2238 - VIOLATION OF DRUG STATUTE

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

If warranted,

1. Actual Suspension – 90 days or more
2. Pharmacology Course
3. Clinical Assessment and Training Program
4. Ethics Course
5. Controlled Drugs – Total Restriction
6. DEA – Surrender of DEA Permit
7. Controlled Drugs – Partial Restriction
8. Controlled Drugs – Maintain Record
9. Psychiatric Evaluation/ Psychotherapy
10. Worksite Monitor
11. Monitor – Practice
12. Conditions Applying the Uniform Standards, including
 - 12.a. Substance Abuse and Addiction Evaluation
 - 13.b. Drugs – Abstain from Use
 - 14.c. Alcohol – Abstain from Use
 - 15.d. Random Bodily Fluid Testing
 - 16.e. Diversion

B&P 2239 - SELF-ABUSE OF DRUGS OR ALCOHOL

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Actual Suspension – 10 days or more
2. Controlled Drugs – Total Restriction
3. DEA – Surrender of DEA Permit
4. Controlled Drugs – Partial Restriction
5. Controlled Drugs – Maintain Record
6. Psychiatric Evaluation/ Psychotherapy
7. Worksite Monitor
8. Monitor – Practice
9. Ethics Course
10. Conditions Applying the Uniform Standards, including:
 - 10.a. Substance Abuse and Addiction Evaluation
 - 11.b. Drugs – Abstain from Use
 - 12.c. Alcohol – Abstain from Use
 - 13.d. Random Bodily Fluid Testing
 - 14.e. Diversion

B&P 2241 - FURNISHING DRUGS TO AN ADDICT

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

If warranted,

1. Actual Suspension – 10 days or more
2. Pharmacology Course
3. Education Program
4. Clinical Assessment and Training Program
5. Ethics Course
6. Controlled Drugs – Total Restriction
7. DEA – Surrender of DEA Permit
8. Controlled Drugs – Partial Restriction
9. Controlled Drugs – Maintain Record
10. Psychiatric Evaluation/ Psychotherapy
11. Worksite Monitor
12. Monitor – Practice
- 12-13 Conditions Applying the Uniform Standards, including

- 13.a. Substance Abuse and Addiction Evaluation
- 14.b. Drugs – Abstain from Use
- 15.c. Alcohol – Abstain from Use
- 16.d. Random Bodily Fluid Testing
- 17.e. Diversion

B&P 2242 - PRESCRIBING DRUGS WITHOUT PRIOR EXAMINATION

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

If warranted,

- 1. Actual Suspension – 10 days or more
- 2. Pharmacology Course
- 3. Education Program
- 4. Clinical Assessment and Training Program
- 5. Ethics Course
- 6. Controlled Drugs – Total Restriction
- 7. DEA – Surrender of DEA Permit
- 8. Controlled Drugs – Partial Restriction
- 9. Controlled Drugs – Maintain Record
- 10. Psychiatric Evaluation/ Psychotherapy
- 11. Worksite Monitor
- 12. Monitor - Practice

B&P 2250 - FAILURE TO COMPLY WITH STERILIZATION CONSENT PROVISIONS

Minimum discipline: Stayed revocation, [X] years probation, standard terms, and

- 1. Education Course
- 2. Pharmacology Course [if warranted]
- 3. Written Examination
- 4. Clinical Assessment and Training Program
- 5. Worksite Monitor
- 6. Monitor – Practice / Billing
- 7. Solo Practice Prohibition/ Supervised Structure
- 8. Prohibited Practice
- 9. Ethics Course

B&P 2251 - USE OF SILICONE

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

- 1. Actual Suspension – 30 days or more
- 2. Pharmacology Course
- 3. Education Program
- 4. Clinical Assessment and Training Program
- 5. Ethics Course
- 6. Prohibited Practice [if warranted]

B&P 2252 - ILLEGAL CANCER TREATMENT

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

- 1. Actual Suspension – 30 days or more
- 2. Pharmacology Course

3. Education Program
4. Clinical Assessment and Training Program
5. Ethics Course
6. Worksite Monitor
7. Monitor Billing/ Practice
8. Ethics Course
9. Prohibited Practice
10. Solo Practice Prohibition/ Supervised Structure

B&P 2261 – MAKING OR SIGNING FALSE DOCUMENT

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Actual Suspension – 30 days or more
 2. Education Course
 3. Ethics Course
 4. Monitoring Billing/ Practice
 5. Prohibited Practice
 6. Solo Practice Prohibition/ Supervised Structure
-

B&P 2262 – ALTERATION OF MEDICAL RECORDS/ FALSE MEDICAL RECORDS

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Actual Suspension – 30 days or more
2. Education Course
3. Pharmacology Course
4. Ethics Course
5. Monitoring Billing/ Practice
6. Prohibited Practice
7. Solo Practice Prohibition/ Supervised Structure

B&P 2263 – VIOLATION OF PROFESSIONAL CONFIDENCE

Minimum discipline: Stayed revocation, 5 years probation, standard terms, and

1. Actual Suspension – 30 days or more
2. Education Course
3. Ethics Course
4. Monitoring Billing/ Practice
5. Prohibited Practice
6. Solo Practice Prohibition/ Supervised Structure

B&P 2264 - AIDING AND ABETTING UNLICENSED PRACTICE

Minimum Discipline: Stayed revocation, 5 years probation, standard terms, and

1. Actual Suspension – 90 days or more
2. Education Course
3. Ethics Course
4. Monitoring Billing/ Practice
5. Prohibited Practice
6. Solo Practice Prohibition/ Supervised Structure

B&P 2271, 651 - DECEPTIVE ADVERTISING

Minimum Discipline: Stayed revocation, 1 year probation

B&P 2272 - ANONYMOUS ADVERTISING

Minimum Discipline: Stayed revocation, 1 year probation

B&P 2273 - EMPLOYMENT OF RUNNERS, CAPPERS AND STEERERS

Minimum discipline: Stayed revocation, 3 years probation, standard terms, and

1. Actual Suspension – 90 days or more
2. Education Course
3. Ethics Course
4. Monitoring Billing/ Practice
5. Prohibited Practice
6. Solo Practice Prohibition/ Supervised Structure

B&P 2274 - MISUSE OF TITLE

Minimum Discipline: Stayed revocation, 1 year probation

B&P 2275 - USE OF “M.D.”

Minimum Discipline: Stayed revocation, 1 year probation

B&P 2276 - MISUSE OF “D.O.”

Minimum Discipline: Stayed revocation, 1 year probation

B&P 2280 - INTOXICATION WHILE TREATING PATIENTS

Minimum discipline: Stayed revocation, 5 years probation, standard terms, Uniform Standards for Substance Abuse, and

1. Actual Suspension – 10 days or more
2. Controlled Drugs – Total Restriction
3. DEA – Surrender of DEA Permit
4. Controlled Drugs – Partial Restriction
5. Controlled Drugs – Maintain Record
6. Psychiatric evaluation /Psychotherapy
7. Worksite Monitor
8. Monitor - Practice
9. Ethics Course
10. Conditions Applying the Uniform Standards, including
 - 10-a. Substance Abuse and Addiction Evaluation
 - 11-b. Drugs – Abstain from Use
 - 12-c. Alcohol – Abstain from Use
 - 13-d. Random Bodily Fluid Testing
 - 14-e. Diversions

B&P 2285 - USE OF FICTITIOUS NAME WITHOUT PERMIT

Minimum discipline: 90 days stayed suspension, 1 year probation

B&P 2288 – IMPERSONATION OF APPLICATION IN EXAM

Revocation

B&P 2306 – PRACTICE DURING SUSPENSION

Revocation

B&P 2305 - DISCIPLINE BY ANOTHER STATE OR FEDERAL AGENCY

Minimum discipline: add actual period of suspension

VIOLATION OF PROBATION – REPEATED VIOLATIONS

A repeated similar offense or a violation of probation evidencing an unreformed attitude should call for the maximum discipline. Other violations of probation should call for at least a meaningful period of actual suspension, preferably 90 days or more, as well as other appropriate terms.

Rev 08/14

Disciplinary Guidelines

Notice

TITLE 16. OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Osteopathic Medical Board of California (hereinafter referred to as the "Board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

**Department of Consumer Affairs – HQ2
1747 North Market Blvd.
Hearing Room
Sacramento CA 95834
Thursday, **September 17, 2015**
10:00 a.m.**

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 **September 17, 2015** or must be received at the hearing. 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 or oral 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 2018, 2451, and 3600-1 of the Business and Professions Code (Initiative Measure, Stats. 1923, p. xciii), and to implement, interpret or make specific sections 315, 726, 729, and 2366 of the Business and Professions Code, section 11425.50 (e) of the Government Code, and sections 261.5, 290, 313.1, 647b, and 647 subdivision (a) and (b) of the Penal Code, the Board is considering changes to Title 16, Division 16, of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend Section 1661.2 in Article 12.5, Division 16, of Title 16 of the California Code of Regulations entitled "Diversion Evaluation Committee Duties & Responsibilities" (Rev 08/89) and Section 1663 in Article 12.7, Division 16, of Title 16 of the California Code of Regulations entitled "Disciplinary Guidelines" (Rev 06/97).

The Board currently regulates approximately 7,500 physicians and surgeons a number that is rapidly increasing. The board's highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees; disciplining licensees for violations of the Medical Practice Act (Act); and monitoring licensees whose licenses have been placed on probation for substance abuse, focusing on the areas of intake and how licensees are monitored as they come into probation and compliance.

Existing law requires the Department of Consumer Affairs (DCA) to establish Uniform Standards regarding substance-abusing licenses, focusing on the areas of intake and how licensees are monitored as they come into probation and compliance.

Existing law, Business and Professions Code (Code) section 2018 authorizes the Board to adopt, amend, or repeal such rules and regulations as may be reasonably necessary to enable the Board to carry into effect the provisions of the Medical Practice Act.

Existing law, Code section 315, established the Substance Abuse Coordination Committee (SACC) within the DCA and required the SACC to formulate uniform and specific standards in sixteen specified areas for each healing arts board to use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.

Existing law, Code section 315.2, specifies that a healing arts board within the DCA is required to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program. The cease-practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, Code section 315.4, authorizes healing arts boards within the Department to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under section 315. The cease-practice order pursuant to this section does not constitute disciplinary action and is not subject to adjudicative hearings.

Existing law, Government Code section 11400.20, authorizes an agency to adopt regulations to govern an adjudicative proceeding.

The main purpose for this proposal is to amend sections 1661.2 and 1663 of Title 16 of the California Code of Regulations. The proposed language is necessary to aid the Board in the discipline of substance-abusing licensees to provide better public protection to the people of California.

This regulation will incorporate the Uniform Standards for Substance Abusing the Healing Arts Licensees (04/2011), as required by SB 1441 (2007-2008, Ridley-Thomas) by proposing to add the standards, which shall be adhered to in all cases in which a licensee is placed on probation due, in part, to a substance abuse problem. These standards shall be followed in all instances, but will also allow the Board to impose more restrictive conditions, if necessary, to protect the public.

The proposed regulations would also incorporate by reference the Board's disciplinary guidelines entitled "Osteopathic Medical Board of California Disciplinary Guidelines of 2014" (Rev 08/14).

ANTICIPATED BENEFITS OF THE PROPOSAL

The Board has determined that this regulatory proposal will provide increased consumer protection for consumers, and to ensure that minimum standards are met and to ensure

uniformity among the standards established by the SACC for the healing arts licensing boards under the DCA.

The Board uses the Disciplinary Guidelines when taking action to suspend, revoke, or place a license on probation. This proposal requires an Administrative Law Judge (ALJ) to apply the mandatory conditions in the Uniform Standards Related to Substance Abusing Licensees when an applicant or licensee has a substance abuse disorder and to also consider the disciplinary guidelines for all other disciplinary matters. This proposal would allow the Board to impose more restrictive conditions if necessary to protect the public from unsafe, incompetent, or negligent practitioners when exercising its licensing, regulatory, and disciplinary functions, unless a specific order is required by statute.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, the Board has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

- “Uniform Standards Regarding Substance-Abusing and Healing Arts Licensees” (04/ 2011)
- Osteopathic Medical Board of California Disciplinary Guidelines of 2014 (Rev 08/14)

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

Nondiscretionary Costs/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: The Board 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.

Cost Impact on Representative Private Person or Business: This regulation would impact only those physicians on probation who are identified as “substance abusing” and subject to the Uniform Standards for Substance-Abusing Licensees. Once so designated, this subset of licensees on probation could be impacted by a temporary removal from practice based on either a positive biological fluid test and/or the requirement to undergo the clinical diagnostic evaluation. Under the proposed regulation, no licensee shall be returned to practice until the Board determines that he or she is able to safely practice either full-time or part-time, and has had at least 30 days of negative drug test results.

The Board also anticipates that this proposed regulation could create an additional fiscal impact to licensees on probation who test positive for a banned substance in that another clinical diagnostic evaluation can be ordered to ensure the licensee is considered "safe to practice."

The cost of the "Clinical Diagnostic Evaluation" and Diversion services provided by MAXIMUS is estimated to be approximately \$338.15 per participant monthly. Resulting in an annual cost of \$4,057.80 in addition to charges incurred for biological fluid testing.

Therefore, the Board estimates that the impact to licensees on probation over a 5 year period (average timeframe of licensee participation) in the Diversion program will result in \$20,289 per participant.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulations would not affect small businesses. The Board does not license businesses, the Board licenses individuals; therefore, there is no impact on small businesses or any business.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses: The board has determined that this regulatory proposal will not have any impact on the creation of jobs or new business or the elimination of jobs or existing businesses or the expansion of business in the State of California.

Benefits of the Regulation: The Board has determined that this proposed regulation will benefit California consumers by enhancing and strengthening the Board's ability to closely monitor physicians with substance-abuse issues and quickly remove them from practice, when appropriate, thus providing the consumer with enhanced protection from physicians with substance abuse problems.

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 be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

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 of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the person designated in this Notice under Contact Person or by accessing the Board's website: <http://www.ombc.ca.gov>.

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

All the information upon which the proposed regulations are 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 Board's website: <http://www.ombc.ca.gov>.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Machiko Chong, Executive Analyst
1300 National Drive, Suite #150
Sacramento, CA 95834-1991
(916) 928-7636 Office
(916) 928-8392 Fax
E-mail: Machiko.Chong@dca.ca.gov

The backup contact person is:

Name: Angie Burton, Executive Director
1300 National Drive, Suite #150
Sacramento, CA 95834-1991
(916) 928-8390 Office
(916) 928-8392 Fax
E-mail: Angie.Burton@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.ombc.ca.gov.

Disciplinary Guidelines

Proposed Language

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

Proposed Language

Changes to the originally proposed language are shown by underlining for new text and strikethrough for deleted text.

1. Amend Section 1661.2 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

§ 1661.2 Diversion Evaluation Committee Duties and Responsibilities.

A diversion evaluation committee shall have the following duties and responsibilities in addition to those set forth in Section 2366 of the Code:

- (a) To consider recommendations of the program manager and any consultants to the committee;
- (b) To set forth in writing for each physician in a program a treatment and rehabilitation plan established for that physician with the requirement for supervision and surveillance.
- (c) To use the uniform standards for substance-abusing licensees contained in "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (04/2011), which is hereby incorporated by reference.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.xciii), Section 1; and Section 3600-1, Business and Professions Code. Reference: Section 2366, Business and Professions Code.

2. Amend Section 1663 of Division 16 of Title 16 of the California Code of Regulations to read as follows:

§ 1663. Disciplinary Guidelines.

(a) In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Osteopathic Medical Board of California shall consider the disciplinary guidelines entitled "Osteopathic Medical Board of California Disciplinary Guidelines of ~~1996~~ 2014" (Rev 08/14) ("Guidelines"), which are hereby incorporated by reference. Deviation from ~~these g~~Guidelines and orders, including the standard terms of probation, is appropriate where the Osteopathic Medical Board of California in its sole discretion determines that the facts of the particular case warrant such a deviation – for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) (1) Notwithstanding the Guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or any finding that the licensee has committed a sex

offense or been convicted of a sex offense, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

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

- (a) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an offense.
- (b) Any offense defined in Section 261.5, 313.1, 647b, or 647 subdivision (a) or (d) of the Penal Code or a finding that a person committed such an offense.
- (c) Any attempt to commit any of the offenses specified in this section.
- (d) Any offense committed or attempted in any other state or against the laws of the United State which, if committed or attempted in this state, would be punishable as one or more of the offenses specified in this section.

(c) If the conduct found to be a violation involves drugs, alcohol, or both, and the individual is permitted to practice under conditions of probation, a clinical diagnostic evaluation shall be ordered as a condition of probation in every case, without deviation. The clinical diagnostic evaluator's report shall be submitted in its entirety to the board.

- (1) Each of the "Terms and Conditions of the Uniform Standards for Substance-Abusing Licensees," as set forth in the Guidelines, shall be included in any order subject to this subsection, but may be imposed contingent upon the outcome of the clinical diagnostic evaluation.
- (2) The Substance Abuse Coordination Committee's *Uniform Standards Regarding Substance Abusing Healing Arts Licensees (04/2011)*, which are hereby incorporated by reference, shall be used in applying the probationary conditions imposed pursuant to this subsection.

(d) Nothing in this section shall prohibit the Board from imposing additional terms or conditions of prohibition in any order that the Board determines would provide greater public protection.

NOTE: Authority cited: Osteopathic Act (Initiative Measure, Stats. 1923, p.xciii), Sections 1, 2018, 2451, and 3600-1, Business and Professions Code; and Section 11400.21, Government Code. Reference: Sections 315, 726 and 729, Business and Professions Code; Sections 11400.21 and 11425.50(e), Government Code; Sections 261.5, 290, 313.1, 647b, and 647 subdivision (a) or (d), Penal Code.

Disciplinary Guidelines
Initial Statement of Reasons

OSTEOPATHIC MEDICAL BOARD OF CALIFORNIA

INITIAL STATEMENT OF REASONS

Hearing Date: September 17, 2015

Subject Matter of Proposed Regulations: Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines as required by SB 1441

Sections affected: Division 16 of Title 16 of California Code of Regulations Sections 1661.2 and 1663

Introduction

Senate Bill 1441: On June 30, 2008, the Medical Board of California was scheduled to sunset its Diversion Program and reverted to disciplinary action as the only means of addressing physicians with substance abuse problems. The sunset was primarily due to the program's failure of its fifth audit, conducted by the Center for Public Interest Law (the Medical Board's Enforcement Monitor), for overall ineffectiveness, lack of standards and failure to protect the public from harm. At the same time, there was extensive media coverage citing deficiencies in the Medical Board's Diversion Program, including patients harmed by physicians who continued to practice even after testing positive for drugs. On January 24, 2008, with the sunset of its Diversion Program imminent, the Medical Board held a Diversion Summit to discuss other options for physicians with substance abuse problems.

On March 10, 2008, the Senate Business, Professions and Economic Development Committee (Senate Committee) held a hearing to review physician's and health practitioner's substance abuse programs. The resulting legislation, authored by the Senate Committee Chair, Senator Ridley-Thomas, was Senate Bill (SB) 1441: Healing arts practitioners: substance abuse (Chapter 548, Statutes of 2008).

In September 2008, SB 1441 was signed into law. The Legislature declared that substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount. The legislation, in part, mandated that the Department of Consumer Affairs (Department) establish a Substance Abuse Coordination Committee (Committee) subject to the Bagley-Keene Open Meeting Act comprised of the Executive Officers of the Department's healing arts boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of the Department. The Committee was charged with developing consistent and uniform standards and best practices in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a Board chooses to have a formal diversion program. The Department is committed to ensuring that licensees who are confirmed to be abusing drugs and/or alcohol, and who pose a risk to the public, are not diverted from an enforcement action or public

disclosure of that action. The Department is also committed to ensuring that licensees who have undergone treatment and have made steps towards recovery can safely return to practice. The Committee has developed sixteen uniform standards as required by SB 1441. The Board is proposing to implement Uniform Standards 1-12 in its Disciplinary Guidelines through the regulatory process.

Other Amendments/Deletions: The disciplinary and probationary environments have changed significantly since 1996 and the Board's proposed changes are meant to address this. Many of the changes are based on best practices exemplified by the Department of Consumer Affairs' various Boards and Bureaus that have proven to be effective and in the best interest for consumers and the licensees receiving discipline.

Specific Purpose of each adoption, amendment, or repeal:

The Board proposes to add specified uniform standards related to substance abuse by incorporating them by reference into CCR section 1661.2. This proposal also updates the Board's existing standards and optional terms of probation. The following describes those uniform standards being added by the Board, including the updates of its Disciplinary Guidelines and other clarifying and minor changes.

CCR section 1661.2

Section 1661.2 is amended as follows:

- Incorporates by reference the new guidelines, including the "Uniform Standards Regarding Substance-Abusing and Healing Arts Licensees" (04/2011).

CCR section 1663

Section 1663 is amended as follows:

- Incorporates by reference the Board's Disciplinary Guidelines entitled "Osteopathic Medical Board of California Disciplinary Guidelines of 2014" (Rev 08/14).
- Adds clarifying language indicating when it is appropriate to use the Disciplinary Guidelines and Uniform Standards.

Factual Basis/Rationale:

In order to comply with SB 1441, the Board proposes to add the following standards, which shall be adhered to in every case where a licensee is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions, if necessary, to protect the public.

Standard 1. Clinical Diagnostic Evaluation and Reports

Requires that if a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years of experience in providing evaluations of

health care professionals with substance abuse disorders and is approved by the Board. This standard also identifies the information that must be addressed or contained in the evaluation report and timeframes for submitting the report to the Board.

The purpose of this standard is to increase consumer protection by: 1) specifying requirements for a clinical diagnostic evaluation of the licensee and the required qualifications for the providers charged with evaluating the licensee along with timeframes for completing the clinical diagnostic evaluation; 2) ensuring that the Board is notified quickly if the licensee is a threat to himself or herself or the public; 3) ensuring the Board is provided with a professional opinion as to whether the licensee has a substance abuse problem, and whether the licensee is a threat to himself or herself or others; and 4) prohibiting personal, financial and business relationships between the evaluator and licensee, thereby ensuring objectivity in assessments.

Because of the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a licensee's ability to practice safely. The evaluator can present recommendations for a therapeutic treatment plan.

The treatment recommendations may be incorporated into a Board order as elements for monitoring. By specifying that the Board be provided with expert recommendations for treatment and practice restrictions, the standard also ensures that licensees who have undergone treatment and have made steps towards recovery can safely return to practice.

Standard 2. Diversion Program – Alcohol and Drugs

Requires that the licensee shall enroll and participate in the Board's Diversion Program within thirty (30) days of the effective date of decision, and remain in the program until the Board determines that further treatment and rehabilitation is no longer necessary. The standard makes note that quitting the Diversion Program without permission or being expelled for cause shall constitute a violation of probation by the licensee.

This standard also requires that the vendor providing diversion services report any major violations committed by the licensee to the board within one (1) business day and any minor violations within five (5) business days. It also outlines standards for testing, specimen collection and handling and requirements for the laboratories who perform the handling and processing of test results.

This standard would increase consumer protection because it requires that the licensee enroll in a program where he or she is regularly monitored by an alternate party, and ensures that they remain in compliance during the term of their probationary period through randomly regulated specimen collections.

Standard 3. Drugs – Abstain from Use

This standard requires that the licensee shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in the California Business and Professions Code, or any

drugs requiring a prescription except for ordering or possessing medications lawfully prescribed to the licensee by another practitioner, for a bona fide illness or condition.

As controlled substances impair a licensee's ability to practice safely the board requires all licensee to comply with the Uniform Standards developed by the Substance Abuse Coordination Committee. The boards highest priority is maintaining the protection of consumers and this standard would ensure consumer safety by prohibiting probationers use of controlled substances as a condition of their probation.

Standard 4. Alcohol – Abstain from Use

Requires that the licensee shall abstain completely from the use of alcoholic beverages.

As alcohol impairs a licensee's ability to practice safely the board requires all licensee to comply with the Uniform Standards developed by the Substance Abuse Coordination Committee. The boards highest priority is maintaining the protection of consumers and this standard would ensure consumer safety by prohibiting probationers use of alcohol as a condition of their probation.

Standard 5. Notification to Employer

Requires a licensee who has an employer to provide the Board with the names, physical addresses, mailing addresses and phone numbers of all employers and supervisors. This standard also requires that the licensee provide written consent to allow Board staff to communicate with the work site monitor and employer about the licensee's work status, performance and monitoring.

Standard 6. Biological Fluid Testing

Requires the Board to randomly test a licensee whose license is placed on probation due to substance abuse and establishes guidelines for the testing frequency.

Randomness is a very important component in drug testing. The testing frequency schedule being proposed by the Board allows for appropriate randomness in testing (without regular interval or pattern), preventing licensees from gauging when they will be tested. By establishing minimum testing frequency "ranges" and employing randomness in testing, licensees will not be able to consider one or more days as a "safety period" following the submission of a biological sample for testing. Requiring a licensee to submit a specimen on the same day as directed will eliminate the ability of a licensee to "flush" their system overnight. The standard is broad enough to allow the Board to evaluate each licensee's situation on a case-by-case basis, if appropriate. For example, one of the exemptions allows the Board to adjust the testing frequency schedule in cases where a licensee who is an admitted recovered substance abuser or addict, has already participated in a rehabilitation program before being placed on probation. In cases where there is evidence that the person has randomly tested and has maintained sobriety, some flexibility should be granted to the Board in determining the duration of high frequency testing, that is equivalent to the proposed testing schedule. Allowing exceptions will not only

protect the public and fit each licensee's needs, but it will ensure successful rehabilitation of the licensee by providing a plan that is manageable and realistic.

Standard 7. Group Support Meetings

Requires that if the Board orders a licensee to participate in group support meeting, the criteria established in the uniform standards must be used to determine the frequency of group meeting attendance and to verify that the meeting facilitator are experienced, mental health professionals.

The purpose of this standard is to increase consumer protection by:

- Holding licensees placed on probation due to substance abuse accountable for attending meetings and being active in their own recovery;
- Allowing the group meeting facilitator and the Board to work together to assist in the licensee's recovery and quickly prevent relapse with open channels of communication; and
- Ensuring that licensees are receiving professional help from a person not related to them in any way that will allow for objectivity and balance during their recovery.

Standard 8. Worksite Monitor

Requires the Board to determine if a worksite monitor is necessary for a particular licensee and outlines the requirements the proposed monitor must meet in order to be approved by the Board to serve as a monitor. In addition, this standard outlines the duties and responsibilities a worksite monitor must perform.

SB 1441 required the Department to establish monitor requirements and standards, including, but not limited to: (1) required qualification of monitors; (2) required methods of monitoring by monitors; and (3) required reporting by monitors. The worksite monitor's role is to have face-to-face contact with a licensee who has a substance abuse history to ensure that the licensee is not abusing drugs and/or alcohol. The monitor is also responsible for reporting to the Board whether patient safety may be at risk and any change in the licensee's behavior that may be cause for suspected substance abuse.

The licensee and the worksite monitor must sign and submit consent forms in order for the Board to communicate with the monitor regarding the licensee's performance while at work. Implementing this standard provides (1) ongoing documentation of the licensee's behavior and would ensure the public's safety; and (2) immediate notification to the Board if a licensee is suspected of working under the influence of drugs and/or alcohol.

Standard 9. Results of Biological Fluid Tests

Requires the Board to suspend the licensee if he or she tests positive for a prohibited substance and notify the licensee's employers that he or she cannot provide medical services while the suspension or cease practice order is in place.

Protection of the public is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions. In order to carry out this mandate, it is appropriate for the Board to immediately suspend a licensee's license if he or she tests positive for a prohibited substance until he or she has been assessed and the results interpreted. It is also appropriate for the Board to notify the licensee's employer that the licensee may not practice until the suspension is lifted. Testing positive for a prohibited substance is a violation of their probation and the Board shall pursue disciplinary action based on the probation violation.

Standard 10. Major and Minor Violations

In compliance with SB 1441, major and minor violations and consequences are being defined. If a licensee commits a major violation, the Board could issue an immediate cease practice order and refer the matter for disciplinary action or other action as determined by the Board. If a licensee commits a minor violation, the Board would be required to determine what action is appropriate based on the violation.

Protection of the public is the highest priority of the Board in exercising its licensing regulatory and disciplinary functions. The Board protects the public through its Practice Act, regulations and related statutes. Major violations would result in consequences that would be the maximum allowed by law under the Board's Practice Act and regulations.

Minor violations would result in consequences determined appropriate by the Board, e.g., issuing a cease practice order or issuing a citation, which is not considered discipline.

Standard 11. Request by a Substance-Abusing Licensee to Return to Practice

In compliance with SB 1441, this standard defines the criteria that a licensee must meet in order to return to practice after practice restrictions were deemed appropriate by the evaluator performing a clinical diagnostic evaluation or following the issuance of a cease practice order.

This standard would increase consumer protection because it requires the licensee to be completely compliant with the conditions in their recovery program and/or probation before the Board will even consider this type of request. All licensees will be held to the same standard.

Standard 12. Request by a Substance-Abusing Licensee for Reinstatement of a full and unrestricted license – Petition for Reinstatement

This standard defines the criteria that licensee must meet in order to request reinstatement of a full and unrestricted license and clarifies the meaning of "Petition for Reinstatement."

This standard would ensure consumer protection as it requires the licensee to meet certain criteria and maintain a level of compliance with terms of their disciplinary order prior to submitting a request for "Petition for Reinstatement" of licensure.

Underlying Data:

Technical, theoretical or empirical studies or reports relied upon (if any): None

Business Impact/Specific Technologies or Equipment:

This regulation will not have a significant adverse economic impact on businesses, specific technologies, or equipment. This regulation only impacts licensees disciplined by the Osteopathic Medical Board of California. This regulation does not mandate the use of specific technologies or equipment.

Economic Impact Assessment:

This regulation will not have a significant adverse economic impact on the creation or elimination of jobs or businesses in the State of California. This initial determination is based on the fact that the regulation will only impact physicians who have been placed on probation who are ordered to cease practice for testing positive for drugs and/or alcohol use. The number of physicians impacted would be less than a half of one percent of the licensee population.

The regulation will not affect the expansion of businesses currently doing business within the State of California because the regulations will only affect licensed individuals and not businesses already operating in the State.

Benefits of the Proposed Action: This regulatory proposal benefits the health and welfare of California residents by providing protection from substance-abusing osteopathic physicians, requiring the osteopathic physicians to be completely compliant with the conditions in their recovery program and/or probation, or the Board can issue a cease practice order.

The regulatory proposal does not affect worker safety nor will it affect the state's environment because it does not affect those areas of law.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulation 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 and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

TABLE 4

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TABLE 5

LEGISLATION

AB 85 (Wilk) Open meetings

Location: Senate Third Reading File

Date of Hearing: Eligible to be heard on the floor through September 11, 2015.

This urgency bill would require two-member advisory committees or panels of a "state body" (as defined in the Bagley-Keene Open Meeting Act) to hold open, public meetings if at least one member of the advisory committee or panel is a member of the larger state body, and the advisory committee is supported, in whole or in part, by state funds.

AB 159 (Calderon) Investigational drugs, biological products, and devices

Location: Senate Second Reading File

Date of Hearing: Eligible to be heard on the floor Se through September 11, 2015.

This bill would allow a physician to administer drugs that are still undergoing clinical trials and have not yet been approved for general use by the federal Food and Drug Administration. Additionally, this bill would allow manufacturers of such drugs to provide them to the patient; authorize health benefit plans to cover the cost of the drugs, and; prohibit state agencies from interfering with the distribution of the drugs or disciplining physicians for recommending them to qualified patients. This bill is similar to SB 149 (Stone, 2015), *and would impact the Medical Board and Osteopathic Medical Board.*

AB 179 (Bonilla) Healing arts

Location: Senate Second Reading File

Date of Hearing: Eligible to be heard on the floor through September 11, 2015.

This bill would extend the provisions authorizing the Dental Board of California from January 1, 2016 to January 1, 2020, and extend the Board of Vocational Nursing and Psychiatric Technicians from January 1, 2016, to January 1, 2018. This bill would also make numerous changes, including: increasing license fee caps for specified categories; providing that the sexual abuse and misconduct statute does not apply to consensual relationships between healing arts licensees and their spouses or domestic partners; requiring Board licensees to submit their email addresses to the Board by July 1, 2016; capping the number of four-year terms a member of the Dental Assisting Council may serve to two, and; merging the Vocational Nursing Fund and the Psychiatric Technicians Fund.

AB 266 (Bonta) Medical marijuana

Location: Senate Second Reading

Date of Hearing: Eligible to be heard on the floor through September 11, 2015.

The Department anticipates that the contents of this bill will be removed, and replaced with intent language.

AB 333 (Melendez) Healing arts: continuing education

Location: Senate Third Reading File

Date of Hearing: Eligible to be heard on the floor through September 11, 2015.

This bill would authorize specified healing arts licensees to apply units, as defined, of continuing education credit, for attending a course that results in the licensee becoming

a certified instructor of cardiopulmonary resuscitation or the proper use of an automated external defibrillator.

AB 483 (Patterson) Healing arts: initial license fees: proration

Location: Senate Third Reading File

Date of Hearing: Eligible to be heard on the floor through September 11, 2015.

This bill would require specified programs within the Department of Consumer Affairs to prorate initial license fees on a monthly basis. *This bill would impact the Acupuncture Board, Architects Board, Dental Board, Dental Hygiene Committee, Occupational Therapy Board, Osteopathic Medical Board, Board of Psychology, and Veterinary Medical Board.*

AB 637 (Campos) Physician orders for life sustaining treatment forms

Location: Chaptered August 17, 2015 (Chapter 217, Statutes 2015)

Date of Hearing: None Scheduled

This bill allows nurse practitioners and physician assistants to sign the Physician Orders for Life Sustaining Treatment form (Treatment form). This Treatment form allows terminally-ill patients to inform their loved ones and health care professionals of their end-of-life wishes. By expanding the number of people who are allowed to sign the Treatment Form, the intent of this bill is to assist terminally-ill patients in making their end-of-life wishes known to their families and health care providers. *This bill impacts licensees of the Physician Assistant Board, and the Board of Registered Nursing.*

AB 1351 (Eggman) Deferred entry of judgment: pretrial diversion

Location: Senate Second Reading File

Date of Hearing: Eligible to be heard on the floor through September 11, 2015.

This bill would change the existing deferred entry of judgment program for specified offenses involving personal use or possession of controlled substances into a pretrial drug diversion program that allows for a not guilty plea to be entered.

AB 1352 (Eggman) Deferred entry of judgment: withdrawal of plea

Location: Senate Second Reading File

Date of Hearing: Eligible to be heard on the floor through September 11, 2015.

This bill would require courts to allow certain defendants in cases involving deferred entries of judgment after January 1, 1997, to withdraw their guilty or nolo contendere pleas in order to avoid certain adverse consequences, including denial of a license or certificate.

SB 396 (Hill) Health and care facilities: outpatient settings and surgical clinics

Location: Enrollment

Date of Hearing: N/A

Summary: This bill would require accredited outpatient surgical clinics to request applicable "805 reports" from the Medical Board prior to granting staff privileges to a physician, impose peer review requirements on accredited clinics, and allow for unannounced inspections. The bill also extends the due date on a report to the Governor and Legislature regarding the vertical enforcement model.

SB 643 (McGuire) Medical marijuana

Location: Assembly Second Reading

Date of Hearing: Eligible to be heard on the floor through September 11, 2015.

The Department anticipates that the contents of this bill will be removed, and replaced with intent language.

SB 738 (Huff) Pupil health: epinephrine auto-injectors: liability limitation

Location: Chaptered on July 16, 2015 (Chapter 132, Statutes of 2015)

Date of Hearing: N/A

Summary: This bill provides that a physician who authorizes a prescription for epinephrine auto-injectors for use by a school shall be immune from professional review, civil liability, or criminal prosecution for issuing such authorization, unless the conduct constitutes gross negligence or willful or malicious conduct.

ACR 97, as amended,(Bonilla). Medical training: osteopathic students.

This measure would urge both private and public medical training institutions in the state to provide equal access to osteopathic and allopathic students to apply to training programs, would urge osteopathic medical schools, allopathic medical schools, and their training institutions to build on current successes of working toward greater collaboration and coordination of education and training for California's future physicians, and would urge efforts by training institutions and allopathic and osteopathic medical schools to work toward greater acceptance and integration of osteopathic and allopathic students

AB-85

Open Meetings



California
LEGISLATIVE INFORMATION

AB-85 Open meetings. (2015-2016)

ENROLLED SEPTEMBER 02, 2015

PASSED IN SENATE AUGUST 31, 2015

PASSED IN ASSEMBLY JUNE 01, 2015

AMENDED IN ASSEMBLY APRIL 15, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 85

Introduced by Assembly Member Wilk

January 06, 2015

An act to amend Section 11121 of the Government Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 85, Wilk. Open meetings.

The Bagley-Keene Open Meeting Act requires that all meetings of a state body, as defined, be open and public and that all persons be permitted to attend and participate in a meeting of a state body, subject to certain conditions and exceptions.

This bill would specify that the definition of "state body" includes an advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body that consists of 3 or more individuals, as prescribed, except a board, commission, committee, or similar multimember body on which a member of a body serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

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

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 11121 of the Government Code is amended to read:

11121. As used in this article, "state body" means each of the following:

(a) Every state board, or commission, or similar multimember body of the state that is created by statute or

required by law to conduct official meetings and every commission created by executive order.

(b) A board, commission, committee, or similar multimember body that exercises any authority of a state body delegated to it by that state body.

(c) An advisory board, advisory commission, advisory committee, advisory subcommittee, or similar multimember advisory body of a state body, if created by formal action of the state body or of any member of the state body, and if the advisory body so created consists of three or more persons, except as in subdivision (d).

(d) A board, commission, committee, or similar multimember body on which a member of a body that is a state body pursuant to this section serves in his or her official capacity as a representative of that state body and that is supported, in whole or in part, by funds provided by the state body, whether the multimember body is organized and operated by the state body or by a private corporation.

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

In order to avoid unnecessary litigation and ensure the people's right to access the meetings of public bodies pursuant to Section 3 of Article 1 of the California Constitution, it is necessary that this act take effect immediately.

AB-159

Investigational Drugs, Biological
Products, and Devices



California
LEGISLATIVE INFORMATION

AB-159 Investigational drugs, biological products, and devices. (2015-2016)

ENROLLED SEPTEMBER 04, 2015
PASSED IN SENATE SEPTEMBER 01, 2015
PASSED IN ASSEMBLY SEPTEMBER 02, 2015
AMENDED IN SENATE JULY 06, 2015
AMENDED IN SENATE JUNE 19, 2015
AMENDED IN SENATE JUNE 16, 2015
AMENDED IN SENATE JUNE 01, 2015
AMENDED IN ASSEMBLY APRIL 28, 2015
AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 159

Introduced by Assembly Member Calderon
(Principal coauthor: Senator Stone)
(Coauthors: Assembly Members Brown, Daly, Cristina Garcia, Lackey, Obernolte, Olsen, and
Waldron)
(Coauthors: Senators Allen and Anderson)

January 21, 2015

An act to add Article 4.5 (commencing with Section 111548) to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, relating to drugs and devices.

LEGISLATIVE COUNSEL'S DIGEST

AB 159, Calderon. Investigational drugs, biological products, and devices.

Existing law, the federal Food, Drug, and Cosmetic Act, prohibits a person from introducing into interstate commerce any new drug unless the drug has been approved by the United States Food and Drug Administration (FDA). Existing law requires the sponsor of a new drug to submit to the FDA an investigational new drug application and to then conduct a series of clinical trials to establish the safety and efficacy of the drug in human populations and submit the results to the FDA in a new drug application.

Existing law, the Sherman Food, Drug, and Cosmetic Law, regulates the packaging, labeling, and advertising of drugs and devices and is administered by the State Department of Public Health. A violation of that law is a crime. The Sherman Food, Drug, and Cosmetic Law prohibits, among other things, the sale, delivery, or giving

away of a new drug or new device unless either the department has approved a new drug or device application for that new drug or new device and that approval has not been withdrawn, terminated, or suspended or the drug or device has been approved pursuant to specified provisions of federal law, including the federal Food, Drug, and Cosmetic Act.

The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California and requires the board to take action against a licensee who is charged with unprofessional conduct. The Osteopathic Act provides for the licensure and regulation of osteopathic physicians and surgeons by the Osteopathic Medical Board of California and requires the board to enforce the Medical Practice Act with respect to its licensees.

This bill would permit a manufacturer of an investigational drug, biological product, or device to make the product available to eligible patients with an immediately life-threatening disease or condition, as specified. The bill would authorize, but not require, a health benefit plan, as defined, to provide coverage for any investigational drug, biological product, or device made available pursuant to these provisions. The bill would prohibit the Medical Board of California and the Osteopathic Medical Board of California from taking any disciplinary action against the license of a physician based solely on the physician's recommendation to an eligible patient regarding, or prescription for or treatment with, an investigational drug, biological product, or device if the recommendation or prescription is consistent with protocol approved by the physician's institutional review board or an accredited institutional review board, and would require the institutional review board to biannually report specified information to the State Department of Public Health, among others. The bill would prohibit a state agency from altering any recommendation made to the federal Centers for Medicare and Medicaid Services regarding a health care provider's certification to participate in the Medicare or Medicaid program based solely on the recommendation from an individual health care provider that a patient have access to an investigational drug, biological product, or device.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Article 4.5 (commencing with Section 111548) is added to Chapter 6 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 4.5. Right to Try Act

111548. This article shall be known and may be cited as the Right to Try Act.

111548.1. For purposes of this article, unless the context otherwise requires, the following definitions shall apply:

(a) "Consulting physician" means a physician and surgeon licensed under the Medical Practice Act or an osteopathic physician and surgeon licensed under the Osteopathic Act who performs all of the following:

- (1) Examines the qualified individual and his or her relevant medical records.
- (2) Confirms, in writing, the primary physician's diagnosis and prognosis.
- (3) Verifies, in the opinion of the consulting physician, that the eligible patient is competent, acting voluntarily, and has made an informed decision.

(b) "Eligible patient" means a person who meets all of the following conditions:

- (1) Has an immediately life-threatening disease or condition.
- (2) Has considered all other treatment options currently approved by the United States Food and Drug Administration.
- (3) Has not been accepted to participate in the nearest clinical trial to his or her home for the immediately life-threatening disease or condition identified in paragraph (1) within one week of completion of the clinical trial application process, or, in the treating physician's medical judgment, it is unreasonable for the patient to participate in that clinical trial due to the patient's current condition and stage of disease.
- (4) Has received a recommendation from his or her primary physician and a consulting physician for an investigational drug, biological product, or device.

(5) Has given written informed consent for the use of the investigational drug, biological product, or device, or,

if he or she lacks the capacity to consent, his or her legally authorized representative has given written informed consent on his or her behalf.

(6) Has documentation from his or her primary physician and a consulting physician attesting that the patient has met the requirements of this subdivision.

(c) "Health benefit plan" means a plan or program that provides, arranges, pays for, or reimburses the cost of health benefits. "Health benefit plan" includes, but is not limited to, a health care service plan contract issued by a health care service plan, as defined in Section 1345, and a policy of health insurance, as defined in Section 106 of the Insurance Code, issued by a health insurer.

(d) "Immediately life-threatening disease or condition" means a stage of disease in which there is a reasonable likelihood that death will occur within a matter of months.

(e) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase one of a clinical trial approved by the United States Food and Drug Administration, but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.

(f) "Primary physician" means a physician and surgeon licensed under the Medical Practice Act or an osteopathic physician and surgeon licensed under the Osteopathic Act.

(g) "State regulatory board" means the Medical Board of California or the Osteopathic Medical Board of California.

(h) (1) "Written, informed consent" means a written document that has been approved by the primary physician's institutional review board or an accredited independent institutional review board, is signed by an eligible patient, or his or her legally authorized representative when the patient lacks the capacity to consent, and attested to by the patient's primary physician and a witness that, at a minimum, does all of the following:

(A) Explains the currently approved products and treatments for the immediately life-threatening disease or condition from which the patient suffers.

(B) Attests to the fact that the patient, or when the patient lacks the capacity to consent his or her legally authorized representative, concurs with the patient's primary physician in believing that all currently approved and conventionally recognized treatments are unlikely to prolong the patient's life.

(C) Clearly identifies the specific proposed investigational drug, biological product, or device that the patient is seeking to use.

(D) Describes the potentially best and worst outcomes of using the investigational drug, biological product, or device and describes the most likely outcome. This description shall include the possibility that new, unanticipated, different, or worse symptoms might result and that death could be hastened by the proposed treatment. The description shall be based on the primary physician's knowledge of the proposed treatment in conjunction with an awareness of the patient's condition.

(E) Clearly states that the patient's health benefit plan, if any, and health care provider are not obligated to pay for the investigational drug, biological product, or device or any care or treatments consequent to use of the investigational drug, biological product, or device.

(F) Clearly states that the patient's eligibility for hospice care may be withdrawn if the patient begins curative treatment and that care may be reinstated if the curative treatment ends and the patient meets hospice eligibility requirements.

(G) Clearly states that in-home health care may be denied if treatment begins.

(H) States that the patient understands that he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device, and that this liability extends to the patient's estate, except as otherwise provided in the patient's health benefit plan or a contract between the patient and the manufacturer of the drug, biological product, or device.

(2) Written, informed consent for purposes of this article shall be consistent with the informed consent requirements of the Protection of Human Subjects in Medical Experimentation Act (Chapter 1.3 (commencing with Section 24170) of Division 20).

111548.2. (a) Notwithstanding Section 110280, 111520, or 111550, a manufacturer of an investigational drug, biological product, or device may make available the manufacturer's investigational drug, biological product, or device to an eligible patient pursuant to this article. This article does not require that a manufacturer make available an investigational drug, biological product, or device to an eligible patient.

(b) A manufacturer may do both of the following:

(1) Provide an investigational drug, biological product, or device to an eligible patient without receiving compensation.

(2) Require an eligible patient to pay the costs of or associated with the manufacture of the investigational drug, biological product, or device.

(c) (1) This article does not expand the coverage provided under Sections 1370.4 and 1370.6 of this code, Sections 10145.3 and 10145.4 of the Insurance Code, or Sections 14087.11 and 14132.98 of the Welfare and Institutions Code.

(2) This article does not require a health benefit plan to provide coverage for the cost of any investigational drug, biological product, or device, or the costs of services related to the use of an investigational drug, biological product, or device under this article. A health benefit plan may provide coverage for an investigational drug, biological product, or device made available pursuant to this section.

(d) If the clinical trial for an investigational drug, biological product, or device is closed due to the lack of efficacy or for toxicity, the investigational drug, biological product, or device shall not be offered. If notice of closure of a clinical trial is given for an investigational drug, biological product, or device taken by a patient outside of a clinical trial, the manufacturer and the patient's primary physician shall notify the patient of the information from the safety committee of the clinical trial.

(e) If an eligible patient dies while being treated by an investigational drug, biological product, or device made available pursuant to this article, the patient's heirs are not liable for any outstanding debt related to the treatment or lack of insurance for the treatment.

111548.3. (a) Notwithstanding any other law, a state regulatory board shall not revoke, fail to renew, or take any other disciplinary action against a physician's license based solely on the physician's recommendation to an eligible patient regarding, or prescription for or treatment with, an investigational drug, biological product, or device if the recommendation or prescription is consistent with protocol approved by the physician's institutional review board or an accredited independent institutional review board.

(b) The physician's institutional review board or an accredited institutional review board shall biannually report the following information to the State Department of Public Health, the Medical Board of California, and the Osteopathic Medical Board of California:

(1) The number of requests made for an investigational drug, biological product, or device.

(2) The status of the requests made.

(3) The duration of the treatment.

(4) The costs of the treatment paid by eligible patients.

(5) The success or failure of the investigational drug, biological product, or device in treating the immediately life-threatening disease or condition from which the patient suffers.

(6) Any adverse event for each investigational drug, biological product, or device.

(c) A state agency shall not alter any recommendation made to the federal Centers for Medicare and Medicaid Services regarding a health care provider's certification to participate in the Medicare or Medicaid program based solely on the recommendation from an individual health care provider that a patient have access to an investigational drug, biological product, or device.

(d) A violation of this section shall not be subject to Chapter 8 (commencing with Section 111825).

111548.5. This article does not create a private cause of action, and actions taken pursuant to this article shall not serve as a basis for a civil, criminal, or disciplinary claim or cause of action, including, but not limited to, product liability, medical negligence, or wrongful death, against a manufacturer of an investigational drug,

biological product, or device, or against any other person or entity involved in the care of an eligible patient for harm done to the eligible patient or his or her heirs resulting from the investigational drug, biological product, or device, or the use or nonuse thereof, if the manufacturer or other person or entity has complied with the terms of this article in relation to the eligible patient, unless there was a failure to exercise reasonable care.

AB-179

Healing Arts



California
LEGISLATIVE INFORMATION

AB-179 Healing arts. (2015-2016)

AMENDED IN SENATE SEPTEMBER 04, 2015

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JUNE 30, 2015

AMENDED IN ASSEMBLY MAY 05, 2015

AMENDED IN ASSEMBLY APRIL 27, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 179

**Introduced by Assembly Member Bonilla
(Principal coauthor: Senator Hill)**

January 26, 2015

An act to amend Sections 726, 1601.1, 1616.5, 1632, 1638, 1638.1, 1638.3, 1646.6, 1647.8, 1724, 1725, 1742, **1752.1**, 2841, 4501, and 4503 of, to amend, repeal, and add Sections 205, ~~1752.1~~, 2894, and 4547 of, to add Section 1650.1 to, *and* to add and repeal Sections 2847.1, 2847.5 and 2858.5 of, ~~and to repeal and add Section 1752.3 of~~, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 179, as amended, Bonilla. Healing arts.

(1) Under existing law, the commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer is unprofessional conduct, except that it is not unprofessional conduct when sexual contact is between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship, as specified.

This bill would expand the exception by providing that it would not be unprofessional conduct when consensual sexual contact is between a licensee and his or her spouse or person in an equivalent domestic relationship, as specified.

(2) Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists and dental assistants by the Dental Board of California and authorizes the board to appoint an executive officer to exercise powers and perform duties delegated by the board to him or her. These provisions are in effect only until January 1, 2016, and, upon repeal of those provisions, the board will be subject to review by the appropriate policy committees of the Legislature. The act prescribes various fees that are required to be paid by dentists and dental assistants for, among other things, an initial license and the renewal of that license.

This bill would extend the provisions relating to the Dental Board of California and the executive officer to

January 1, 2020. The bill would also change various fees that would be required to be paid by a dentist, a dental assistant, or certain educational programs, as specified. The bill would, on and after January 1, 2016, require that an initial license for a dentist be no greater than \$650 and would require the fee for the renewal of that license to be no greater than \$650. The bill would, on and after January 1, 2018, require that an initial license be no greater than \$800 and would require the fee for a renewal of that license to be no greater than \$800. The bill would also require, by July 1, 2016, every applicant and licensee under the act to report to the board his or her electronic mail address, and would require the board to annually send an electronic notice to each applicant and licensee that requests confirmation of the applicant's or licensee's electronic mail address.

The act authorizes the board to license a person as a registered dental assistant if he or she meets certain requirements, including a written and practical examination.

This ~~bill, until July 1, 2017, bill~~ would ~~remove that practical examination requirement. The bill would~~ require the Dental Board of California, in consultation with the Office of Professional Examination Services, to *conduct a review to* determine on or before July 1, 2017, whether a practical examination is necessary to demonstrate the competency of registered dental assistants and to submit that determination to the appropriate policy committees of the Legislature by that date, as specified. ~~The bill would make related conforming changes. The bill would authorize the board to vote to suspend the practical examination if the review concludes that the practical examination is unnecessary or does not accurately measure the competency of registered dental assistants. The bill would provide that the suspension of the practical examination commences on the date the board votes to suspend the practical examination and would continue being suspended until July 1, 2017. The bill would require the board to post a notice on its Internet Web site if it suspends the practical examination.~~

Existing law creates the Dental Assisting Council of the Dental Board of California, which considers all matters relating to California dental assistants and is composed of members who serve terms, as specified. Existing law requires the board to make all the initial appointments of members by May 1, 2012.

This bill would prohibit a member from serving more than two full terms. The bill would remove the requirement for the board to make all initial appointments by May 1, 2012.

(3) Existing law provides for the licensure and regulation of vocational nurses under the Vocational Nursing Practice Act, and psychiatric technicians under the Psychiatric Technicians Law, by the Board of Vocational Nursing and Psychiatric Technicians of the State of California, and requires the board to, among other things, appoint an executive officer, who is required to be a licensed vocational nurse, registered nurse, or psychiatric technician. Existing law repeals these provisions on January 1, 2016.

This bill would remove the requirement that the executive officer be a vocational nurse, registered nurse, or psychiatric technician, and would extend the repeal date of the provisions relating to the board to January 1, 2018.

(4) Existing law establishes the Vocational Nursing and Psychiatric Technicians Fund in the State Treasury, and establishes the Vocational Nurses Account and the Psychiatric Technician Examiners Account within the fund. Existing law authorizes the Board of Vocational Nursing and Psychiatric Technicians of the State of California to collect specified fees and fines related to the board's licensure and regulation of vocational nurses and psychiatric technicians, and prohibits the board from charging expenses for these respective activities against funds received from any other source.

This bill, beginning July 1, 2016, would remove that prohibition, abolish the Vocational Nurses Account and the Psychiatric Technician Examiners Account, and specify that all money in the Vocational Nursing and Psychiatric Technicians Fund shall be used to carry out the Vocational Nursing Practice Act and the Psychiatric Technicians Law.

(5) Existing law authorizes the Director of Consumer Affairs to investigate the work of the boards within the Department of Consumer Affairs, obtain a copy of the records of official matters in possession of the boards, and require reports from the boards as the director deems reasonably necessary. Existing law requires the director to provide certain reports to the Legislature, including, but not limited to, a copy of an independent review of the Bureau for Private Postsecondary Education's staffing resources needs and requirements.

This bill would require the director to appoint an administrative and enforcement program monitor no later than March 1, 2016, and would require the monitor to monitor and evaluate the administrative process and disciplinary system and procedures of the Board of Vocational Nursing and Psychiatric Technicians of the State of California for a period of no more than 2 years, as specified. The bill would require the monitor to submit a report of his or her findings and conclusions to the Legislature, the department, and the board by July 1, 2016,

subsequent reports by November 1, 2016, and February 1, 2017, and a final report before January 1, 2018. The bill would require the board and its staff to cooperate with the program monitor. The bill would also require the department's internal audit unit to review the board's financial needs, fee structure, budget, and expenditures, and require the director to provide the Legislature with a copy of the review no later than October 1, 2016. The bill would repeal these provisions on January 1, 2018.

(6) This bill would incorporate additional changes in Section 205 of the Business and Professions Code, proposed by AB 177 and AB 180 that would become operative only if this bill and either or both of those bills are chaptered and become effective January 1, 2016, and this bill is chaptered last.

(7) This bill would incorporate additional changes in Section 1724 of the Business and Professions Code, proposed by AB 483, that would become operative only if this bill and AB 483 are chaptered and become effective January 1, 2016, and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 205 of the Business and Professions Code is amended to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

- (1) Accountancy Fund.
- (2) California Architects Board Fund.
- (3) Athletic Commission Fund.
- (4) Barbering and Cosmetology Contingent Fund.
- (5) Cemetery Fund.
- (6) Contractors' License Fund.
- (7) State Dentistry Fund.
- (8) State Funeral Directors and Embalmers Fund.
- (9) Guide Dogs for the Blind Fund.
- (10) Home Furnishings and Thermal Insulation Fund.
- (11) California Architects Board-Landscape Architects Fund.
- (12) Contingent Fund of the Medical Board of California.
- (13) Optometry Fund.
- (14) Pharmacy Board Contingent Fund.
- (15) Physical Therapy Fund.
- (16) Private Investigator Fund.
- (17) Professional Engineer's and Land Surveyor's Fund.
- (18) Consumer Affairs Fund.
- (19) Behavioral Sciences Fund.
- (20) Licensed Midwifery Fund.
- (21) Court Reporters' Fund.
- (22) Veterinary Medical Board Contingent Fund.
- (23) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.

- (24) Electronic and Appliance Repair Fund.
- (25) Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund.
- (26) Dispensing Opticians Fund.
- (27) Acupuncture Fund.
- (28) Physician Assistant Fund.
- (29) Board of Podiatric Medicine Fund.
- (30) Psychology Fund.
- (31) Respiratory Care Fund.
- (32) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
- (33) Board of Registered Nursing Fund.
- (34) Psychiatric Technician Examiners Account of the Vocational Nursing and Psychiatric Technicians Fund.
- (35) Animal Health Technician Examining Committee Fund.
- (36) State Dental Hygiene Fund.
- (37) State Dental Assistant Fund.
- (38) Structural Pest Control Fund.
- (39) Structural Pest Control Eradication and Enforcement Fund.
- (40) Structural Pest Control Research Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

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

SEC. 2. Section 205 is added to the Business and Professions Code, to read:

205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

- (1) Accountancy Fund.
- (2) California Architects Board Fund.
- (3) Athletic Commission Fund.
- (4) Barbering and Cosmetology Contingent Fund.
- (5) Cemetery Fund.
- (6) Contractors' License Fund.
- (7) State Dentistry Fund.
- (8) State Funeral Directors and Embalmers Fund.
- (9) Guide Dogs for the Blind Fund.
- (10) Home Furnishings and Thermal Insulation Fund.
- (11) California Architects Board-Landscape Architects Fund.
- (12) Contingent Fund of the Medical Board of California.

- (13) Optometry Fund.
- (14) Pharmacy Board Contingent Fund.
- (15) Physical Therapy Fund.
- (16) Private Investigator Fund.
- (17) Professional Engineer's and Land Surveyor's Fund.
- (18) Consumer Affairs Fund.
- (19) Behavioral Sciences Fund.
- (20) Licensed Midwifery Fund.
- (21) Court Reporters' Fund.
- (22) Veterinary Medical Board Contingent Fund.
- (23) Vocational Nursing and Psychiatric Technicians Fund.
- (24) Electronic and Appliance Repair Fund.
- (25) Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund.
- (26) Dispensing Opticians Fund.
- (27) Acupuncture Fund.
- (28) Physician Assistant Fund.
- (29) Board of Podiatric Medicine Fund.
- (30) Psychology Fund.
- (31) Respiratory Care Fund.
- (32) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.
- (33) Board of Registered Nursing Fund.
- (34) Animal Health Technician Examining Committee Fund.
- (35) State Dental Hygiene Fund.
- (36) State Dental Assistant Fund.
- (37) Structural Pest Control Fund.
- (38) Structural Pest Control Eradication and Enforcement Fund.
- (39) Structural Pest Control Research Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) This section shall become operative on July 1, 2016.

SEC. 2.1. *Section 205 is added to the Business and Professions Code, to read:*

205. (a) *There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:*

(1) *Accountancy Fund.*

(2) *California Architects Board Fund.*

- (3) *Athletic Commission Fund.*
- (4) *Barbering and Cosmetology Contingent Fund.*
- (5) *Cemetery Fund.*
- (6) *Contractors' License Fund.*
- (7) *State Dentistry Fund.*
- (8) *State Funeral Directors and Embalmers Fund.*
- (9) *Guide Dogs for the Blind Fund.*
- (10) *Home Furnishings and Thermal Insulation Fund.*
- (11) *California Architects Board-Landscape Architects Fund.*
- (12) *Contingent Fund of the Medical Board of California.*
- (13) *Optometry Fund.*
- (14) *Pharmacy Board Contingent Fund.*
- (15) *Physical Therapy Fund.*
- (16) *Private Investigator Fund.*
- (17) *Professional Engineer's, Land Surveyor's, and Geologist's Fund.*
- (18) *Consumer Affairs Fund.*
- (19) *Behavioral Sciences Fund.*
- (20) *Licensed Midwifery Fund.*
- (21) *Court Reporters' Fund.*
- (22) *Veterinary Medical Board Contingent Fund.*
- (23) *Vocational Nursing and Psychiatric Technicians Fund.*
- (24) *Electronic and Appliance Repair Fund.*
- (25) *Dispensing Opticians Fund.*
- (26) *Acupuncture Fund.*
- (27) *Physician Assistant Fund.*
- (28) *Board of Podiatric Medicine Fund.*
- (29) *Psychology Fund.*
- (30) *Respiratory Care Fund.*
- (31) *Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.*
- (32) *Board of Registered Nursing Fund.*
- (33) *Animal Health Technician Examining Committee Fund.*
- (34) *State Dental Hygiene Fund.*
- (35) *State Dental Assistant Fund.*
- (36) *Structural Pest Control Fund.*
- (37) *Structural Pest Control Eradication and Enforcement Fund.*
- (38) *Structural Pest Control Research Fund.*

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) This section shall become operative on July 1, 2016.

SEC. 2.2. *Section 205 is added to the Business and Professions Code, to read:*

205. *(a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:*

- (1) Accountancy Fund.*
- (2) California Architects Board Fund.*
- (3) Athletic Commission Fund.*
- (4) Barbering and Cosmetology Contingent Fund.*
- (5) Cemetery and Funeral Fund.*
- (6) Contractors' License Fund.*
- (7) State Dentistry Fund.*
- (8) Guide Dogs for the Blind Fund.*
- (9) Home Furnishings and Thermal Insulation Fund.*
- (10) California Architects Board-Landscape Architects Fund.*
- (11) Contingent Fund of the Medical Board of California.*
- (12) Optometry Fund.*
- (13) Pharmacy Board Contingent Fund.*
- (14) Physical Therapy Fund.*
- (15) Private Investigator Fund.*
- (16) Professional Engineer's and Land Surveyor's Fund.*
- (17) Consumer Affairs Fund.*
- (18) Behavioral Sciences Fund.*
- (19) Licensed Midwifery Fund.*
- (20) Court Reporters' Fund.*
- (21) Veterinary Medical Board Contingent Fund.*
- (22) Vocational Nursing and Psychiatric Technicians Fund.*
- (23) Electronic and Appliance Repair Fund.*
- (24) Geology and Geophysics Account of the Professional Engineer's and Land Surveyor's Fund.*
- (25) Dispensing Opticians Fund.*
- (26) Acupuncture Fund.*
- (27) Physician Assistant Fund.*
- (28) Board of Podiatric Medicine Fund.*
- (29) Psychology Fund.*

(30) *Respiratory Care Fund.*

(31) *Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.*

(32) *Board of Registered Nursing Fund.*

(33) *Animal Health Technician Examining Committee Fund.*

(34) *State Dental Hygiene Fund.*

(35) *State Dental Assistant Fund.*

(36) *Structural Pest Control Fund.*

(37) *Structural Pest Control Eradication and Enforcement Fund.*

(38) *Structural Pest Control Research Fund.*

(b) *For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.*

(c) *This section shall become operative on July 1, 2016.*

SEC. 2.3. *Section 205 is added to the Business and Professions Code, to read:*

205. (a) *There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:*

(1) *Accountancy Fund.*

(2) *California Architects Board Fund.*

(3) *Athletic Commission Fund.*

(4) *Barbering and Cosmetology Contingent Fund.*

(5) *Cemetery and Funeral Fund.*

(6) *Contractors' License Fund.*

(7) *State Dentistry Fund.*

(8) *Guide Dogs for the Blind Fund.*

(9) *Home Furnishings and Thermal Insulation Fund.*

(10) *California Architects Board-Landscape Architects Fund.*

(11) *Contingent Fund of the Medical Board of California.*

(12) *Optometry Fund.*

(13) *Pharmacy Board Contingent Fund.*

(14) *Physical Therapy Fund.*

(15) *Private Investigator Fund.*

(16) *Professional Engineer's, Land Surveyor's, and Geologist's Fund.*

(17) *Consumer Affairs Fund.*

(18) *Behavioral Sciences Fund.*

(19) *Licensed Midwifery Fund.*

(20) *Court Reporters' Fund.*

(21) Veterinary Medical Board Contingent Fund.

(22) Vocational Nursing and Psychiatric Technicians Fund.

(23) Electronic and Appliance Repair Fund.

(24) Dispensing Opticians Fund.

(25) Acupuncture Fund.

(26) Physician Assistant Fund.

(27) Board of Podiatric Medicine Fund.

(28) Psychology Fund.

(29) Respiratory Care Fund.

(30) Speech-Language Pathology and Audiology and Hearing Aid Dispensers Fund.

(31) Board of Registered Nursing Fund.

(32) Animal Health Technician Examining Committee Fund.

(33) State Dental Hygiene Fund.

(34) State Dental Assistant Fund.

(35) Structural Pest Control Fund.

(36) Structural Pest Control Eradication and Enforcement Fund.

(37) Structural Pest Control Research Fund.

(b) For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each account or fund shall be available for expenditure only for the purposes as are now or may hereafter be provided by law.

(c) This section shall become operative on July 1, 2016.

SEC. 3. Section 726 of the Business and Professions Code is amended to read:

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

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

SEC. 4. Section 1601.1 of the Business and Professions Code is amended to read:

1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and five public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college, and one shall be a dentist practicing in a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.

(d) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 5. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. (a) The board, by and with the approval of the director, may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

SEC. 6. Section 1632 of the Business and Professions Code is amended to read:

1632. (a) The board shall require each applicant to successfully complete the Part I and Part II written examinations of the National Board Dental Examination of the Joint Commission on National Dental Examinations.

(b) The board shall require each applicant to successfully complete an examination in California law and ethics developed and administered by the board. The board shall provide a separate application for this examination. The board shall ensure that the law and ethics examination reflects current law and regulations, and ensure that the examinations are randomized. Applicants shall submit this application and required fee to the board in order to take this examination. In addition to the aforementioned application, the only other requirement for taking this examination shall be certification from the dean of the qualifying dental school attended by the applicant that the applicant has graduated, or will graduate, or is expected to graduate. Applicants who submit completed applications and certification from the dean at least 15 days prior to a scheduled examination shall be scheduled to take the examination. Successful results of the examination shall, as established by board regulation, remain valid for two years from the date that the applicant is notified of having passed the examination.

(c) Except as otherwise provided in Section 1632.5, the board shall require each applicant to have taken and received a passing score on one of the following:

(1) A portfolio examination of the applicant's competence to enter the practice of dentistry. This examination shall be conducted while the applicant is enrolled in a dental school program at a board-approved school located in California. This examination shall utilize uniform standards of clinical experiences and competencies, as approved by the board pursuant to Section 1632.1. The applicant shall pass a final assessment of the submitted portfolio at the end of his or her dental school program. Before any portfolio assessment may be submitted to the board, the applicant shall remit the required fee to the board to be deposited into the State Dentistry Fund, and a letter of good standing signed by the dean of his or her dental school or his or her delegate stating that the applicant has graduated or will graduate with no pending ethical issues.

(A) The portfolio examination shall not be conducted until the board adopts regulations to carry out this paragraph. The board shall post notice on its Internet Web site when these regulations have been adopted.

(B) The board shall also provide written notice to the Legislature and the Legislative Counsel when these regulations have been adopted.

(2) A clinical and written examination administered by the Western Regional Examining Board, which board shall determine the passing score for that examination.

(d) Notwithstanding subdivision (b) of Section 1628, the board is authorized to do either of the following:

(1) Approve an application for examination from, and to examine an applicant who is enrolled in, but has not yet graduated from, a reputable dental school approved by the board.

(2) Accept the results of an examination described in paragraph (2) of subdivision (c) submitted by an applicant who was enrolled in, but had not graduated from, a reputable dental school approved by the board at the time the examination was administered.

In either case, the board shall require the dean of that school or his or her delegate to furnish satisfactory proof that the applicant will graduate within one year of the date the examination was administered or as provided in paragraph (1) of subdivision (c).

SEC. 7. Section 1638 of the Business and Professions Code is amended to read:

1638. (a) For purposes of this article, "oral and maxillofacial surgery" means the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects which involve both functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(b) Any person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)) as a physician and surgeon who possesses, or possessed, a license to practice dentistry in another state, but is not licensed to practice dentistry under this chapter may apply to the board on a form prescribed by the board for an oral and maxillofacial surgery permit.

(c) The board may issue an oral and maxillofacial surgery permit to an applicant who has furnished evidence satisfactory to the board that he or she is currently certified or eligible for certification in oral and maxillofacial surgery by a specialty board recognized by the Commission on Accreditation of the American Dental Association and holds a current license in good standing to practice medicine in the state.

(d) An application shall be accompanied by an application fee required by the board and two classifiable sets of fingerprints on forms provided by the board.

SEC. 8. Section 1638.1 of the Business and Professions Code is amended to read:

1638.1. (a) (1) A person licensed pursuant to Section 1634 who wishes to perform elective facial cosmetic surgery shall first apply for and receive a permit to perform elective facial cosmetic surgery from the board.

(2) A permit issued pursuant to this section shall be valid for a period of two years and must be renewed by the permitholder at the time his or her license is renewed. Every six years, prior to renewal of the permitholder's license and permit, the permitholder shall submit evidence acceptable to the credentialing committee that he or she has maintained continued competence to perform the procedures authorized by the permit. The credentialing committee may limit a permit consistent with paragraph (1) of subdivision (e) if it is not satisfied that the permitholder has established continued competence.

(b) The board may adopt regulations for the issuance of the permit that it deems necessary to protect the health, safety, and welfare of the public.

(c) A licensee may obtain a permit to perform elective facial cosmetic surgery by furnishing all of the following information on an application form approved by the board:

(1) Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.

(2) Proof that the applicant has satisfied the criteria specified in either subparagraph (A) or (B):

(A) (i) Is certified, or is a candidate for certification, by the American Board of Oral and Maxillofacial Surgery.

(ii) Submits to the board a letter from the program director of the accredited residency program, or from the director of a postresidency fellowship program accredited by the Commission on Dental Accreditation of the American Dental Association, stating that the licensee has the education, training, and competence necessary to perform the surgical procedures that the licensee has notified the board he or she intends to perform.

(iii) Submits documentation to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform from both of the following categories:

(I) Cosmetic contouring of the osteocartilaginous facial structure, which may include, but is not limited to, rhinoplasty and otoplasty.

(II) Cosmetic soft tissue contouring or rejuvenation, which may include, but is not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation.

(iv) Submits documentation to the board showing the surgical privileges the applicant possesses at any licensed general acute care hospital and any licensed outpatient surgical facility in this state.

(B) (i) Has been granted privileges by the medical staff at a licensed general acute care hospital to perform the surgical procedures set forth in paragraph (A) at that hospital.

- (ii) Submits to the board the documentation described in clause (iii) of subparagraph (A).
- (3) Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.
- (d) The application shall be accompanied by an application fee required by the board for an initial permit. The fee to renew a permit shall not exceed the maximum amount prescribed in Section 1724.
- (e) (1) The board shall appoint a credentialing committee to review the qualifications of each applicant for a permit. Upon completion of the review of an applicant, the committee shall make a recommendation to the board on whether to issue or not issue a permit to the applicant. The permit may be unqualified, entitling the permit holder to perform any facial cosmetic surgical procedure authorized by this section, or it may contain limitations if the credentialing committee is not satisfied that the applicant has the training or competence to perform certain classes of procedures, or if the applicant has not requested to be permitted for all procedures authorized by this section.
- (2) The credentialing committee shall be comprised of five members, as follows:
- (A) A physician and surgeon with a specialty in plastic and reconstructive surgery who maintains active status on the staff of a licensed general acute care hospital in this state.
- (B) A physician and surgeon with a specialty in otolaryngology who maintains active status on the staff of a licensed general acute care hospital in this state.
- (C) Three oral and maxillofacial surgeons licensed by the board who are board certified by the American Board of Oral and Maxillofacial Surgeons, and who maintain active status on the staff of a licensed general acute care hospital in this state, at least one of whom shall be licensed as a physician and surgeon in this state. Two years after the effective date of this section, any oral and maxillofacial surgeon appointed to the committee who is not licensed as a physician and surgeon shall hold a permit pursuant to this section.
- (3) The board shall solicit from the following organizations input and recommendations regarding members to be appointed to the credentialing committee:
- (A) The Medical Board of California.
- (B) The California Dental Association.
- (C) The California Association of Oral and Maxillofacial Surgeons.
- (D) The California Medical Association.
- (E) The California Society of Plastic Surgeons.
- (F) Any other source that the board deems appropriate.
- (4) The credentialing committee shall meet at a time and place directed by the board to evaluate applicants for permits. A quorum of three members shall be required for the committee to consider applicants and make recommendations to the board.
- (f) A licensee may not perform any elective, facial cosmetic surgical procedure except at a general acute care hospital, a licensed outpatient surgical facility, or an outpatient surgical facility accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Association for Ambulatory Health Care (AAAHC), the Medicare program, or an accreditation agency approved by the Medical Board of California pursuant to subdivision (g) of Section 1248.1 of the Health and Safety Code.
- (g) For purposes of this section, the following terms shall have the following meanings:
- (1) "Elective cosmetic surgery" means any procedure defined as cosmetic surgery in subdivision (d) of Section 1367.63 of the Health and Safety Code, and excludes any procedure that constitutes reconstructive surgery, as defined in subdivision (c) of Section 1367.63 of the Health and Safety Code.
- (2) "Facial" means those regions of the human body described in Section 1625 and in any regulations adopted pursuant to that section by the board.
- (h) A holder of a permit issued pursuant to this section shall not perform elective facial cosmetic surgical procedures unless he or she has malpractice insurance or other financial security protection that would satisfy the requirements of Section 2216.2 and any regulations adopted thereunder.

(i) A holder of a permit shall comply with the requirements of subparagraph (D) of paragraph (2) of subdivision (a) of Section 1248.15 of the Health and Safety Code, and the reporting requirements specified in Section 2240, with respect to any surgical procedure authorized by this section, in the same manner as a physician and surgeon.

(j) Any violation of this section constitutes unprofessional conduct and is grounds for the revocation or suspension of the person's permit, license, or both, or the person may be reprimanded or placed on probation. Proceedings initiated by the board under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(k) On or before January 1, 2009, and every four years thereafter, the board shall report to the Joint Committee on Boards, Commissions and Consumer Protection on all of the following:

(1) The number of persons licensed pursuant to Section 1634 who apply to receive a permit to perform elective facial cosmetic surgery from the board pursuant to subdivision (a).

(2) The recommendations of the credentialing committee to the board.

(3) The board's action on recommendations received by the credentialing committee.

(4) The number of persons receiving a permit from the board to perform elective facial cosmetic surgery.

(5) The number of complaints filed by or on behalf of patients who have received elective facial cosmetic surgery by persons who have received a permit from the board to perform elective facial cosmetic surgery.

(6) Action taken by the board resulting from complaints filed by or on behalf of patients who have received elective facial cosmetic surgery by persons who have received a permit from the board to perform elective facial cosmetic surgery.

SEC. 9. Section 1638.3 of the Business and Professions Code is amended to read:

1638.3. (a) The fee to renew an oral and maxillofacial surgery permit shall be the amount prescribed in Section 1724.

(b) Every provision of this chapter applicable to a person licensed to practice dentistry shall apply to a person to whom a special permit is issued under this article.

SEC. 10. Section 1646.6 of the Business and Professions Code is amended to read:

1646.6. (a) The application fee for a permit or renewal under this article shall not exceed the amount prescribed in Section 1724.

(b) The fee for an onsite inspection shall not exceed the amount prescribed in Section 1724.

(c) It is the intent of the Legislature that fees established pursuant to this section be equivalent to administration and enforcement costs incurred by the board in carrying out this article.

(d) At the discretion of the board, the fee for onsite inspection may be collected and retained by a contractor engaged pursuant to subdivision (b) of Section 1646.4.

SEC. 11. Section 1647.8 of the Business and Professions Code is amended to read:

1647.8. (a) The application fee for a permit or renewal under this article shall not exceed the amount prescribed in Section 1724.

(b) The fee for an onsite inspection shall not exceed the amount prescribed in Section 1724.

(c) It is the intent of the Legislature that the board hire sufficient staff to administer the program and that the fees established pursuant to this section be equivalent to administration and enforcement costs incurred by the board in carrying out this article.

SEC. 12. Section 1650.1 is added to the Business and Professions Code, to read:

1650.1. (a) Every applicant and licensee who has an electronic mail address shall report to the board that

electronic mail address no later than July 1, 2016. The electronic mail address shall be considered confidential and not subject to public disclosure.

(b) The board shall annually send an electronic notice to each applicant and licensee that requests confirmation from the applicant or licensee that his or her electronic mail address is current.

SEC. 13. Section 1724 of the Business and Professions Code is amended to read:

1724. The amount of charges and fees for dentists licensed pursuant to this chapter shall be established by the board as is necessary for the purpose of carrying out the responsibilities required by this chapter as it relates to dentists, subject to the following limitations:

(a) The fee for an application for licensure qualifying pursuant to paragraph (1) of subdivision (c) of Section 1632 shall not exceed one thousand five hundred dollars (\$1,500). The fee for an application for licensure qualifying pursuant to paragraph (2) of subdivision (c) of Section 1632 shall not exceed one thousand dollars (\$1,000).

(b) The fee for an application for licensure qualifying pursuant to Section 1634.1 shall not exceed one thousand dollars (\$1,000).

(c) The fee for an application for licensure qualifying pursuant to Section 1635.5 shall not exceed one thousand dollars (\$1,000).

(d) The fee for an initial license and for the renewal of a license is five hundred twenty-five dollars (\$525). On and after January 1, 2016, the fee for an initial license shall not exceed six hundred fifty dollars (\$650), and the fee for the renewal of a license shall not exceed six hundred fifty dollars (\$650). On and after January 1, 2018, the fee for an initial license shall not exceed eight hundred dollars (\$800), and the fee for the renewal of a license shall not exceed eight hundred dollars (\$800).

(e) The fee for an application for a special permit shall not exceed one thousand dollars (\$1,000), and the renewal fee for a special permit shall not exceed six hundred dollars (\$600).

(f) The delinquency fee shall be 50 percent of the renewal fee for such a license or permit in effect on the date of the renewal of the license or permit.

(g) The penalty for late registration of change of place of practice shall not exceed seventy-five dollars (\$75).

(h) The fee for an application for an additional office permit shall not exceed seven hundred fifty dollars (\$750), and the fee for the renewal of an additional office permit shall not exceed three hundred seventy-five dollars (\$375).

(i) The fee for issuance of a replacement pocket license, replacement wall certificate, or replacement engraved certificate shall not exceed one hundred twenty-five dollars (\$125).

(j) The fee for a provider of continuing education shall not exceed five hundred dollars (\$500) per year.

(k) The fee for application for a referral service permit and for renewal of that permit shall not exceed twenty-five dollars (\$25).

(l) The fee for application for an extramural facility permit and for the renewal of a permit shall not exceed twenty-five dollars (\$25).

(m) The fee for an application for an elective facial cosmetic surgery permit shall not exceed four thousand dollars (\$4,000), and the fee for the renewal of an elective facial cosmetic surgery permit shall not exceed eight hundred dollars (\$800).

(n) The fee for an application for an oral and maxillofacial surgery permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of an oral and maxillofacial surgery permit shall not exceed one thousand two hundred dollars (\$1,200).

(o) The fee for an application for a general anesthesia permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of a general anesthesia permit shall not exceed six hundred dollars (\$600).

(p) The fee for an onsite inspection and evaluation related to a general anesthesia or conscious sedation permit shall not exceed four thousand five hundred dollars (\$4,500).

(q) The fee for an application for a conscious sedation permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of a conscious sedation permit shall not exceed six hundred dollars (\$600).

(r) The fee for an application for an oral conscious sedation permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of an oral conscious sedation permit shall not exceed six hundred dollars (\$600).

(s) The fee for a certification of licensure shall not exceed one hundred twenty-five dollars (\$125).

(t) The fee for an application for the law and ethics examination shall not exceed two hundred fifty dollars (\$250).

The board shall report to the appropriate fiscal committees of each house of the Legislature whenever the board increases any fee pursuant to this section and shall specify the rationale and justification for that increase.

SEC. 13.5. *Section 1724 of the Business and Professions Code is amended to read:*

1724. The amount of charges and fees for dentists licensed pursuant to this chapter shall be established by the board as is necessary for the purpose of carrying out the responsibilities required by this chapter as it relates to dentists, subject to the following limitations:

(a) The fee for ~~application for examination~~ *an application for licensure qualifying pursuant to paragraph (1) of subdivision (c) of Section 1632* shall not exceed *one thousand five hundred dollars* ~~(\$500)~~ *(\$1,500)*. *The fee for an application for licensure qualifying pursuant to paragraph (2) of subdivision (c) of Section 1632 shall not exceed one thousand dollars (\$1,000).*

(b) The fee for *an* application for ~~reexamination~~ *licensure qualifying pursuant to Section 1634.1* shall not exceed *one hundred thousand* ~~dollars (\$100)~~ *dollars (\$1,000)*.

(c) The fee for ~~examination and for reexamination~~ *an application for licensure qualifying pursuant to Section 1635.5* shall not exceed ~~eight hundred dollars (\$800)~~ *one thousand dollars (\$1,000)*. ~~Applicants who are found to be ineligible to take the examination shall be entitled to a refund in an amount fixed by the board.~~

(d) The fee for an initial license and for the renewal of a license is five hundred twenty-five dollars (\$525). *On and after January 1, 2016, the fee for an initial license shall not exceed six hundred fifty dollars (\$650), and the fee for the renewal of a license shall not exceed six hundred fifty dollars (\$650). On and after January 1, 2018, the fee for an initial license shall not exceed eight hundred dollars (\$800), and the fee for the renewal of a license shall not exceed eight hundred dollars (\$800). Commencing July 1, 2017, the fee for an initial license shall be prorated on a monthly basis.*

(e) The fee for *an application for* a special permit shall not exceed ~~three hundred one thousand~~ *dollars (\$300)*, ~~(\$1,000)~~, and the renewal fee for a special permit shall not exceed ~~one six~~ *hundred* ~~dollars (\$100)~~ *dollars (\$600)*.

(f) The delinquency fee shall be ~~the amount prescribed by Section 163.5.~~ *50 percent of the renewal fee for such a license or permit in effect on the date of the renewal of the license or permit.*

(g) The penalty for late registration of change of place of practice shall not exceed seventy-five dollars (\$75).

(h) The ~~application~~ fee for ~~permission to conduct an additional place of practice~~ *an application for an additional office permit shall not exceed seven hundred fifty dollars (\$750), and the fee for the renewal of an additional office permit shall not exceed two three hundred seventy-five* ~~dollars (\$200)~~ *dollars (\$375)*.

~~(i) The renewal fee for an additional place of practice shall not exceed one hundred dollars (\$100).~~

~~(j)~~

~~(i)~~ The fee for issuance of a ~~substitute~~ *replacement pocket license, replacement wall certificate, or replacement engraved* certificate shall not exceed one hundred twenty-five dollars (\$125).

~~(k)~~

~~(j)~~ The fee for a provider of continuing education shall not exceed ~~two five~~ *hundred fifty* ~~dollars (\$250)~~ *dollars (\$500)* per year.

~~(l)~~

(k) The fee for application for a referral service permit and for renewal of that permit shall not exceed twenty-five dollars (\$25).

(m)

(l) The fee for application for an extramural facility permit and for the renewal of a permit shall not exceed twenty-five dollars (\$25).

(m) The fee for an application for an elective facial cosmetic surgery permit shall not exceed four thousand dollars (\$4,000), and the fee for the renewal of an elective facial cosmetic surgery permit shall not exceed eight hundred dollars (\$800).

(n) The fee for an application for an oral and maxillofacial surgery permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of an oral and maxillofacial surgery permit shall not exceed one thousand two hundred dollars (\$1,200).

(o) The fee for an application for a general anesthesia permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of a general anesthesia permit shall not exceed six hundred dollars (\$600).

(p) The fee for an onsite inspection and evaluation related to a general anesthesia or conscious sedation permit shall not exceed four thousand five hundred dollars (\$4,500).

(q) The fee for an application for a conscious sedation permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of a conscious sedation permit shall not exceed six hundred dollars (\$600).

(r) The fee for an application for an oral conscious sedation permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of an oral conscious sedation permit shall not exceed six hundred dollars (\$600).

(s) The fee for a certification of licensure shall not exceed one hundred twenty-five dollars (\$125).

(t) The fee for an application for the law and ethics examination shall not exceed two hundred fifty dollars (\$250).

The board shall report to the appropriate fiscal committees of each house of the Legislature whenever the board increases any fee pursuant to this section and shall specify the rationale and justification for that increase.

SEC. 14. Section 1725 of the Business and Professions Code is amended to read:

1725. The amount of the fees prescribed by this chapter that relate to the licensing and permitting of dental assistants shall be established by regulation and subject to the following limitations:

(a) The application fee for an original license shall not exceed two hundred dollars (\$200).

(b) The fee for examination for licensure as a registered dental assistant shall not exceed the actual cost of the practical examination.

(c) The fee for application and for the issuance of an orthodontic assistant permit or a dental sedation assistant permit shall not exceed two hundred dollars (\$200).

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

(e) The fee for the written examination for a registered dental assistant shall not exceed the actual cost of the examination.

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

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

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

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

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

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

(l) The biennial renewal fee for a registered dental assistant license, registered dental assistant in extended functions license, dental sedation assistant permit, or orthodontic assistant permit shall not exceed two hundred dollars (\$200).

(m) The delinquency fee shall be 50 percent of the renewal fee for the license or permit in effect on the date of the renewal of the license or permit.

(n) The fee for issuance of a duplicate registration, license, permit, or certificate to replace one that is lost or destroyed, or in the event of a name change, shall not exceed one hundred dollars (\$100).

(o) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants that are not accredited by a board-approved agency, or the Chancellor's office of the California Community Colleges shall not exceed seven thousand five hundred dollars (\$7,500).

(p) The fee for review of each approval application or reevaluation for a course that is not accredited by a board-approved agency or the Chancellor's office of the California Community Colleges shall not exceed two thousand dollars (\$2,000).

(q) Fees collected pursuant to this section shall be deposited in the State Dental Assistant Fund.

SEC. 15. Section 1742 of the Business and Professions Code is amended to read:

1742. (a) There is hereby created a Dental Assisting Council of the Dental Board of California, which shall consider all matters relating to dental assistants in this state, on its own initiative or upon the request of the board, and make appropriate recommendations to the board and the standing committees of the board, including, but not limited to, the following areas:

(1) Requirements for dental assistant examination, licensure, permitting, and renewal.

(2) Standards and criteria for approval of dental assisting educational programs, courses, and continuing education.

(3) Allowable dental assistant duties, settings, and supervision levels.

(4) Appropriate standards of conduct and enforcement for dental assistants.

(5) Requirements regarding infection control.

(b) (1) The members of the council shall be appointed by the board and shall include the registered dental assistant member of the board, another member of the board, and five registered dental assistants, representing as broad a range of dental assisting experience and education as possible, who meet the requirements of paragraph (2).

(2) The board shall consider, in its appointments of the five registered dental assistant members, recommendations submitted by any incorporated, nonprofit professional society, association, or entity whose membership is comprised of registered dental assistants within the state. Two of those members shall be employed as faculty members of a registered dental assisting educational program approved by the board, and shall have been so employed for at least the prior five years. Three of those members, which shall include one registered dental assistant in extended functions, shall be employed clinically in private dental practice or public safety net or dental health care clinics. All five of those members shall have possessed a current and active registered dental assistant or registered dental assistant in extended functions license for at least the prior five years, and shall not be employed by a current member of the board.

(c) No council appointee shall have served previously on the dental assisting forum or have any financial interest in any registered dental assistant school. All final candidate qualifications and applications for board-appointed council members shall be made available in the published board materials with final candidate selection conducted during the normal business of the board during public meetings.

(d) A vacancy occurring during a term shall be filled by appointment by the board for the unexpired term,

according to the criteria applicable to the vacancy within 90 days after it occurs.

(e) Each member shall comply with conflict of interest requirements that apply to board members.

(f) The council shall meet in conjunction with other board committees, and at other times as deemed necessary.

(g) Each member shall serve for a term of four years, except that, of the initial appointments of the nonboard members, one of the members shall serve a term of one year, one member shall serve a term of two years, two members shall serve a term of three years, and one member shall serve a term of four years, as determined by the board. No member shall serve more than two full terms.

(h) Recommendations by the council pursuant to this section shall be approved, modified, or rejected by the board within 120 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the recommendation, the council may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation, which shall be provided by the board within 30 days of the request.

(i) The council shall select a chair who shall establish the agendas of the council and shall serve as the council's liaison to the board, including the reporting of the council's recommendations to the board.

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

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

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

(2) For individuals applying prior to January 1, 2010, evidence of completion of satisfactory work experience of at least 12 months as a dental assistant in California or another state and satisfactory performance on a written *and practical* examination administered by the board.

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

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

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

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

(e) In addition to the requirements specified in subdivisions (a) and (d), individuals applying for registered dental assistant licensure on or after January 1, 2010, shall demonstrate satisfactory performance on a written examination in law and ethics administered by the board and shall provide written evidence of successful completion within five years prior to application of all of the following:

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

(2) A board-approved course in infection control.

(3) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent.

(f) A registered dental assistant may apply for an orthodontic assistant permit or a dental sedation assistant permit, or both, by submitting written evidence of the following:

(1) Successful completion of a board-approved orthodontic assistant or dental sedation assistant course, as applicable.

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

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

(h) Completion of the continuing education requirements established by the board pursuant to Section 1645 by a registered dental assistant who also holds a permit as an orthodontic assistant or dental sedation assistant shall fulfill the continuing education requirements for the permit or permits.

(i) The board shall, in consultation with the Office of Professional Examination Services, conduct a review to determine whether a practical examination is necessary to demonstrate competency of registered dental assistants, and if so, how this examination should be developed and administered. The board shall submit its review and determination to the appropriate policy committees of the Legislature on or before July 1, 2017.

~~(j) This section shall remain in effect only until July 1, 2017, and as of that date is repealed.~~

(j) Notwithstanding any other law, if the review conducted by the Office of Professional Examination Services pursuant to subdivision (i) concludes that the practical examination is unnecessary or does not accurately measure the competency of registered dental assistants, the board may vote to suspend the practical examination. The suspension of the practical examination shall commence on the date the board votes to suspend the practical examination and shall remain suspended until July 1, 2017, at which date the practical examination shall be reinstated. If the board votes to suspend the practical examination, the board shall post a notice on its Internet Web site stating that the practical examination has been suspended, until July 1, 2017.

~~SEC. 17. Section 1752.1 is added to the Business and Professions Code, to read:~~

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

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

~~(2) For individuals applying prior to January 1, 2010, evidence of completion of satisfactory work experience of at least 12 months as a dental assistant in California or another state and satisfactory performance on a written and practical examination administered by the board.~~

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

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

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

~~established minimum criteria shall not qualify for satisfactory work experience as defined by this section.~~

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

~~(e) In addition to the requirements specified in subdivisions (a) and (d), individuals applying for registered dental assistant licensure on or after January 1, 2010, shall demonstrate satisfactory performance on a written examination in law and ethics administered by the board and shall provide written evidence of successful completion within five years prior to application of all of the following:~~

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

~~(2) A board-approved course in infection control.~~

~~(3) A course in basic life support offered by an instructor approved by the American Red Cross or the American Heart Association, or any other course approved by the board as equivalent.~~

~~(f) A registered dental assistant may apply for an orthodontic assistant permit or a dental sedation assistant permit, or both, by submitting written evidence of the following:~~

~~(1) Successful completion of a board-approved orthodontic assistant or dental sedation assistant course, as applicable.~~

~~(2) Passage of a written examination administered by the board that shall encompass the knowledge, skills, and abilities necessary to competently perform the duties of the particular permit.~~

~~(g) A registered dental assistant with permits in either orthodontic assisting or dental sedation assisting shall be referred to as an "RDA with orthodontic assistant permit," or "RDA with dental sedation assistant permit," as applicable. These terms shall be used for reference purposes only and do not create additional categories of licensure.~~

~~(h) Completion of the continuing education requirements established by the board pursuant to Section 1645 by a registered dental assistant who also holds a permit as an orthodontic assistant or dental sedation assistant shall fulfill the continuing education requirements for the permit or permits.~~

~~(i) This section shall become operative on July 1, 2017.~~

~~SEC. 18. Section 1752.3 of the Business and Professions Code is repealed.~~

~~SEC. 19. Section 1752.3 is added to the Business and Professions Code, to read:~~

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

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

~~(1) Place a base or liner.~~

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

~~(3) Fabricate and adjust an indirect provisional restoration.~~

~~(4) Cement an indirect provisional restoration.~~

~~(c) This section shall become operative on July 1, 2017.~~

~~SEC. 20.~~ **SEC. 17.** Section 2841 of the Business and Professions Code is amended to read:

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

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

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 21.~~SEC. 18.~~ Section 2847.1 is added to the Business and Professions Code, to read:

2847.1. (a) The board shall select an executive officer who shall perform duties as are delegated by the board and who shall be responsible to it for the accomplishment of those duties. The executive officer shall not be a member of the board.

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

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

(d) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

SEC. 22.~~SEC. 19.~~ Section 2847.5 is added to the Business and Professions Code, to read:

2847.5. (a) (1) The director shall appoint an administrative and enforcement program monitor no later than March 1, 2016. The director may retain a person for this position by a personal services contract. In this connection, the Legislature finds, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the administrative and enforcement program monitor and may terminate or dismiss him or her from this position. If the monitor is terminated or dismissed, the director shall appoint a replacement monitor within two months.

(3) The monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the initial administrative and enforcement program monitor's appointment.

(b) (1) The administrative and enforcement program monitor shall monitor and evaluate the following:

(A) The board's administrative process, with specific concentration on the management of staff, assistance of board members, and working relationship with the Legislature, including the following:

(i) Staff hiring and training procedures.

(ii) Oversight of staff work.

(iii) Evaluation of staff performance.

(iv) Training of board members.

(v) Dissemination of information to board members.

(vi) Assistance of board members in performing their duties.

(vii) Communication with legislators and legislative staff.

(viii) Representation of the board at legislative meetings and hearings.

(B) The board's disciplinary system and procedures, with specific concentration on improving the overall efficiency and consistency of the enforcement program, including the following:

(i) The quality and consistency of complaint processing and investigation.

(ii) Consistency in the application of sanctions or discipline imposed on ~~licensees, the~~ licensees.

(iii) *The* accurate and consistent implementation of the laws and rules affecting discipline, including adherence to the "Complaint Prioritization Guidelines for Health Care Agencies" established by the Consumer Protection Enforcement Initiative of 2010.

(iii)

(iv) Staff concerns regarding disciplinary matters or procedures.

(iv)

(v) The appropriate use of licensed professionals to investigate complaints.

(v)

(vi) The board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding vocational nurses and psychiatric technicians.

(4)

(2) The administrative and enforcement program monitor shall exercise no authority over the board's management or staff; however, the board and its staff shall cooperate with the monitor, and shall provide data, information, and files as requested by the monitor to perform all of his or her duties.

(5)

(3) The director shall assist the administrative and enforcement program monitor in the performance of his or her duties, and the monitor shall have the same investigative authority as the director.

(6)

(4) The director shall specify further duties of the administrative and program enforcement monitor.

(c) (1) The administrative and enforcement program monitor shall submit to the department, the board, and the Legislature an initial written report of his or her findings and conclusions no later than July 1, 2016, and subsequent written reports no later than November 1, 2016, and February 1, 2017, and shall be available to make oral reports to each entity if requested to do so. The monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The monitor shall make his or her reports available to the public or the media. The monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(2) The administrative and enforcement program monitor shall issue a final report before January 1, 2018. The final report shall include final findings and conclusions on the topics addressed in the initial report submitted by the monitor pursuant to paragraph (1).

(d) The board shall pay for all of the costs associated with the employment of the administrative and enforcement program monitor.

(e) This section shall remain in effect only until March 1, 2018, and as of that date is repealed.

SEC. 23. SEC. 20. Section 2858.5 is added to the Business and Professions Code, to read:

2858.5. (a) The department's internal audit unit shall review the board's financial needs, fee structure, budget, and ~~expenditures~~ *expenditures, including the estimated costs of meeting staffing and other requirements to implement this chapter and Chapter 10 (commencing with Section 4500) of Division 2.* The director shall provide to the Legislature a copy of the review, no later than October 1, 2016. ~~The director shall include with this report an overview of the estimated costs of meeting staffing and other requirements to implement this chapter and Chapter 10 (commencing with Section 4500) of Division 2 based on findings of the review.~~

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

SEC. 24. SEC. 21. Section 2894 of the Business and Professions Code is amended to read:

2894. (a) All money in the Vocational Nursing and Psychiatric Technicians Fund shall be used to carry out the provisions of this chapter, including the promotion of nursing education in this state, and for the refund, in accordance with law, of license fees or other moneys paid into the Vocational Nursing and Psychiatric Technicians Fund under the provisions of this chapter.

(b) Claims against the Vocational Nursing and Psychiatric Technicians Fund shall be audited by the Controller, and shall be paid by the Treasurer upon warrants drawn by the Controller.

(c) This section shall remain in effect only until July 1, 2016, and as of that date is repealed.

SEC. 25.~~SEC. 22.~~ Section 2894 is added to the Business and Professions Code, to read:

2894. (a) All money in the Vocational Nursing and Psychiatric Technicians Fund shall be used to carry out this chapter, including the promotion of nursing education in this state, and Chapter 10 (commencing with Section 4500), and for the refund, in accordance with law, of license fees or other moneys paid into the Vocational Nursing and Psychiatric Technicians Fund under the provisions of this chapter and Chapter 10 (commencing with Section 4500).

(b) Claims against the Vocational Nursing and Psychiatric Technicians Fund shall be audited by the Controller, and shall be paid by the Treasurer upon warrants drawn by the Controller.

(c) This section shall become operative on July 1, 2016.

SEC. 26.~~SEC. 23.~~ Section 4501 of the Business and Professions Code is amended to read:

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

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

SEC. 27.~~SEC. 24.~~ Section 4503 of the Business and Professions Code is amended to read:

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

(b) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

SEC. 28.~~SEC. 25.~~ Section 4547 of the Business and Professions Code is amended to read:

4547. (a) All expenses incurred in the operation of this chapter shall be paid out of the Vocational Nursing and Psychiatric Technicians Fund from the revenue received by the board under this chapter and deposited in the Vocational Nursing and Psychiatric Technicians Fund. No part of the expenses shall be charged against any funds which are derived from any functions of the board provided for in other chapters of this code.

(b) This section shall remain in effect only until July 1, 2016, and as of that date is repealed.

SEC. 29.~~SEC. 26.~~ Section 4547 is added to the Business and Professions Code, to read:

4547. (a) All expenses incurred in the operation of this chapter or Chapter 6.5 (commencing with Section 2840) shall be paid out of the Vocational Nursing and Psychiatric Technicians Fund from the revenue received by the board under this chapter or Chapter 6.5 (commencing with Section 2840) and deposited in the Vocational Nursing and Psychiatric Technicians Fund.

(b) This section shall become operative on July 1, 2016.

SEC. 27. (a) *Section 2.1 of this bill incorporates changes to Section 205 of the Business and Professions Code proposed by both this bill and Assembly Bill 177. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 205 of the Business and Professions Code, and (3) Assembly Bill 180 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 177, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.*

(b) *Section 2.2 of this bill incorporates changes to Section 205 of the Business and Professions Code proposed by both this bill and Assembly Bill 180. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 205 of the Business and Professions Code, (3) Assembly Bill 177 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after Assembly Bill 180 in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.*

(c) *Section 2.3 of this bill incorporates changes to Section 205 of the Business and Professions Code proposed by this bill, Assembly Bill 177, and Assembly Bill 180. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2016, (2) all three bills amend Section 205 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 177 and Assembly 180, in which*

case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 28. *Section 13.5 of this bill incorporates amendments to Section 1724 of the Business and Professions Code proposed by both this bill and Assembly Bill 483. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 1724 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 483, in which case Section 13 of this bill shall not become operative.*

AB-266

Medical Cannabis



California

LEGISLATIVE INFORMATION

AB-266 Medical marijuana. (2015-2016)

AMENDED IN SENATE SEPTEMBER 11, 2015
 AMENDED IN SENATE SEPTEMBER 04, 2015
 AMENDED IN SENATE SEPTEMBER 01, 2015
 AMENDED IN SENATE AUGUST 17, 2015
 AMENDED IN SENATE JULY 13, 2015
 AMENDED IN SENATE JUNE 30, 2015
 AMENDED IN ASSEMBLY JUNE 02, 2015
 AMENDED IN ASSEMBLY MAY 11, 2015
 AMENDED IN ASSEMBLY MAY 05, 2015
 AMENDED IN ASSEMBLY APRIL 14, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 266

Introduced by Assembly Members Bonta, Cooley, Jones-Sawyer, ~~and~~ Lackey, *and Wood*
 (~~Coauthor: Assembly Member Chiu~~)

February 10, 2015

~~An act to amend Section 2220.05 of the Business and Professions Code, relating to medical marijuana.~~
An act to amend Sections 27 and 101 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 11362.775 of the Health and Safety Code, to add Section 147.5 to the Labor Code, and to add Section 31020 to the Revenue and Taxation Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 266, as amended, Bonta. ~~Medical Board of California: cannabis.~~ *Medical marijuana.*

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department

of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill, among other things, would enact the Medical Marijuana Regulation and Safety Act for the licensure and regulation of medical marijuana and would establish within the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Director of Consumer Affairs. The bill would require the director to administer and enforce the provisions of the act.

This bill would also require the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of commercial cannabis and cannabis products.

This bill would impose certain fines and civil penalties for specified violations of the act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account.

(2) Under existing law, certain persons with identification cards, who associate within the state in order collectively or cooperatively to cultivate marijuana for medical purposes, are not solely on the basis of that fact subject to specified state criminal sanctions.

This bill would repeal these provisions upon the issuance of licenses by licensing authorities pursuant to the Medical Marijuana Regulation and Safety Act, as specified, and would instead provide that actions of licensees with the relevant local permits, in accordance with the act and applicable local ordinances, are not offenses subject to arrest, prosecution, or other sanction under state law.

(3) This bill would provide that its provisions are severable.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would provide that it shall become operative only if SB 643 and AB 243 of the 2015–16 Regular Session are also enacted and become operative.

~~Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law requires the Medical Board of California to prioritize its investigative and prosecutorial resources to ensure that the most harmful physicians and surgeons are identified and disciplined expeditiously, and provides a list of allegations that shall be prioritized.~~

~~This bill would add repeatedly recommending excessive cannabis to patients for medical purposes, and repeatedly recommending cannabis to patients without a good faith examination and a medical reason, to the list of prioritized allegations.~~

~~This bill would become operative only if SB 643 of the 2015–16 Regular Session is enacted and becomes operative.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: **noyes**

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

SECTION 1. *Section 27 of the Business and Professions Code is amended to read:*

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and

revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

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

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

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

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

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

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

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

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

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

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

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

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

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

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

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

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

(f) The Bureau of Medical Marijuana Regulation shall disclose information on its licensees.

(f)

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

SEC. 2. *Section 101 of the Business and Professions Code is amended to read:*

101. The department is comprised of the following:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary Education.

(l) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(m) The Board of Registered Nursing.

(n) The Board of Behavioral Sciences.

(o) The State Athletic Commission.

(p) The Cemetery and Funeral Bureau.

(q) The State Board of Guide Dogs for the Blind.

(r) The Bureau of Security and Investigative Services.

(s) The Court Reporters Board of California.

(t) The Board of Vocational Nursing and Psychiatric Technicians.

(u) The Landscape Architects Technical Committee.

(v) The Division of Investigation.

(w) The Bureau of Automotive Repair.

(x) The Respiratory Care Board of California.

(y) The Acupuncture Board.

- (z) The Board of Psychology.
- (aa) The California Board of Podiatric Medicine.
- (ab) The Physical Therapy Board of California.
- (ac) The Arbitration Review Program.
- (ad) The Physician Assistant Committee.
- (ae) The Speech-Language Pathology and Audiology Board.
- (af) The California Board of Occupational Therapy.
- (ag) The Osteopathic Medical Board of California.
- (ah) The Naturopathic Medicine Committee.
- (ai) The Dental Hygiene Committee of California.
- (aj) The Professional Fiduciaries Bureau.
- (ak) The State Board of Chiropractic Examiners.
- (al) The Bureau of Real Estate.
- (am) The Bureau of Real Estate Appraisers.
- (an) The Structural Pest Control Board.

(ao) The Bureau of Medical Marijuana Regulation.

(ao)

(ap) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. *Section 205.1 is added to the Business and Professions Code, to read:*

205.1. *Notwithstanding subdivision (a) of Section 205, the Medical Marijuana Regulation and Safety Act Fund is a special fund within the Professions and Vocations Fund, and is subject to subdivision (b) of Section 205.*

SEC. 4. *Chapter 3.5 (commencing with Section 19300) is added to Division 8 of the Business and Professions Code, to read:*

CHAPTER 3.5. Medical Marijuana Regulation and Safety act
Article 1. Definitions

19300. *This act shall be known and may be cited as the Medical Marijuana Regulation and Safety Act.*

19300.5. *For purposes of this chapter, the following definitions shall apply:*

(a) "Accrediting body" means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) "Applicant," for purposes of Article 4 (commencing with Section 19319), means the following:

(1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) If the owner is an entity, "owner" includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.

(3) If the applicant is a publicly traded company, "owner" means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(c) "Batch" means a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order

during the same cycle of manufacture.

(d) "Bureau" means the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(e) "Cannabinoid" or "phytocannabinoid" means a chemical compound that is unique to and derived from cannabis.

(f) "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus., *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(i) "Certificate of accreditation" means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

(j) "Chief" means Chief of the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(k) "Commercial cannabis activity" includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(l) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) "Dispensary" means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

(o) "Dispensing" means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(p) "Distribution" means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

(q) "Distributor" means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(r) "Dried flower" means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(s) "Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

(t) "Fund" means the Medical Marijuana Regulation and Safety Act Fund established pursuant to Section 19351.

(u) "Identification program" means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

(v) "Labor peace agreement" means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(w) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the license.

(x) "Cultivation site" means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(y) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(z) "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(aa) "Transporter" means a person issued a state license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between facilities that have been issued a state license pursuant to this chapter.

(ab) "Licensee" means a person issued a state license under this chapter to engage in commercial cannabis activity.

(ac) "Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ad) "Lot" means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of medical cannabis or a medical cannabis product produced by a continuous process, "lot" means a specifically identified amount produced in a unit of time or a quantity in a manner that ensures its having uniform character and quality within specified limits.

(ae) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(af) "Manufacturing site" means a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

(ag) "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(ah) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(ai) "Permit," "local license," or "local permit" means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

(aj) "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(ak) "State license," "license," or "registration" means a state license issued pursuant to this chapter.

(al) "Topical cannabis" means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

(am) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

19300.7. License classifications pursuant to this chapter are as follows:

(a) Type 1 = Cultivation; Specialty outdoor; Small.

(b) Type 1A = Cultivation; Specialty indoor; Small.

(c) Type 1B = Cultivation; Specialty mixed-light; Small.

(d) Type 2 = Cultivation; Outdoor; Small.

(e) Type 2A = Cultivation; Indoor; Small.

(f) Type 2B = Cultivation; Mixed-light; Small.

(g) Type 3 = Cultivation; Outdoor; Medium.

(h) Type 3A = Cultivation; Indoor; Medium.

(i) Type 3B = Cultivation; Mixed-light; Medium.

(j) Type 4 = Cultivation; Nursery.

(k) Type 6 = Manufacturer 1.

(l) Type 7 = Manufacturer 2.

(m) Type 8 = Testing.

(n) Type 10 = Dispensary; General.

(o) Type 10A = Dispensary; No more than three retail sites.

(p) Type 11 = Distribution.

(q) Type 12 = Transporter.

Article 2. Administration

19302. There is in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

19303. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory,

and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

19304. *The bureau shall make and prescribe reasonable rules as may be necessary or proper to carry out the purposes and intent of this chapter and to enable it to exercise the powers and duties conferred upon it by this chapter, not inconsistent with any statute of this state, including particularly this chapter and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the bureau has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.*

19305. *Notice of any action of the licensing authority required by this chapter to be given may be signed and given by the director or an authorized employee of the department and may be made personally or in the manner prescribed by Section 1013 of the Code of Civil Procedure.*

19306. (a) *The bureau may convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this chapter, including best practices and guidelines to ensure qualified patients have adequate access to medical cannabis and medical cannabis products. The advisory committee members shall be determined by the chief.*

(b) *The advisory committee members may include, but not be limited to, representatives of the medical marijuana industry, representatives of medical marijuana cultivators, appropriate local and state agencies, appropriate local and state law enforcement, physicians, environmental and public health experts, and medical marijuana patient advocates.*

19307. *A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this chapter.*

19308. *For any hearing held pursuant to this chapter, the director, or a licensing authority, may delegate the power to hear and decide to an administrative law judge. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.*

19309. *In any hearing before a licensing authority pursuant to this chapter, the licensing authority may pay any person appearing as a witness at the hearing at the request of the licensing authority pursuant to a subpoena, his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.*

19310. *The department may on its own motion at any time before a penalty assessment is placed into effect and without any further proceedings, review the penalty, but such review shall be limited to its reduction.*

Article 3. Enforcement

19311. *Grounds for disciplinary action include:*

(a) *Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter.*

(b) *Conduct that constitutes grounds for denial of licensure pursuant to Chapter 3 (commencing with Section 490) of Division 1.5.*

(c) *Any other grounds contained in regulations adopted by a licensing authority pursuant to this chapter.*

(d) *Failure to comply with any state law, except as provided for in this chapter or other California law.*

19312. *Each licensing authority may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. The disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.*

19313. *Each licensing authority may take disciplinary action against a licensee for any violation of this chapter when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or*

engaged in commercial cannabis activity.

19313.5. *Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities and the Department of Food and Agriculture.*

19314. *All accusations against licensees shall be filed by the licensing authority within five years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within five years after such discovery.*

19315. *(a) Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.*

(b) Nothing in this chapter shall be interpreted to require the Department of Consumer Affairs to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.

(c) Nothing in this chapter shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority under the Fish and Game Code, the Water Code, the Food and Agricultural Code, or the Health and Safety Code.

19316. *(a) Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.*

(b) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(c) Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

19317. *(a) The actions of a licensee, its employees, and its agents that are (1) permitted pursuant to both a state license and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances, and (2) conducted in accordance with the requirements of this chapter and regulations adopted pursuant to this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.*

(b) The actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to both a state license and a local license or permit following the requirements of the applicable local ordinances, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

19318. *(a) A person engaging in commercial cannabis activity without a license required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the court may order the destruction of medical cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351.*

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General

on behalf of the people, the penalty collected shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

Article 4. Licensing

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

19321. (a) The Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health shall promulgate regulations for implementation of their respective responsibilities in the administration of this chapter.

(b) A license issued pursuant to this section shall be valid for 12 months from the date of issuance. The license shall be renewed annually. Each licensing authority shall establish procedures for the renewal of a license.

(c) Notwithstanding subdivision (a) of Section 19320, a facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016.

(d) Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum.

Article 5. Medical Marijuana Regulation

19326. (a) A person other than a licensed transporter shall not transport medical cannabis or medical cannabis products from one licensee to another licensee, unless otherwise specified in this chapter.

(b) All licensees holding cultivation or manufacturing licenses shall send all medical cannabis and medical cannabis products cultivated or manufactured to a distributor, as defined in Section 19300.5, for quality assurance and inspection by the Type 11 licensee and for a batch testing by a Type 8 licensee prior to distribution to a dispensary. Those licensees holding a Type 10A license in addition to a cultivation license or a manufacturing license shall send all medical cannabis and medical cannabis products to a Type 11 licensee for presale inspection and for a batch testing by a Type 8 licensee prior to dispensing any product. The licensing authority shall fine a licensee who violates this subdivision in an amount determined by the licensing authority to be reasonable.

(c) (1) Upon receipt of medical cannabis or medical cannabis products by a holder of a cultivation or manufacturing license, the Type 11 licensee shall first inspect the product to ensure the identity and quantity of the product and then ensure a random sample of the medical cannabis or medical cannabis product is tested by a Type 8 licensee prior to distributing the batch of medical cannabis or medical cannabis products.

(2) Upon issuance of a certificate of analysis by the Type 8 licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products shall undergo a quality assurance review by the Type 11 licensee prior to distribution to ensure the quantity and content of the medical cannabis or medical cannabis product, and for tracking and taxation purposes by the state. Licensed cultivators and manufacturers shall package or seal all medical cannabis and medical cannabis products in tamper-evident packaging and use a unique identifier, as prescribed by the Department of Food and Agriculture, for the purpose of identifying and tracking medical cannabis or medical cannabis products. Medical cannabis and medical cannabis products shall be labeled as required by Section 19347. All packaging and sealing shall be completed prior to medical cannabis or medical cannabis products being transported or delivered to a licensee, qualified patient, or caregiver.

(3) This section does not limit the ability of licensed cultivators, manufacturers, and dispensaries to directly enter into contracts with one another indicating the price and quantity of medical cannabis or medical cannabis products to be distributed. However, a Type 11 licensee responsible for executing the contract is authorized to collect a fee for the services rendered, including, but not limited to, costs incurred by a Type 8 licensee, as well as applicable state or local taxes and fees.

(d) Medical cannabis and medical cannabis products shall be tested by a registered testing laboratory, prior to retail sale or dispensing, as follows:

(1) Medical cannabis from dried flower shall, at a minimum, be tested for concentration, pesticides, mold, and other contaminants.

(2) Medical cannabis extracts shall, at a minimum, be tested for concentration and purity of the product.

(3) This chapter shall not prohibit a licensee from performing on-site testing for the purposes of quality assurance of the product in conjunction with reasonable business operations. On-site testing by the licensee shall not be certified by the State Department of Public Health.

(e) All commercial cannabis activity shall be conducted between licensees, when these are available.

19327. (a) A licensee shall keep accurate records of commercial cannabis activity.

(b) All records related to commercial cannabis activity as defined by the licensing authorities shall be maintained for a minimum of seven years.

(c) The bureau may examine the books and records of a licensee and inspect the premises of a licensee as the licensing authority or a state or local agency deems necessary to perform its duties under this chapter. All inspections shall be conducted during standard business hours of the licensed facility or at any other reasonable time.

(d) Licensees shall keep records identified by the licensing authorities on the premises of the location licensed. The licensing authorities may make any examination of the records of any licensee. Licensees shall also provide and deliver copies of documents to the licensing agency upon request.

(e) A licensee or its agent, or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the licensee pursuant to this section has engaged in a violation of this chapter.

(f) If a licensee or an employee of a licensee fails to maintain or provide the records required pursuant to this

section, the licensee shall be subject to a citation and fine of thirty thousand dollars (\$30,000) per individual violation.

19328. (a) A licensee may only hold a state license in up to two separate license categories, as follows:

- (1) Type 1, 1A, 1B, 2, 2A, or 2B licensees may also hold either a Type 6 or 7 state license.
- (2) Type 6 or 7 licensees, or a combination thereof, may also hold either a Type 1, 1A, 1B, 2, 2A, or 2B state license.
- (3) Type 6 or 7 licensees, or a combination thereof, may also hold a Type 10A state license.
- (4) Type 10A licensees may also hold either a Type 6 or 7 state license, or a combination thereof.
- (5) Type 1, 1A, 1B, 2, 2A, or 2B licensees, or a combination thereof, may also hold a Type 10A state license.
- (6) Type 10A licensees may apply for Type 1, 1A, 1B, 2, 2A, or 2B state license, or a combination thereof.
- (7) Type 11 licensees shall apply for a Type 12 state license, but shall not apply for any other type of state license.
- (8) Type 12 licensees may apply for a Type 11 state license.
- (9) A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more than four acres of total canopy size of cultivation by the licensee is occurring throughout the state during the period that the respective licenses are valid. All cultivation pursuant to this section shall comply with local ordinances. This paragraph shall become inoperative on January 1, 2026.

(b) Except as provided in subdivision (a), a person or entity that holds a state license is prohibited from licensure for any other activity authorized under this chapter, and is prohibited from holding an ownership interest in real property, personal property, or other assets associated with or used in any other license category.

(c) (1) In a jurisdiction that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single qualified business, upon licensure that business shall not be subject to subdivision (a) if it meets all of the following conditions:

- (A) The business was cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products on July 1, 2015, and has continuously done so since that date.
- (B) The business has been in full compliance with all applicable local ordinances at all times prior to licensure.
- (C) The business is registered with the State Board of Equalization.

(2) A business licensed pursuant to paragraph (1) is not required to conduct all cultivation or manufacturing within the bounds of a local jurisdiction, but all cultivation and manufacturing shall have commenced prior to July 1, 2015, and have been in full compliance with applicable local ordinances.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

19329. A licensee shall not also be licensed as a retailer of alcoholic beverages pursuant to Division 9 (commencing with Section 23000).

19330. This chapter and Article 2 (commencing with Section 11357) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code shall not interfere with an employer's rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

Article 7. Licensed Distributors, Dispensaries, and Transporters

19334. (a) State licenses to be issued by the Department of Consumer Affairs are as follows:

(1) "Dispensary," as defined in this chapter. This license shall allow for delivery pursuant to Section 19340.

(2) "Distributor," for the distribution of medical cannabis and medical cannabis products from manufacturer to dispensary. A Type 11 licensee shall hold a Type 12, or transporter, license and register each location where product is stored for the purposes of distribution. A Type 11 licensee shall not hold a license in a cultivation, manufacturing, dispensing, or testing license category and shall not own, or have an ownership interest in, a facility licensed in those categories other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(3) "Transport," for transporters of medical cannabis or medical cannabis products between licensees. A Type 12 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(4) "Special dispensary status" for dispensers who have no more than three licensed dispensary facilities. This license shall allow for delivery where expressly authorized by local ordinance.

(b) The bureau shall establish minimum security requirements for the commercial transportation and delivery of medical cannabis and products.

(c) A licensed dispensary shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary. These security measures shall include, but not be limited to, all of the following:

(1) Preventing individuals from remaining on the premises of the dispensary if they are not engaging in activity expressly related to the operations of the dispensary.

(2) Establishing limited access areas accessible only to authorized dispensary personnel.

(3) Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, or immediate sale.

(d) A dispensary shall notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:

(1) Significant discrepancies identified during inventory. The level of significance shall be determined by the bureau.

(2) Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary.

(3) The loss or unauthorized alteration of records related to cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents.

(4) Any other breach of security.

Article 9. Delivery

19340. (a) Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

(b) Upon approval of the licensing authority, a licensed dispensary that delivers medical cannabis or medical cannabis products shall comply with both of the following:

(1) The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, do not explicitly by ordinance prohibit delivery, as defined in Section 19300.5.

(2) All employees of a dispensary delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current license authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

(c) A county shall have the authority to impose a tax, pursuant to Article 11 (commencing with Section 19348), on each delivery transaction completed by a licensee.

(d) During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

(e) The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the licensing authority and law enforcement officers.

(f) A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

Article 10. Licensed Manufacturers and Licensed Laboratories

19341. The State Department of Public Health shall promulgate regulations governing the licensing of cannabis manufacturers and testing laboratories. Licenses to be issued are as follows:

(a) "Manufacturing level 1," for manufacturing sites that produce medical cannabis products using nonvolatile solvents.

(b) "Manufacturing level 2," for manufacturing sites that produce medical cannabis products using volatile solvents. The State Department of Public Health shall limit the number of licenses of this type.

(c) "Testing," for testing of medical cannabis and medical cannabis products. Testing licensees shall have their facilities licensed according to regulations set forth by the division. A testing licensee shall not hold a license in another license category of this chapter and shall not own or have ownership interest in a facility licensed pursuant to this chapter.

19342. (a) For the purposes of testing medical cannabis or medical cannabis products, licensees shall use a licensed testing laboratory that has adopted a standard operating procedure using methods consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and ISO/IEC 17025 to test medical cannabis and medical cannabis products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement.

(b) An agent of a licensed testing laboratory shall obtain samples according to a statistically valid sampling method for each lot.

(c) A licensed testing laboratory shall analyze samples according to either of the following:

(1) The most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(2) Scientifically valid methodology that is demonstrably equal or superior to paragraph (1), in the opinion of the accrediting body.

(d) If a test result falls outside the specifications authorized by law or regulation, the licensed testing laboratory shall follow a standard operating procedure to confirm or refute the original result.

(e) A licensed testing laboratory shall destroy the remains of the sample of medical cannabis or medical cannabis product upon completion of the analysis.

19343. A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

(a) Is registered by the State Department of Public Health.

(b) Is independent from all other persons and entities involved in the medical cannabis industry.

(c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.

(d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

(e) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the licensed testing laboratory for testing.

19344. *(a) A licensed testing laboratory shall issue a certificate of analysis for each lot, with supporting data, to report both of the following:*

(1) Whether the chemical profile of the lot conforms to the specifications of the lot for compounds, including, but not limited to, all of the following:

(A) Tetrahydrocannabinol (THC).

(B) Tetrahydrocannabinolic Acid (THCA).

(C) Cannabidiol (CBD).

(D) Cannabidiolic Acid (CBDA).

(E) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(F) Cannabigerol (CBG).

(G) Cannabinol (CBN).

(H) Any other compounds required by the State Department of Public Health.

(2) That the presence of contaminants does not exceed the levels that are the lesser of either the most current version of the American Herbal Pharmacopoeia monograph or the State Department of Public Health. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:

(A) Residual solvent or processing chemicals.

(B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.

*(C) Microbiological impurity, including total aerobic microbial count, total yeast mold count, *P. aeruginosa*, *aspergillus spp.*, *s. aureus*, aflatoxin B1, B2, G1, or G2, or ochratoxin A.*

(D) Whether the batch is within specification for odor and appearance.

(b) Residual levels of volatile organic compounds shall be below the lesser of either the specifications set by the United States Pharmacopoeia (U.S.P. Chapter 467) or those set by the State Department of Public Health.

19345. *(a) Except as provided in this chapter, a licensed testing laboratory shall not acquire or receive medical cannabis or medical cannabis products except from a licensed facility in accordance with this chapter, and shall not distribute, sell, deliver, transfer, transport, or dispense medical cannabis or medical cannabis products, from which the medical cannabis or medical cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.*

(b) A licensed testing laboratory may receive and test samples of medical cannabis or medical cannabis products from a qualified patient or primary caregiver only if he or she presents his or her valid recommendation for cannabis for medical purposes from a physician. A licensed testing laboratory shall not certify samples from a qualified patient or caregiver for resale or transfer to another party or licensee. All tests performed by a licensed testing laboratory for a qualified patient or caregiver shall be recorded with the name of the qualified patient or caregiver and the amount of medical cannabis or medical cannabis product received.

(c) The State Department of Public Health shall develop procedures to ensure that testing of cannabis occurs prior to delivery to dispensaries or any other business, specify how often licensees shall test cannabis and that the cost of testing shall be borne by the licensed cultivators, and require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the State Department of Public Health, unless remedial measures can bring the cannabis into compliance with quality assurance standards as promulgated by the State Department of Public Health.

(d) The State Department of Public Health shall establish a licensing fee, and laboratories shall pay a fee to be licensed. Licensing fees shall not exceed the reasonable regulatory cost of the licensing activities.

19347. *(a) Prior to delivery or sale at a dispensary, medical cannabis products shall be labeled and in a tamper-*

evident package. Labels and packages of medical cannabis products shall meet the following requirements:

- (1) Medical cannabis packages and labels shall not be made to be attractive to children.
- (2) All medical cannabis product labels shall include the following information, prominently displayed and in a clear and legible font:
 - (A) Manufacture date and source.
 - (B) The statement "SCHEDULE I CONTROLLED SUBSTANCE."
 - (C) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.
 - (D) The statement "FOR MEDICAL USE ONLY."
 - (E) The statement "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."
 - (F) The statement "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."
 - (G) For packages containing only dried flower, the net weight of medical cannabis in the package.
 - (H) A warning if nuts or other known allergens are used.
 - (I) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.
 - (J) Clear indication, in bold type, that the product contains medical cannabis.
 - (K) Identification of the source and date of cultivation and manufacture.
 - (L) Any other requirement set by the bureau.
 - (M) Information associated with the unique identifier issued by the Department of Food and Agriculture pursuant to Section 11362.777 of the Health and Safety Code.
- (b) Only generic food names may be used to describe edible medical cannabis products.

Article 14. Reporting

19353. Beginning on March 1, 2023, and on or before March 1 of each following year, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities and post the report on the authority's Internet Web site. The report shall include, but not be limited to, the following information for the previous fiscal year:

- (a) The amount of funds allocated and spent by the licensing authority for medical cannabis licensing, enforcement, and administration.
- (b) The number of state licenses issued, renewed, denied, suspended, and revoked, by state license category.
- (c) The average time for processing state license applications, by state license category.
- (d) The number and type of enforcement activities conducted by the licensing authorities and by local law enforcement agencies in conjunction with the licensing authorities or the bureau.
- (e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the licensing authorities.

19354. The bureau shall contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, to develop a study that identifies the impact that cannabis has on motor skills.

Article 15. Privacy

19355. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the office or licensing authorities for the purposes of

administering this chapter are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter, or a local ordinance.

(b) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this chapter shall be maintained in accordance with Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, and other state and federal laws relating to confidential patient information.

(c) Nothing in this section precludes the following:

(1) Employees of the bureau or any licensing authorities notifying state or local agencies about information submitted to the agency that the employee suspects is falsified or fraudulent.

(2) Notifications from the bureau or any licensing authorities to state or local agencies about apparent violations of this chapter or applicable local ordinance.

(3) Verification of requests by state or local agencies to confirm licenses and certificates issued by the regulatory authorities or other state agency.

(4) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(d) Information shall not be disclosed by any state or local agency beyond what is necessary to achieve the goals of a specific investigation, notification, or the parameters of a specific court order or subpoena.

SEC. 5. *Section 9147.7 of the Government Code is amended to read:*

9147.7. (a) For the purpose of this section, "eligible agency" means any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government, however denominated, excluding an agency that is constitutionally created or an agency related to postsecondary education, for which a date for repeal has been established by statute on or after January 1, 2011.

(b) The Joint Sunset Review Committee is hereby created to identify and eliminate waste, duplication, and inefficiency in government agencies. The purpose of the committee is to conduct a comprehensive analysis over 15 years, and on a periodic basis thereafter, of every eligible agency to determine if the agency is still necessary and cost effective.

(c) Each eligible agency scheduled for repeal shall submit to the committee, on or before December 1 prior to the year it is set to be repealed, a complete agency report covering the entire period since last reviewed, including, but not limited to, the following:

(1) The purpose and necessity of the agency.

(2) A description of the agency budget, priorities, and job descriptions of employees of the agency.

(3) Any programs and projects under the direction of the agency.

(4) Measures of the success or failures of the agency and justifications for the metrics used to evaluate successes and failures.

(5) Any recommendations of the agency for changes or reorganization in order to better fulfill its purpose.

(d) The committee shall take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency shall be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency. No eligible agency shall be extended in perpetuity unless specifically exempted from the provisions of this section. The committee may recommend that the Legislature extend the statutory sunset date for no more than one year to allow the committee more time to evaluate the eligible agency.

(e) The committee shall be comprised of 10 members of the Legislature. The Senate Committee on Rules shall appoint five members of the Senate to the committee, not more than three of whom shall be members of the same political party. The Speaker of the Assembly shall appoint five members of the Assembly to the

committee, not more than three of whom shall be members of the same political party. Members shall be appointed within 15 days after the commencement of the regular session. Each member of the committee who is appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve during that committee member's term of office or until that committee member no longer is a Member of the Senate or the Assembly, whichever is applicable. A vacancy on the committee shall be filled in the same manner as the original appointment. Three Assembly Members and three Senators who are members of the committee shall constitute a quorum for the conduct of committee business. Members of the committee shall receive no compensation for their work with the committee.

(f) The committee shall meet not later than 30 days after the first day of the regular session to choose a chairperson and to establish the schedule for eligible agency review provided for in the statutes governing the eligible agencies. The chairperson of the committee shall alternate every two years between a Member of the Senate and a Member of the Assembly, and the vice chairperson of the committee shall be a member of the opposite house as the chairperson.

(g) This section shall not be construed to change the existing jurisdiction of the budget or policy committees of the Legislature.

(h) This section shall not apply to the Bureau of Medical Marijuana Regulation.

SEC. 6. *Section 11362.775 of the Health and Safety Code is amended to read:*

11362.775. *Qualified (a) Subject to subdivision (b), qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate ~~marijuana~~ *cannabis* for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.*

(b) This section shall remain in effect only until one year after the Bureau of Medical Marijuana Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Marijuana Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code), and is repealed upon issuance of licenses.

SEC. 7. *Section 147.5 is added to the Labor Code, to read:*

147.5. *(a) By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.*

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

SEC. 8. *Section 31020 is added to the Revenue and Taxation Code, to read:*

31020. *The board, in consultation with the Department of Food and Agriculture, shall adopt a system for reporting the movement of commercial cannabis and cannabis products throughout the distribution chain. The system shall not be duplicative of the electronic database administered by the Department of Food and Agriculture specified in Section 19335 of the Business and Professions Code. The system shall also employ secure packaging and be capable of providing information to the board. This system shall capture, at a minimum, all of the following:*

(a) The amount of tax due by the designated entity.

(b) The name, address, and license number of the designated entity that remitted the tax.

(c) The name, address, and license number of the succeeding entity receiving the product.

(d) The transaction date.

(e) Any other information deemed necessary by the board for the taxation and regulation of marijuana and marijuana products.

SEC. 9. *The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

SEC. 10. *The Legislature finds and declares that Section 4 of this act, which adds Section 19355 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:*

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 11. *If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.*

SEC. 12. *This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015–16 Regular Session are also enacted and become operative.*

SECTION 1. ~~Section 2220.05 of the Business and Professions Code is amended to read:~~

~~2220.05.(a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:~~

~~(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.~~

~~(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.~~

~~(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.~~

~~(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.~~

~~(5) Sexual misconduct with one or more patients during a course of treatment or an examination.~~

~~(6) Practicing medicine while under the influence of drugs or alcohol.~~

~~(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).~~

~~(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).~~

~~SEC. 2. This measure shall become operative only if Senate Bill 643 of the 2015–16 Regular Session is enacted and becomes operative.~~

AB-333

Healing Arts: Continuing Education



California LEGISLATIVE INFORMATION

AB-333 Healing arts: continuing education. (2015-2016)

ENROLLED SEPTEMBER 03, 2015
PASSED IN SENATE AUGUST 31, 2015
PASSED IN ASSEMBLY SEPTEMBER 01, 2015
AMENDED IN SENATE JUNE 24, 2015
AMENDED IN ASSEMBLY APRIL 30, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 333

Introduced by Assembly Member Melendez

February 13, 2015

An act to add Section 856 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 333, Melendez. Healing arts: continuing education.

Existing law provides for the licensure and regulation of various healing arts licensees by various boards, as defined, within the Department of Consumer Affairs and imposes various continuing education requirements for license renewal.

This bill would allow specified healing arts licensees to apply one unit, as defined, of continuing education credit, once per renewal cycle, towards any required continuing education units for attending certain courses that result in the licensee becoming a certified instructor of cardiopulmonary resuscitation (CPR) or the proper use of an automated external defibrillator (AED), and would allow specified healing arts licensees to apply up to 2 units of continuing education credit, once per renewal cycle, towards any required continuing education units for conducting CPR or AED training sessions for employees of school districts and community college districts in the state. The bill would specify that these provisions would only apply if a licensing board's laws or regulations establishing continuing education requirements include the courses or activities mentioned above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 856 is added to the Business and Professions Code, to read:

856. (a) (1) A person licensed pursuant to this division who is required to complete continuing education units as a condition of renewing his or her license may, once per renewal cycle, apply one unit of continuing education credit, pursuant to paragraph (2), towards that requirement for attending a course that results in the licensee becoming a certified instructor of cardiopulmonary resuscitation (CPR) or the proper use of an automated external defibrillator (AED).

(2) A licensee may only apply continuing education credit for attending one of the following courses:

(A) An instructional program developed by the American Heart Association.

(B) An instructional program developed by the American Red Cross.

(C) An instructional program that is nationally recognized and based on the most current national evidence-based emergency cardiovascular care guidelines for the performance of CPR and the use of an AED.

(b) A person licensed pursuant to this division who is required to complete continuing education units as a condition of renewing his or her license may, once per renewal cycle, apply up to two units of continuing education credit towards that requirement for conducting CPR or AED training sessions for employees of school districts and community college districts in the state.

(c) For purposes of this section, "unit" means any measurement for continuing education, such as hours or course credits.

(d) This section shall only apply to a person licensed under this division if the applicable licensing board's laws or regulations establishing continuing education requirements include the courses or activities described in subdivisions (a) and (b).

AB-483

Healing Arts: Initial License Fees:
Proration



California
LEGISLATIVE INFORMATION

AB-483 Healing arts: license fees: proration. (2015-2016)

ENROLLED SEPTEMBER 11, 2015
PASSED IN SENATE SEPTEMBER 08, 2015
PASSED IN ASSEMBLY SEPTEMBER 09, 2015
AMENDED IN SENATE SEPTEMBER 02, 2015
AMENDED IN SENATE AUGUST 19, 2015
AMENDED IN SENATE JUNE 22, 2015
AMENDED IN ASSEMBLY MAY 28, 2015
AMENDED IN ASSEMBLY APRIL 09, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 483

**Introduced by Assembly Member Patterson
(Principal coauthor: Assembly Member Gordon)
(Coauthors: Assembly Members Chang, Chávez, Grove, Obernolte, Waldron, and Wilk)
(Coauthor: Senator Anderson)**

February 23, 2015

An act to amend Sections 1724, 1944, 2456.1, 2570.16, 4842.5, 4905, 4970, and 5604 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 483, Patterson. Healing arts: license fees: proration.

Existing law provides for the regulation and licensure of various professions and vocations by boards within the Department of Consumer Affairs. Existing law establishes fees for initial licenses, initial temporary and permanent licenses, and original licenses for those various professions and vocations. Existing law requires that licenses issued to certain licensees, including, among others, architects, acupuncturists, dental hygienists, dentists, occupational therapists, osteopathic physicians and surgeons, registered veterinary technicians, and veterinarians, expire at 12 a.m. on either the last day of the birth month of the licensee or at 12 a.m. of the legal birth date of the licensee during the 2nd year of a 2-year term, if not renewed.

This bill would, commencing July 1, 2017, require that the fees imposed on these licensees for an initial license or an original license be prorated on a monthly basis. The bill would, commencing July 1, 2017, require that the fee assessed an osteopathic physician and surgeon for license renewal be prorated on a monthly basis.

This bill would incorporate additional changes in Section 1724 of the Business and Professions Code, proposed by Assembly Bill 179, that would become operative only if this bill and Assembly Bill 179 are chaptered and become effective January 1, 2016, and this bill is chaptered last.

This bill would incorporate additional changes in Section 1944 of the Business and Professions Code, proposed by Senate Bill 800, that would become operative only if this bill and Senate Bill 800 are chaptered and become effective January 1, 2016, and this bill is chaptered last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 1724 of the Business and Professions Code is amended to read:

1724. The amount of charges and fees for dentists licensed pursuant to this chapter shall be established by the board as is necessary for the purpose of carrying out the responsibilities required by this chapter as it relates to dentists, subject to the following limitations:

- (a) The fee for application for examination shall not exceed five hundred dollars (\$500).
- (b) The fee for application for reexamination shall not exceed one hundred dollars (\$100).
- (c) The fee for examination and for reexamination shall not exceed eight hundred dollars (\$800). Applicants who are found to be ineligible to take the examination shall be entitled to a refund in an amount fixed by the board.
- (d) The fee for an initial license and for the renewal of a license is five hundred twenty-five dollars (\$525). Commencing July 1, 2017, the fee for an initial license shall be prorated on a monthly basis.
- (e) The fee for a special permit shall not exceed three hundred dollars (\$300), and the renewal fee for a special permit shall not exceed one hundred dollars (\$100).
- (f) The delinquency fee shall be the amount prescribed by Section 163.5.
- (g) The penalty for late registration of change of place of practice shall not exceed seventy-five dollars (\$75).
- (h) The application fee for permission to conduct an additional place of practice shall not exceed two hundred dollars (\$200).
- (i) The renewal fee for an additional place of practice shall not exceed one hundred dollars (\$100).
- (j) The fee for issuance of a substitute certificate shall not exceed one hundred twenty-five dollars (\$125).
- (k) The fee for a provider of continuing education shall not exceed two hundred fifty dollars (\$250) per year.
- (l) The fee for application for a referral service permit and for renewal of that permit shall not exceed twenty-five dollars (\$25).
- (m) The fee for application for an extramural facility permit and for the renewal of a permit shall not exceed twenty-five dollars (\$25).

The board shall report to the appropriate fiscal committees of each house of the Legislature whenever the board increases any fee pursuant to this section and shall specify the rationale and justification for that increase.

SEC. 1.5. Section 1724 of the Business and Professions Code is amended to read:

1724. The amount of charges and fees for dentists licensed pursuant to this chapter shall be established by the board as is necessary for the purpose of carrying out the responsibilities required by this chapter as it relates to dentists, subject to the following limitations:

- (a) The fee for an application for licensure qualifying pursuant to paragraph (1) of subdivision (c) of Section 1632 shall not exceed one thousand five hundred dollars (\$1,500). The fee for an application for licensure qualifying pursuant to paragraph (2) of subdivision (c) of Section 1632 shall not exceed one thousand dollars (\$1,000).
- (b) The fee for an application for licensure qualifying pursuant to Section 1634.1 shall not exceed one thousand

dollars (\$1,000).

(c) The fee for an application for licensure qualifying pursuant to Section 1635.5 shall not exceed one thousand dollars (\$1,000).

(d) The fee for an initial license and for the renewal of a license is five hundred twenty-five dollars (\$25). On and after January 1, 2016, the fee for an initial license shall not exceed six hundred fifty dollars (\$650), and the fee for the renewal of a license shall not exceed six hundred fifty dollars (\$650). On and after January 1, 2018, the fee for an initial license shall not exceed eight hundred dollars (\$800), and the fee for the renewal of a license shall not exceed eight hundred dollars (\$800). Commencing July 1, 2017, the fee for an initial license shall be prorated on a monthly basis.

(e) The fee for an application for a special permit shall not exceed one thousand dollars (\$1,000), and the renewal fee for a special permit shall not exceed six hundred dollars (\$600).

(f) The delinquency fee shall be 50 percent of the renewal fee for such a license or permit in effect on the date of the renewal of the license or permit.

(g) The penalty for late registration of change of place of practice shall not exceed seventy-five dollars (\$75).

(h) The fee for an application for an additional office permit shall not exceed seven hundred fifty dollars (\$750), and the fee for the renewal of an additional office permit shall not exceed three hundred seventy-five dollars (\$375).

(i) The fee for issuance of a replacement pocket license, replacement wall certificate, or replacement engraved certificate shall not exceed one hundred twenty-five dollars (\$125).

(j) The fee for a provider of continuing education shall not exceed five hundred dollars (\$500) per year.

(k) The fee for application for a referral service permit and for renewal of that permit shall not exceed twenty-five dollars (\$25).

(l) The fee for application for an extramural facility permit and for the renewal of a permit shall not exceed twenty-five dollars (\$25).

(m) The fee for an application for an elective facial cosmetic surgery permit shall not exceed four thousand dollars (\$4,000), and the fee for the renewal of an elective facial cosmetic surgery permit shall not exceed eight hundred dollars (\$800).

(n) The fee for an application for an oral and maxillofacial surgery permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of an oral and maxillofacial surgery permit shall not exceed one thousand two hundred dollars (\$1,200).

(o) The fee for an application for a general anesthesia permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of a general anesthesia permit shall not exceed six hundred dollars (\$600).

(p) The fee for an onsite inspection and evaluation related to a general anesthesia or conscious sedation permit shall not exceed four thousand five hundred dollars (\$4,500).

(q) The fee for an application for a conscious sedation permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of a conscious sedation permit shall not exceed six hundred dollars (\$600).

(r) The fee for an application for an oral conscious sedation permit shall not exceed one thousand dollars (\$1,000), and the fee for the renewal of an oral conscious sedation permit shall not exceed six hundred dollars (\$600).

(s) The fee for a certification of licensure shall not exceed one hundred twenty-five dollars (\$125).

(t) The fee for an application for the law and ethics examination shall not exceed two hundred fifty dollars (\$250).

The board shall report to the appropriate fiscal committees of each house of the Legislature whenever the board increases any fee pursuant to this section and shall specify the rationale and justification for that increase.

SEC. 2. Section 1944 of the Business and Professions Code is amended to read:

1944. (a) The committee shall establish by resolution the amount of the fees that relate to the licensing of a registered dental hygienist, a registered dental hygienist in alternative practice, and a registered dental hygienist in extended functions. The fees established by board resolution in effect on June 30, 2009, as they relate to the licensure of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions, shall remain in effect until modified by the committee. The fees are subject to the following limitations:

(1) The application fee for an original license and the fee for the issuance of an original license shall not exceed two hundred fifty dollars (\$250). Commencing July 1, 2017, the fee for the issuance of an original license shall be prorated on a monthly basis.

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

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

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

(5) The fee for examination for licensure as a registered dental hygienist in alternative practice shall not exceed the actual cost of administering the examination.

(6) The biennial renewal fee shall not exceed one hundred sixty dollars (\$160).

(7) The delinquency fee shall not exceed one-half of the renewal fee. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee, and compliance with all other applicable requirements of this article.

(8) The fee for issuance of a duplicate license to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars (\$25) or one-half of the renewal fee, whichever is greater.

(9) The fee for certification of licensure shall not exceed one-half of the renewal fee.

(10) The fee for each curriculum review and site evaluation for educational programs for dental hygienists who are not accredited by a committee-approved agency shall not exceed two thousand one hundred dollars (\$2,100).

(11) The fee for each review or approval of course requirements for licensure or procedures that require additional training shall not exceed seven hundred fifty dollars (\$750).

(12) The initial application and biennial fee for a provider of continuing education shall not exceed five hundred dollars (\$500).

(13) The amount of fees payable in connection with permits issued under Section 1962 is as follows:

(A) The initial permit fee is an amount equal to the renewal fee for the applicant's license to practice dental hygiene in effect on the last regular renewal date before the date on which the permit is issued.

(B) If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is issued.

(b) The renewal and delinquency fees shall be fixed by the committee by resolution at not more than the current amount of the renewal fee for a license to practice under this article nor less than five dollars (\$5).

(c) Fees fixed by the committee by resolution pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(d) Fees collected pursuant to this section shall be collected by the committee and deposited into the State Dental Hygiene Fund, which is hereby created. All money in this fund shall, upon appropriation by the Legislature in the annual Budget Act, be used to implement this article.

(e) No fees or charges other than those listed in this section shall be levied by the committee in connection with the licensure of registered dental hygienists, registered dental hygienists in alternative practice, or registered dental hygienists in extended functions.

- (f) The fee for registration of an extramural dental facility shall not exceed two hundred fifty dollars (\$250).
- (g) The fee for registration of a mobile dental hygiene unit shall not exceed one hundred fifty dollars (\$150).
- (h) The biennial renewal fee for a mobile dental hygiene unit shall not exceed two hundred fifty dollars (\$250).
- (i) The fee for an additional office permit shall not exceed two hundred fifty dollars (\$250).
- (j) The biennial renewal fee for an additional office as described in Section 1926.4 shall not exceed two hundred fifty dollars (\$250).
- (k) The initial application and biennial special permit fee is an amount equal to the biennial renewal fee specified in paragraph (6) of subdivision (a).
- (l) The fees in this section shall not exceed an amount sufficient to cover the reasonable regulatory cost of carrying out this article.

SEC. 2.5. Section 1944 of the Business and Professions Code is amended to read:

1944. (a) The committee shall establish by resolution the amount of the fees that relate to the licensing of a registered dental hygienist, a registered dental hygienist in alternative practice, and a registered dental hygienist in extended functions. The fees established by board resolution in effect on June 30, 2009, as they relate to the licensure of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions, shall remain in effect until modified by the committee. The fees are subject to the following limitations:

- (1) The application fee for an original license and the fee for the issuance of an original license shall not exceed two hundred fifty dollars (\$250). Commencing July 1, 2017, the fee for the issuance of an original license shall be prorated on a monthly basis.
- (2) The fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.
- (3) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed the actual cost of the examination.
- (4) The fee for examination for licensure as a registered dental hygienist in alternative practice shall not exceed the actual cost of administering the examination.
- (5) The biennial renewal fee shall not exceed one hundred sixty dollars (\$160).
- (6) The delinquency fee shall not exceed one-half of the renewal fee. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee, and compliance with all other applicable requirements of this article.
- (7) The fee for issuance of a duplicate license to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars (\$25) or one-half of the renewal fee, whichever is greater.
- (8) The fee for certification of licensure shall not exceed one-half of the renewal fee.
- (9) The fee for each curriculum review, feasibility study review, and site evaluation for educational programs for dental hygienists who are not accredited by a committee-approved agency shall not exceed two thousand one hundred dollars (\$2,100).
- (10) The fee for each review or approval of course requirements for licensure or procedures that require additional training shall not exceed seven hundred fifty dollars (\$750).
- (11) The initial application and biennial fee for a provider of continuing education shall not exceed five hundred dollars (\$500).
- (12) The amount of fees payable in connection with permits issued under Section 1962 is as follows:
 - (A) The initial permit fee is an amount equal to the renewal fee for the applicant's license to practice dental hygiene in effect on the last regular renewal date before the date on which the permit is issued.
 - (B) If the permit will expire less than one year after its issuance, then the initial permit fee is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the permit is

issued.

(b) The renewal and delinquency fees shall be fixed by the committee by resolution at not more than the current amount of the renewal fee for a license to practice under this article nor less than five dollars (\$5).

(c) Fees fixed by the committee by resolution pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(d) Fees collected pursuant to this section shall be collected by the committee and deposited into the State Dental Hygiene Fund, which is hereby created. All money in this fund shall, upon appropriation by the Legislature in the annual Budget Act, be used to implement this article.

(e) No fees or charges other than those listed in this section shall be levied by the committee in connection with the licensure of registered dental hygienists, registered dental hygienists in alternative practice, or registered dental hygienists in extended functions.

(f) The fee for registration of an extramural dental facility shall not exceed two hundred fifty dollars (\$250).

(g) The fee for registration of a mobile dental hygiene unit shall not exceed one hundred fifty dollars (\$150).

(h) The biennial renewal fee for a mobile dental hygiene unit shall not exceed two hundred fifty dollars (\$250).

(i) The fee for an additional office permit shall not exceed two hundred fifty dollars (\$250).

(j) The biennial renewal fee for an additional office as described in Section 1926.4 shall not exceed two hundred fifty dollars (\$250).

(k) The initial application and biennial special permit fee is an amount equal to the biennial renewal fee specified in paragraph (6) of subdivision (a).

(l) The fees in this section shall not exceed an amount sufficient to cover the reasonable regulatory cost of carrying out this article.

SEC. 3. Section 2456.1 of the Business and Professions Code is amended to read:

2456.1. (a) All osteopathic physician's and surgeon's certificates shall expire at 12 midnight on the last day of the birth month of the licensee during the second year of a two-year term if not renewed on or before that day.

(b) The board shall establish by regulation procedures for the administration of a birth date renewal program, including, but not limited to, the establishment of a system of staggered license expiration dates such that a relatively equal number of licenses expire monthly.

(c) To renew an unexpired license, the licensee shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee.

(d) Commencing July 1, 2017, the fee assessed pursuant to this section shall be prorated on a monthly basis.

SEC. 4. Section 2570.16 of the Business and Professions Code is amended to read:

2570.16. Initial license and renewal fees shall be established by the board in an amount that does not exceed a ceiling of one hundred fifty dollars (\$150) per year. Commencing July 1, 2017, the initial license fee shall be prorated on a monthly basis. The board shall establish the following additional fees:

(a) An application fee not to exceed fifty dollars (\$50).

(b) A late renewal fee as provided for in Section 2570.10.

(c) A limited permit fee.

(d) A fee to collect fingerprints for criminal history record checks.

SEC. 5. Section 4842.5 of the Business and Professions Code is amended to read:

4842.5. The amount of fees prescribed by this article is fixed by the following schedule:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is

reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed three hundred fifty dollars (\$350).

(b) The fee for the California registered veterinary technician examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed three hundred dollars (\$300).

(c) The initial registration fee shall be set by the board at not more than three hundred fifty dollars (\$350), except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not more than one hundred seventy-five dollars (\$175). Commencing July 1, 2017, the initial registration fee shall be set by the board at not more than three hundred fifty dollars (\$350) and shall be prorated on a monthly basis. The board may adopt regulations to provide for the waiver or refund of the initial registration fee when the registration is issued less than 45 days before the date on which it will expire.

(d) The biennial renewal fee shall be set by the board at not more than three hundred fifty dollars (\$350).

(e) The delinquency fee shall be set by the board at not more than fifty dollars (\$50).

(f) Any charge made for duplication or other services shall be set at the cost of rendering the services.

(g) The fee for filing an application for approval of a school or institution offering a curriculum for training registered veterinary technicians pursuant to Section 4843 shall be set by the board at an amount not to exceed three hundred dollars (\$300). The school or institution shall also pay for the actual costs of an onsite inspection conducted by the board pursuant to Section 2065.6 of Title 16 of the California Code of Regulations, including, but not limited to, the travel, food, and lodging expenses incurred by an inspection team sent by the board.

(h) The fee for failure to report a change in the mailing address is twenty-five dollars (\$25).

SEC. 6. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars (\$350).

(b) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred fifty dollars (\$350).

(c) The fee for the Veterinary Medicine Practice Act examination shall be set by the board in an amount it determines reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred dollars (\$100).

(d) The initial license fee shall be set by the board not to exceed five hundred dollars (\$500) except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not to exceed two hundred fifty dollars (\$250). Commencing July 1, 2017, the initial license fee shall be set by the board not to exceed five hundred dollars (\$500) and shall be prorated on a monthly basis. The board, by appropriate regulation, may provide for the waiver or refund of the initial license fee when the license is issued less than 45 days before the date on which it will expire.

(e) The renewal fee shall be set by the board for each biennial renewal period in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed five hundred dollars (\$500).

(f) The temporary license fee shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed two hundred fifty dollars (\$250).

(g) The delinquency fee shall be set by the board, not to exceed fifty dollars (\$50).

(h) The fee for issuance of a duplicate license is twenty-five dollars (\$25).

(i) Any charge made for duplication or other services shall be set at the cost of rendering the service, except as specified in subdivision (h).

(j) The fee for failure to report a change in the mailing address is twenty-five dollars (\$25).

(k) The initial and annual renewal fees for registration of veterinary premises shall be set by the board in an amount not to exceed four hundred dollars (\$400) annually.

(l) If the money transferred from the Veterinary Medical Board Contingent Fund to the General Fund pursuant to the Budget Act of 1991 is redeposited into the Veterinary Medical Board Contingent Fund, the fees assessed by the board shall be reduced correspondingly. However, the reduction shall not be so great as to cause the Veterinary Medical Board Contingent Fund to have a reserve of less than three months of annual authorized board expenditures. The fees set by the board shall not result in a Veterinary Medical Board Contingent Fund reserve of more than 10 months of annual authorized board expenditures.

SEC. 7. Section 4970 of the Business and Professions Code is amended to read:

4970. The amount of fees prescribed for licensed acupuncturists shall be those set forth in this section unless a lower fee is fixed by the board in accordance with Section 4972.

(a) The application fee shall be seventy-five dollars (\$75).

(b) The examination and reexamination fees shall be the actual cost to the Acupuncture Board for the development and writing of, grading, and administering of each examination.

(c) The initial license fee shall be three hundred twenty-five dollars (\$325), except that if the license will expire less than one year after its issuance, then the initial license fee shall be an amount equal to 50 percent of the initial license fee. Commencing July 1, 2017, the initial license fee shall be three hundred twenty-five dollars (\$325) and shall be prorated on a monthly basis.

(d) The renewal fee shall be three hundred twenty-five dollars (\$325) and in the event a lower fee is fixed by the board, shall be an amount sufficient to support the functions of the board in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the board shall assess the renewal fee biennially.

(e) The delinquency fee shall be set in accordance with Section 163.5.

(f) The application fee for the approval of a school or college under Section 4939 shall be three thousand dollars (\$3,000). This subdivision shall become inoperative on January 1, 2017.

(g) The duplicate wall license fee is an amount equal to the cost to the board for the issuance of the duplicate license.

(h) The duplicate renewal receipt fee is ten dollars (\$10).

(i) The endorsement fee is ten dollars (\$10).

(j) The fee for a duplicate license for an additional office location as required under Section 4961 shall be fifteen dollars (\$15).

SEC. 8. Section 5604 of the Business and Professions Code is amended to read:

5604. The fees prescribed by this chapter for architect applicants or architect licenseholders shall be fixed by the board as follows:

(a) The application fee for reviewing a candidate's eligibility to take any section of the examination shall not exceed one hundred dollars (\$100).

(b) The fee for any section of the examination administered by the board shall not exceed one hundred dollars (\$100).

(c) The fee for an original license at an amount equal to the renewal fee in effect at the time the license is issued, except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be fixed at an amount equal to 50 percent of the renewal fee in effect at the time the license is issued. Commencing July 1, 2017, the fee for an original license at an amount equal to the renewal fee in effect at the time the license is issued and the fee for an original license shall be prorated on a monthly basis. The board, by appropriate regulation, may provide for the waiver or refund of the fee for an original license if the license is issued less than 45 days before the date on which it will expire.

(d) The fee for an application for reciprocity shall not exceed one hundred dollars (\$100).

(e) The fee for a duplicate license shall not exceed twenty-five dollars (\$25).

(f) The renewal fee shall not exceed four hundred dollars (\$400).

(g) The delinquency fee shall not exceed 50 percent of the renewal fee.

(h) The fee for a retired license shall not exceed the fee prescribed in subdivision (c).

SEC. 9. Section 1.5 of this bill incorporates amendments to Section 1724 of the Business and Professions Code proposed by both this bill and Assembly Bill 179. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 1724 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 179, in which case Section 1 of this bill shall not become operative.

SEC. 10. Section 2.5 of this bill incorporates amendments to Section 1944 of the Business and Professions Code proposed by both this bill and Senate Bill 800. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 1944 of the Business and Professions Code, and (3) this bill is enacted after Senate Bill 800, in which case Section 2 of this bill shall not become operative.

AB-637

Physician Orders for Life Sustaining
Treatment Forms



AB-637 Physician Orders for Life Sustaining Treatment forms. (2015-2016)

Assembly Bill No. 637

CHAPTER 217

An act to amend Section 4780 of the Probate Code, relating to resuscitative measures.

[Approved by Governor August 17, 2015. Filed with Secretary of State August 17, 2015.
]

LEGISLATIVE COUNSEL'S DIGEST

AB 637, Campos. Physician Orders for Life Sustaining Treatment forms.

Existing law defines a request regarding resuscitative measures to mean a written document, signed by an individual, as specified, and the physician, that directs a health care provider regarding resuscitative measures, and includes a Physician Orders for Life Sustaining Treatment form (POLST form). Existing law requires a physician to treat a patient in accordance with the POLST form and specifies the criteria for creation of a POLST form, including that the form be completed by a health care provider based on patient preferences and medical indications, and signed by a physician and the patient or his or her legally recognized health care decisionmaker.

This bill would authorize the signature of a nurse practitioner or a physician assistant acting under the supervision of the physician and within the scope of practice authorized by law to create a valid POLST form.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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

SECTION 1. Section 4780 of the Probate Code is amended to read:

4780. (a) As used in this part:

(1) "Request regarding resuscitative measures" means a written document, signed by (A) an individual with capacity, or a legally recognized health care decisionmaker, and (B) the individual's physician, that directs a health care provider regarding resuscitative measures. A request regarding resuscitative measures is not an advance health care directive.

(2) "Request regarding resuscitative measures" includes one, or both of, the following:

(A) A prehospital "do not resuscitate" form as developed by the Emergency Medical Services Authority or other substantially similar form.

(B) A Physician Orders for Life Sustaining Treatment form, as approved by the Emergency Medical Services Authority.

(3) "Physician Orders for Life Sustaining Treatment form" means a request regarding resuscitative measures that directs a health care provider regarding resuscitative and life-sustaining measures.

(b) A legally recognized health care decisionmaker may execute the Physician Orders for Life Sustaining Treatment form only if the individual lacks capacity, or the individual has designated that the decisionmaker's

authority is effective pursuant to Section 4682.

(c) The Physician Orders for Life Sustaining Treatment form and medical intervention and procedures offered by the form shall be explained by a health care provider, as defined in Section 4621. The form shall be completed by a health care provider based on patient preferences and medical indications, and signed by a physician, or a nurse practitioner or a physician assistant acting under the supervision of the physician and within the scope of practice authorized by law, and the patient or his or her legally recognized health care decisionmaker. The health care provider, during the process of completing the Physician Orders for Life Sustaining Treatment form, should inform the patient about the difference between an advance health care directive and the Physician Orders for Life Sustaining Treatment form.

(d) An individual having capacity may revoke a Physician Orders for Life Sustaining Treatment form at any time and in any manner that communicates an intent to revoke, consistent with Section 4695.

(e) A request regarding resuscitative measures may also be evidenced by a medallion engraved with the words "do not resuscitate" or the letters "DNR," a patient identification number, and a 24-hour toll-free telephone number, issued by a person pursuant to an agreement with the Emergency Medical Services Authority.

AB-1351

Deferred Entry of Judgement: Pretrial
Diversion



California
LEGISLATIVE INFORMATION

AB-1351 Deferred entry of judgment: pretrial diversion. (2015-2016)

AMENDED IN SENATE SEPTEMBER 03, 2015

AMENDED IN ASSEMBLY JUNE 01, 2015

AMENDED IN ASSEMBLY APRIL 16, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 1351

**Introduced by Assembly Member Eggman
(Coauthor: Senator Hall)**

February 27, 2015

An act to amend Sections 1000, 1000.1, 1000.2, 1000.3, 1000.4, 1000.5, and 1000.6 ~~of of, and to add~~ *Section 1000.7 to*, the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1351, as amended, Eggman. Deferred entry of judgment: pretrial diversion.

Existing law allows individuals charged with specified crimes to qualify for deferred entry of judgment. A defendant qualifies if he or she has no conviction for any offense involving controlled substances, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program, the defendant's record does not indicate that probation or parole has ever been revoked without being completed, and the defendant's record does not indicate that he or she has been granted diversion, deferred entry of judgment, or was convicted of a felony within 5 years prior to the alleged commission of the charged offense.

Under the existing deferred entry of judgment program, an eligible defendant may have entry of judgment deferred, upon pleading guilty to the offenses charged and entering a drug treatment program for 18 months to 3 years. If the defendant does not perform satisfactorily in the program, does not benefit from the program, is convicted of specified crimes, or engages in criminal activity rendering him or her unsuitable for deferred entry of judgment, the defendant's guilty plea is entered and the court enters judgment and proceeds to schedule a sentencing hearing. If the defendant completes the program, the criminal charges are dismissed. Existing law allows the presiding judge of the superior court, with the district attorney and public defender, to establish a pretrial diversion drug program.

This bill would ~~change~~ *make* the deferred entry of judgment program ~~into~~ a pretrial diversion program. ~~Under the pretrial diversion program created by this bill, The bill would provide that~~ a defendant ~~would qualify~~ *qualifies for the pretrial diversion program* if he or she has no prior conviction *within 5 years prior to the alleged commission of the charged offense* for any offense involving controlled substances other than the ~~offenses that~~

qualify offense that qualifies him or her for diversion, the charged offense did not involve violence, there is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation that qualifies for the program and the defendant has no prior conviction for a serious or violent felony within 5 years prior to the alleged commission of the charged offense.

Under the pretrial diversion program created by this bill, a qualifying defendant would enter a not guilty plea, and ~~would suspend the~~ proceedings *would be suspended* in order *for the defendant* to enter a drug treatment program for 6 months to one year, or longer if requested by the defendant with good cause. ~~If The bill would require the court, if the defendant does not perform satisfactorily in the program or is convicted of specified crimes, the court would to terminate the program and reinstate the criminal proceedings would be reinstated. If the defendant completes the program, proceedings. The bill would require the criminal charges would be dismissed. to be dismissed if the defendant completes the program.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 1000 of the Penal Code is amended to read:

1000. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading for a violation of Section 11350, 11357, 11364, or 11365, paragraph (2) of subdivision (b) of Section 11375, Section 11377, or Section 11550 of the Health and Safety Code, or subdivision (b) of Section 23222 of the Vehicle Code, or Section 11358 of the Health and Safety Code if the marijuana planted, cultivated, harvested, dried, or processed is for personal use, or Section 11368 of the Health and Safety Code if the narcotic drug was secured by a fictitious prescription and is for the personal use of the defendant and was not sold or furnished to another, or subdivision (d) of Section 653f if the solicitation was for acts directed to personal use only, or Section 381 or subdivision (f) of Section 647 of the Penal Code, if for being under the influence of a controlled substance, or Section 4060 of the Business and Professions Code, and it appears to the prosecuting attorney that, except as provided in subdivision (b) of Section 11357 of the Health and Safety Code, all of the following apply to the defendant:

(1) The defendant has no prior conviction *within five years prior to the alleged commission of the charged offense* for any offense involving controlled substances other than the offenses listed in this subdivision.

(2) The offense charged did not involve a crime of violence or threatened violence.

(3) There is no evidence of a violation relating to narcotics or restricted dangerous drugs other than a violation of the sections listed in this subdivision.

(4) The defendant has no prior conviction within five years prior to the alleged commission of the charged offense for a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5.

(b) The prosecuting attorney shall review his or her file to determine whether or not paragraphs (1) to (4), inclusive, of subdivision (a) apply to the defendant. If the defendant is found eligible, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. This procedure is intended to allow the court to set the hearing for pretrial diversion ~~of judgment~~ at the arraignment. If the defendant is found ineligible for pretrial diversion, the prosecuting attorney shall file with the court a declaration in writing or state for the record the grounds upon which the determination is based, and shall make this information available to the defendant and his or her attorney. The sole remedy of a defendant who is found ineligible for pretrial diversion is a postconviction appeal.

(c) All referrals for pretrial diversion granted by the court pursuant to this chapter shall be made only to programs that have been certified by the county drug program administrator pursuant to Chapter 1.5 (commencing with Section 1211) of Title 8, or to programs that provide services at no cost to the participant and have been deemed by the court and the county drug program administrator to be credible and effective. The defendant may request to be referred to a program in any county, as long as that program meets the criteria set forth in this subdivision.

(d) Pretrial diversion for an alleged violation of Section 11368 of the Health and Safety Code shall not prohibit any administrative agency from taking disciplinary action against a licensee or from denying a license. Nothing in this subdivision shall be construed to expand or restrict the provisions of Section 1000.4.

(e) Any defendant who is participating in a program referred to in this section may be required to undergo analysis of his or her urine for the purpose of testing for the presence of any drug as part of the program. However, urinalysis results shall not be admissible as a basis for any new criminal prosecution or proceeding.

SEC. 2. Section 1000.1 of the Penal Code is amended to read:

1000.1. (a) If the prosecuting attorney determines that this chapter may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of that determination. This notification shall include all of the following:

(1) A full description of the procedures for pretrial diversion.

(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process.

(3) A clear statement that the court may grant pretrial diversion with respect to any crime specified in subdivision (a) of Section 1000 that is charged, provided that the defendant pleads not guilty to the charge or charges, waives the right *to a speedy trial and* to a speedy preliminary hearing, if applicable, and that upon the defendant's successful completion of a program, as specified in subdivision (c) of Section 1000, the positive recommendation of the program authority and the motion of the defendant, prosecuting attorney, the court, or the probation department, but no sooner than six months and no later than one year from the date of the defendant's referral to the program, the court shall dismiss the charge or charges against the defendant.

(4) A clear statement that upon any failure of treatment or condition under the program, or any circumstance specified in Section 1000.3, the prosecuting attorney or the probation department or the court on its own may make a motion to the court to terminate pretrial diversion and schedule further proceedings as otherwise provided in this code.

(5) An explanation of criminal record retention and disposition resulting from participation in the pretrial diversion program and the defendant's rights relative to answering questions about his or her arrest and pretrial diversion following successful completion of the program.

(b) If the defendant consents and waives his or her right to a speedy trial and a speedy preliminary hearing, if applicable, the court may refer the case to the probation department or the court may summarily grant pretrial diversion. When directed by the court, the probation department shall make an investigation and take into consideration the defendant's age, employment and service records, educational background, community and family ties, prior controlled substance use, treatment history, if any, demonstrable motivation, and other mitigating factors in determining whether the defendant is a person who would be benefited by education, treatment, or rehabilitation. The probation department shall also determine which programs the defendant would benefit from and which programs would accept the defendant. The probation department shall report its findings and recommendations to the court. The court shall make the final determination regarding education, treatment, or rehabilitation for the defendant. If the court determines that it is appropriate, the court shall grant pretrial diversion if the defendant pleads not guilty to the charge or charges and waives the right to a speedy trial and to a speedy preliminary hearing, if applicable.

(c) (1) No statement, or any information procured therefrom, made by the defendant to any probation officer or drug treatment worker, that is made during the course of any investigation conducted by the probation department or treatment program pursuant to subdivision (b), and prior to the reporting of the probation department's findings and recommendations to the court, shall be admissible in any action or proceeding brought subsequent to the investigation.

(2) No statement, or any information procured therefrom, with respect to the specific offense with which the defendant is charged, that is made to any probation officer or drug program worker subsequent to the granting of pretrial diversion shall be admissible in any action or proceeding.

(d) A defendant's participation in pretrial diversion pursuant to this chapter shall not constitute a conviction or an admission of guilt for any purpose.

SEC. 3. Section 1000.2 of the Penal Code is amended to read:

1000.2. (a) The court shall hold a hearing and, after consideration of any information relevant to its decision, shall determine if the defendant consents to further proceedings under this chapter and if the defendant should be granted pretrial diversion. If the defendant does not consent to participate in pretrial diversion the

proceedings shall continue as in any other case.

(b) At the time that pretrial diversion is granted, any bail bond or undertaking, or deposit in lieu thereof, on file by or on behalf of the defendant shall be exonerated, and the court shall enter an order so directing.

(c) The period during which pretrial diversion is granted shall be for no less than six months nor longer than one year. However, the defendant may ~~request~~ *request*, and the court shall grant, for good cause shown, an extension of time to complete a program specified in subdivision (c) of Section 1000. Progress reports shall be filed by the probation department with the court as directed by the court.

SEC. 4. Section 1000.3 of the Penal Code is amended to read:

1000.3. (a) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, or that the defendant is convicted of an offense that reflects the defendant's propensity for violence, or the defendant is convicted of a felony, the prosecuting attorney, the court on its own, or the probation department may make a motion for termination from pretrial diversion.

(b) After notice to the defendant, the court shall hold a hearing to determine whether pretrial diversion shall be terminated.

(c) If the court finds that the defendant is not performing satisfactorily in the assigned program, or the court finds that the defendant has been convicted of a crime as indicated in subdivision (a) the court shall schedule the matter for further proceedings as otherwise provided in this code.

(d) If the defendant has completed pretrial diversion, at the end of that period, the criminal charge or charges shall be dismissed.

(e) Prior to dismissing the charge or charges or terminating pretrial diversion, the court shall consider the defendant's ability to pay and whether the defendant has paid a diversion restitution fee pursuant to Section 1001.90, if ordered, and has met his or her financial obligation to the program, if any. As provided in Section 1203.1b, the defendant shall reimburse the probation department for the reasonable cost of any program investigation or progress report filed with the court as directed pursuant to Sections 1000.1 and 1000.2.

SEC. 5. Section 1000.4 of the Penal Code is amended to read:

1000.4. (a) Any record filed with the Department of Justice shall indicate the disposition in those cases referred to pretrial diversion pursuant to this chapter. Upon successful completion of a pretrial diversion program, the arrest upon which the defendant was diverted shall be deemed to have never occurred. The defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or granted pretrial diversion for the offense, except as specified in subdivision (b). A record pertaining to an arrest resulting in successful completion of a pretrial diversion program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate.

(b) The defendant shall be advised that, regardless of his or her successful completion of the pretrial diversion program, the arrest upon which pretrial diversion was based may be disclosed by the Department of Justice in response to any peace officer application request and that, notwithstanding subdivision (a), this section does not relieve him or her of the obligation to disclose the arrest in response to any direct question contained in any questionnaire or application for a position as a peace officer, as defined in Section 830.

SEC. 6. Section 1000.5 of the Penal Code is amended to read:

1000.5. (a) The presiding judge of the superior court, or a judge designated by the presiding judge, together with the district attorney and the public defender, may agree in writing to establish and conduct a preguilty plea drug court program pursuant to the provisions of this chapter, wherein criminal proceedings are suspended without a plea of guilty for designated defendants. The drug court program shall include a regimen of graduated sanctions and rewards, individual and group therapy, urinalysis testing commensurate with treatment needs, close court monitoring and supervision of progress, educational or vocational counseling as appropriate, and other requirements as agreed to by the presiding judge or his or her designee, the district attorney, and the public defender. If there is no agreement in writing for a preguilty plea program by the presiding judge or his or her designee, the district attorney, and the public defender, the program shall be operated as a pretrial diversion program as provided in this chapter.

(b) The provisions of Section 1000.3 and Section 1000.4 regarding satisfactory and unsatisfactory performance in a program shall apply to preguilty plea programs. If the court finds that (1) the defendant is not performing satisfactorily in the assigned program, (2) the defendant is not benefiting from education, treatment, or rehabilitation, (3) the defendant has been convicted of a crime specified in Section 1000.3, or (4) the defendant has engaged in criminal conduct rendering him or her unsuitable for the preguilty plea program, the court shall reinstate the criminal charge or charges. If the defendant has performed satisfactorily during the period of the preguilty plea program, at the end of that period, the criminal charge or charges shall be dismissed and the provisions of Section 1000.4 shall apply.

SEC. 7. Section 1000.6 of the Penal Code is amended to read:

1000.6. (a) Where a person is participating in a pretrial diversion program or a preguilty plea program pursuant to this chapter, the person shall be allowed, under the direction of a licensed health care practitioner, to use medications including, but not limited to, methadone, buprenorphine, or levoalphacetylmethadol (LAAM) to treat substance use disorders if the participant allows release of his or her medical records to the court presiding over the participant's preguilty plea or pretrial diversion program for the limited purpose of determining whether or not the participant is using such medications under the direction of a licensed health care practitioner and is in compliance with the pretrial diversion or preguilty plea program rules.

(b) If the conditions specified in subdivision (a) are met, using medications to treat substance use disorders shall not be the sole reason for exclusion from a pretrial diversion or preguilty plea program. A patient who uses medications to treat substance use disorders and participates in a preguilty plea or pretrial diversion program shall comply with all court program rules.

(c) A person who is participating in a pretrial diversion program or preguilty plea program pursuant to this chapter who uses medications to treat substance use disorders shall present to the court a declaration from ~~their~~ *his or her* health care practitioner, or ~~their~~ *his or her* health care practitioner's authorized representative, that the person is currently under their care.

(d) Urinalysis results that only establish that a person described in this section has ingested medication duly prescribed to that person by his or her physician or psychiatrist, or medications used to treat substance use disorders, shall not be considered a violation of the terms of the pretrial diversion or preguilty plea program under this chapter.

(e) Except as provided in subdivisions (a) to (d), inclusive, this section shall not be interpreted to amend any provisions governing diversion programs.

SEC. 8. *Section 1000.7 is added to the Penal Code, immediately following Section 1000.6, to read:*

1000.7. *This chapter does not affect a pretrial diversion program provided pursuant to Chapter 2.7 (commencing with Section 1001).*

AB-1352

Deferred Entry of Judgement:
Withdrawal of Plea



California

LEGISLATIVE INFORMATION

AB-1352 Deferred entry of judgment: withdrawal of plea. (2015-2016)

AMENDED IN SENATE SEPTEMBER 09, 2015

AMENDED IN SENATE SEPTEMBER 03, 2015

AMENDED IN SENATE MAY 19, 2015

AMENDED IN ASSEMBLY APRIL 27, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL

No. 1352

Introduced by Assembly Member Eggman

February 27, 2015

An act to add Section 1203.43 to the Penal Code, relating to deferred entry of judgment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1352, as amended, Eggman. Deferred entry of judgment: withdrawal of plea.

Existing law allows judgment to be deferred with respect to a defendant who is charged with certain crimes involving possession of controlled substances and who meets certain criteria, including that he or she has no prior convictions for any offense involving controlled substances and has had no felony convictions within the 5 years prior, as specified. Existing law prohibits the record pertaining to an arrest resulting in successful completion of a deferred entry of judgment program from being used in any way that could result in the denial of *any* employment, benefit, license, or certificate.

This bill would require a court to allow a defendant who was granted deferred entry of judgment on or after January 1, 1997, who has performed satisfactorily during the period in which deferred entry of judgment was granted, and for whom the criminal charge or charges were dismissed, as specified, to withdraw his or her plea and enter a plea of not guilty, and would require the court to dismiss the complaint or information against the defendant. If court records showing the case resolution are no longer available, the bill would require that the defendant's declaration, under penalty of perjury, that the charges were dismissed after he or she completed the requirements, be presumed to be ~~true~~. *true if the defendant submits a copy of his or her state summary criminal history information that either shows that the defendant successfully completed the deferred entry of judgment program or that the record does not show a final disposition.* By expanding the application of the crime of perjury, 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 Local Program: yes

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

SECTION 1. Section 1203.43 is added to the Penal Code, to read:

1203.43. (a) (1) The Legislature finds and declares that the statement in Section 1000.4, that "successful completion of a deferred entry of judgment program shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate" constitutes misinformation about the actual consequences of making a plea in the case of some defendants, including all noncitizen defendants, because the disposition of the case may cause adverse consequences, including adverse immigration consequences.

(2) Accordingly, the Legislature finds and declares that based on this misinformation and the potential harm, the defendant's prior plea is invalid.

(b) For the above-specified reason, in any case in which a defendant was granted deferred entry of judgment on or after January 1, 1997, has performed satisfactorily during the period in which deferred entry of judgment was granted, and for whom the criminal charge or charges were dismissed pursuant to Section 1000.3, the court shall, upon request of the defendant, permit the defendant to withdraw the plea of guilty or nolo contendere and enter a plea of not guilty, and the court shall dismiss the complaint or information against the defendant. If court records showing the case resolution are no longer available, the defendant's declaration, under penalty of perjury, that the charges were dismissed after he or she completed the requirements for deferred entry of judgment, shall be presumed to be ~~true~~. *true if the defendant has submitted a copy of his or her state summary criminal history information maintained by the Department of Justice that either shows that the defendant successfully completed the deferred entry of judgment program or that the record is incomplete in that it does not show a final disposition. For purposes of this section, a final disposition means that the state summary criminal history information shows either a dismissal after completion of the program or a sentence after termination of the program.*

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

SB-396

Health and Care Facilities: Outpatient
Settings and Surgical Clinics



SB-396 Health care: outpatient settings and surgical clinics: facilities: licensure and enforcement. (2015-2016)

Senate Bill No. 396

CHAPTER 287

An act to amend Section 805.5 of the Business and Professions Code, to amend Section 12529.7 of the Government Code, and to amend Sections 1248.15 and 1248.35 of the Health and Safety Code, relating to health care.

[Approved by Governor September 09, 2015. Filed with Secretary of State September 09, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 396, Hill. Health care: outpatient settings and surgical clinics: facilities: licensure and enforcement.

The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law provides that it is unprofessional conduct for a physician and surgeon to perform procedures in any outpatient setting except in compliance with specified provisions. Existing law prohibits an association, corporation, firm, partnership, or person from operating, managing, conducting, or maintaining an outpatient setting in the state unless the setting is one of the specified settings, which include, among others, an ambulatory surgical clinic that is certified to participate in the Medicare Program, a surgical clinic licensed by the State Department of Public Health, or an outpatient setting accredited by an accreditation agency approved by the Division of Licensing of the Medical Board of California.

Existing law provides that an outpatient setting that is accredited shall be inspected by the accreditation agency and may be inspected by the Medical Board of California. Existing law requires that the inspections be conducted no less often than once every 3 years by the accreditation agency and as often as necessary by the Medical Board of California to ensure quality of care provided.

This bill would authorize the accrediting agency to conduct unannounced inspections subsequent to the initial inspection for accreditation, if the accreditation agency provides specified notice of the unannounced routine inspection to the outpatient setting.

Existing law requires members of the medical staff and other practitioners who are granted clinical privileges in an outpatient setting to be professionally qualified and appropriately credentialed for the performance of privileges granted and requires the outpatient setting to grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting. A willful violation of these provisions is a crime.

This bill would additionally require that each licensee who performs procedures in an outpatient setting that requires the outpatient setting to be accredited be peer reviewed, as specified, at least every 2 years, by licensees who are qualified by education and experience to perform the same types of, or similar, procedures. The bill would require the findings of the peer review to be reported to the governing body, which shall determine if the licensee continues to be professionally qualified and appropriately credentialed for the performance of privileges granted. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law requires specified entities, including any health care service plan or medical care foundation, to

request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California, prior to granting or renewing staff privileges, to determine if a certain report has been made indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted.

This bill would also require an outpatient setting and a facility certified to participate in the federal Medicare Program as an ambulatory surgical center to request that report. By expanding the scope of a crime, this bill would impose a state-mandated local program.

Existing law establishes a vertical enforcement and prosecution model for cases before the Medical Board of California, and requires the board to report to the Governor and the Legislature on that model by March 1, 2015.

This bill would extend the date that report is due to March 1, 2016.

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 Local Program: yes

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

SECTION 1. Section 805.5 of the Business and Professions Code is amended to read:

805.5. (a) Prior to granting or renewing staff privileges for any physician and surgeon, psychologist, podiatrist, or dentist, any health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code, any health care service plan or medical care foundation, the medical staff of the institution, a facility certified to participate in the federal Medicare Program as an ambulatory surgical center, or an outpatient setting accredited pursuant to Section 1248.1 of the Health and Safety Code shall request a report from the Medical Board of California, the Board of Psychology, the Osteopathic Medical Board of California, or the Dental Board of California to determine if any report has been made pursuant to Section 805 indicating that the applying physician and surgeon, psychologist, podiatrist, or dentist has been denied staff privileges, been removed from a medical staff, or had his or her staff privileges restricted as provided in Section 805. The request shall include the name and California license number of the physician and surgeon, psychologist, podiatrist, or dentist. Furnishing of a copy of the 805 report shall not cause the 805 report to be a public record.

(b) Upon a request made by, or on behalf of, an institution described in subdivision (a) or its medical staff the board shall furnish a copy of any report made pursuant to Section 805 as well as any additional exculpatory or explanatory information submitted electronically to the board by the licensee pursuant to subdivision (f) of that section. However, the board shall not send a copy of a report (1) if the denial, removal, or restriction was imposed solely because of the failure to complete medical records, (2) if the board has found the information reported is without merit, (3) if a court finds, in a final judgment, that the peer review, as defined in Section 805, resulting in the report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, or (4) if a period of three years has elapsed since the report was submitted. This three-year period shall be tolled during any period the licensee has obtained a judicial order precluding disclosure of the report, unless the board is finally and permanently precluded by judicial order from disclosing the report. If a request is received by the board while the board is subject to a judicial order limiting or precluding disclosure, the board shall provide a disclosure to any qualified requesting party as soon as practicable after the judicial order is no longer in force.

If the board fails to advise the institution within 30 working days following its request for a report required by this section, the institution may grant or renew staff privileges for the physician and surgeon, psychologist, podiatrist, or dentist.

(c) Any institution described in subdivision (a) or its medical staff that violates subdivision (a) is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand two hundred dollars (\$1,200).

SEC. 2. Section 12529.7 of the Government Code is amended to read:

12529.7. By March 1, 2016, the Medical Board of California, in consultation with the Department of Justice and the Department of Consumer Affairs, shall report and make recommendations to the Governor and the Legislature on the vertical enforcement and prosecution model created under Section 12529.6.

SEC. 3. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The board shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

(iii) Submit for approval by an accrediting agency a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(D) The outpatient setting shall submit for approval by an accreditation agency at the time of accreditation a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations. The plan shall include, at a minimum, that if a patient is being transferred to a local accredited or licensed acute care hospital, the outpatient setting shall do all of the following:

(i) Notify the individual designated by the patient to be notified in case of an emergency.

(ii) Ensure that the mode of transfer is consistent with the patient's medical condition.

(iii) Ensure that all relevant clinical information is documented and accompanies the patient at the time of transfer.

(iv) Continue to provide appropriate care to the patient until the transfer is effectuated.

(E) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body or in accordance with existing law.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of Division 2 of the Business and Professions Code.

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) (i) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(ii) Each licensee who performs procedures in an outpatient setting that requires the outpatient setting to be accredited shall be, at least every two years, peer reviewed, which shall be a process in which the basic qualifications, staff privileges, employment, medical outcomes, or professional conduct of a licensee is reviewed to make recommendations for quality improvement and education, if necessary, including when the outpatient setting has only one licensee. The peer review shall be performed by licensees who are qualified by education and experience to perform the same types of, or similar, procedures. The findings of the peer review shall be reported to the governing body, which shall determine if the licensee continues to meet the requirements described in clause (i). The process that resulted in the findings of the peer review shall be reviewed by the accrediting agency at the next survey to determine if the outpatient setting meets applicable accreditation standards pursuant to this section.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations shall have all of the sites inspected.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the board to protect the public health and safety.

(d) No accreditation standard adopted or approved by the board, and no standard included in any certification program of any accreditation agency approved by the board, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

(e) The board shall adopt standards that it deems necessary for outpatient settings that offer in vitro fertilization.

(f) The board may adopt regulations it deems necessary to specify procedures that should be performed in an accredited outpatient setting for facilities or clinics that are outside the definition of outpatient setting as specified in Section 1248.

(g) As part of the accreditation process, the accrediting agency shall conduct a reasonable investigation of the prior history of the outpatient setting, including all licensed physicians and surgeons who have an ownership interest therein, to determine whether there have been any adverse accreditation decisions rendered against them. For the purposes of this section, "conducting a reasonable investigation" means querying the Medical Board of California and the Osteopathic Medical Board of California to ascertain if either the outpatient setting has, or, if its owners are licensed physicians and surgeons, if those physicians and surgeons have, been subject to an adverse accreditation decision.

SEC. 4. Section 1248.35 of the Health and Safety Code is amended to read:

1248.35. (a) Every outpatient setting that is accredited shall be inspected by the accreditation agency and may also be inspected by the Medical Board of California. The Medical Board of California shall ensure that accreditation agencies inspect outpatient settings.

(b) Unless otherwise specified, the following requirements apply to inspections described in subdivision (a).

(1) The frequency of inspection shall depend upon the type and complexity of the outpatient setting to be inspected.

(2) Inspections shall be conducted no less often than once every three years by the accreditation agency and as often as necessary by the Medical Board of California to ensure the quality of care provided. After the initial inspection for accreditation, subsequent inspections may be unannounced. For unannounced routine inspections, the accreditation agency shall notify the outpatient setting that the inspection will occur within 60 days.

(3) The Medical Board of California or the accreditation agency may enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

(c) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Require correction of any identified deficiencies within a set timeframe. Failure to comply shall result in the accrediting agency issuing a reprimand or suspending or revoking the outpatient setting's accreditation.

(2) Issue a reprimand.

(3) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the board or the accreditation agency, to correct the deficiencies.

(4) Suspend or revoke the outpatient setting's certification of accreditation.

(d) (1) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient setting. During the allotted time to correct the deficiencies, the plan of correction, which includes the deficiencies and the corrective action to be taken to the board and to the California State Board of Pharmacy if an outpatient setting is licensed pursuant to Article 14 (commencing with Section 4190) of Chapter 9 of Division 2 of the Business and Professions Code. The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

(2) If an outpatient setting does not comply with a corrective action within a timeframe specified by the accrediting agency, the accrediting agency shall issue a reprimand, and may either place the outpatient setting on probation or suspend or revoke the accreditation of the outpatient setting, and shall notify the board of its action. This section shall not be deemed to prohibit an outpatient setting that is unable to correct the deficiencies, as specified in the plan of correction, for reasons beyond its control, from voluntarily surrendering its accreditation prior to initiation of any suspension or revocation proceeding.

(e) The accreditation agency shall, within 24 hours, report to the board if the outpatient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation. If an outpatient setting has been issued a license by the California State Board of Pharmacy pursuant to Article 14 (commencing with Section 4190) of Chapter 9 of Division 2 of the Business and Professions Code, the accreditation agency shall also send this report to the California State Board of Pharmacy within 24 hours.

(f) The accreditation agency, upon receipt of a complaint from the board that an outpatient setting poses an

immediate risk to public safety, shall inspect the outpatient setting and report its findings of inspection to the board within five business days. If an accreditation agency receives any other complaint from the board, it shall investigate the outpatient setting and report its findings of investigation to the board within 30 days.

(g) Reports on the results of any inspection shall be kept on file with the board and the accreditation agency along with the plan of correction and the comments of the outpatient setting. The inspection report may include a recommendation for reinspection. All final inspection reports, which include the lists of deficiencies, plans of correction or requirements for improvements and correction, and corrective action completed, shall be public records open to public inspection.

(h) If one accrediting agency denies accreditation, or revokes or suspends the accreditation of an outpatient setting, this action shall apply to all other accrediting agencies. An outpatient setting that is denied accreditation is permitted to reapply for accreditation with the same accrediting agency. The outpatient setting also may apply for accreditation from another accrediting agency, but only if it discloses the full accreditation report of the accrediting agency that denied accreditation. Any outpatient setting that has been denied accreditation shall disclose the accreditation report to any other accrediting agency to which it submits an application. The new accrediting agency shall ensure that all deficiencies have been corrected and conduct a new onsite inspection consistent with the standards specified in this chapter.

(i) If an outpatient setting's certification of accreditation has been suspended or revoked, or if the accreditation has been denied, the accreditation agency shall do all of the following:

(1) Notify the board of the action.

(2) Send a notification letter to the outpatient setting of the action. The notification letter shall state that the setting is no longer allowed to perform procedures that require outpatient setting accreditation.

(3) Require the outpatient setting to remove its accreditation certification and to post the notification letter in a conspicuous location, accessible to public view.

(j) The board may take any appropriate action it deems necessary pursuant to Section 1248.7 if an outpatient setting's certification of accreditation has been suspended or revoked, or if accreditation has been denied.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SB-643

Medical Marijuana



California
LEGISLATIVE INFORMATION

SB-643 Medical marijuana. (2015-2016)

AMENDED IN ASSEMBLY SEPTEMBER 11, 2015
AMENDED IN ASSEMBLY SEPTEMBER 04, 2015
AMENDED IN ASSEMBLY SEPTEMBER 01, 2015
AMENDED IN ASSEMBLY AUGUST 18, 2015
AMENDED IN ASSEMBLY AUGUST 17, 2015
AMENDED IN SENATE JUNE 03, 2015
AMENDED IN SENATE MAY 06, 2015
AMENDED IN SENATE APRIL 06, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

No. 643

Introduced by Senator McGuire

February 27, 2015

An act amend ~~Section 2220.05~~ of Sections 144, 2220.05, 2241.5, and 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, and 19325 to, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335), Article 8 (commencing with Section 19337), and Article 11 (commencing with Section 19348) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 643, as amended, McGuire. Medical marijuana.

Existing

(1) *Existing* law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill ~~would~~ *would, among other things, set forth standards for a physician and surgeon prescribing medical cannabis and require that the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive cannabis to patients for medical purposes or repeatedly recommending cannabis to patients for medical purposes without a good faith examination, as specified. ~~The bill would become operative only if AB 266 of the 2015-16 Regular Session is enacted and takes effect on or before January 1, 2016. The bill would require the Bureau of Medical Marijuana to require an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks. The bill would prohibit a physician and surgeon who recommends cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the Medical Marijuana Regulation and Safety Act. The bill would make a violation of this prohibition a misdemeanor, and by creating a new crime, this bill would impose a state-mandated local program.~~*

This bill would require the Governor, under the Medical Marijuana Regulation and Safety Act, to appoint, subject to confirmation by the Senate, a chief of the Bureau of Medical Marijuana Regulation. The act would require the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, and would authorize the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. The act would require the Department of Food and Agriculture to administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical cannabis and would impose specified duties on this department in this regard. The act would require the State Department of Public Health to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical cannabis and would impose specified duties on this department in this regard.

This bill would authorize counties to impose a tax upon specified cannabis-related activity.

This bill would require an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime and imposing a state-mandated local program.

This bill would set forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products. The bill would also establish state cultivator license types, as specified.

(2) This bill would provide that its provisions are severable.

(3) 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.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest. The bill would make legislative findings to that effect.

(5) The bill would become operative only if AB 266 and AB 243 of the 2015-16 Regular Session are enacted and take effect on or before January 1, 2016.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: **no**yes

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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history

information from the Department of Justice and the United States Federal Bureau of Investigation.

(b) Subdivision (a) applies to the following:

- (1) California Board of Accountancy.
- (2) State Athletic Commission.
- (3) Board of Behavioral Sciences.
- (4) Court Reporters Board of California.
- (5) State Board of Guide Dogs for the Blind.
- (6) California State Board of Pharmacy.
- (7) Board of Registered Nursing.
- (8) Veterinary Medical Board.
- (9) Board of Vocational Nursing and Psychiatric Technicians.
- (10) Respiratory Care Board of California.
- (11) Physical Therapy Board of California.
- (12) Physician Assistant Committee of the Medical Board of California.
- (13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.
- (14) Medical Board of California.
- (15) State Board of Optometry.
- (16) Acupuncture Board.
- (17) Cemetery and Funeral Bureau.
- (18) Bureau of Security and Investigative Services.
- (19) Division of Investigation.
- (20) Board of Psychology.
- (21) California Board of Occupational Therapy.
- (22) Structural Pest Control Board.
- (23) Contractors' State License Board.
- (24) Naturopathic Medicine Committee.
- (25) Professional Fiduciaries Bureau.
- (26) Board for Professional Engineers, Land Surveyors, and Geologists.

(27) Bureau of Medical Marijuana Regulation.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SECTION 1. SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

- (1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.
 - (2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.
 - (3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.
 - (4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.
 - (5) Sexual misconduct with one or more patients during a course of treatment or an examination.
 - (6) Practicing medicine while under the influence of drugs or alcohol.
- (b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).
- (c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2241.5 of the Business and Professions Code is amended to read:

- 2241.5.** (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.
- (b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.
- (c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:
- (1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.
 - (2) Violates Section 2241 regarding treatment of an addict.
 - (3) Violates Section 2242 *or 2525.3* regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous ~~drugs~~ *drugs or recommending medical cannabis*.
 - (4) Violates Section 2242.1 regarding prescribing on the Internet.
 - (5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.
 - (6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

SEC. 4. Section 2242.1 of the Business and Professions Code is amended to read:

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either a fine of up to twenty-five thousand dollars (\$25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars (\$25,000) per occurrence.

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

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section ~~2242~~ 2242 or 2525.3.

SEC. 5. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Recommending Medical Cannabis

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8, if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars (\$5,000) or by civil penalties of up to five thousand dollars (\$5,000) and shall constitute unprofessional conduct.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

2525.2. An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California shall not recommend medical cannabis

to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

2525.3. *Recommending medical cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.*

2525.4. *It is unprofessional conduct for any attending physician recommending medical cannabis to be employed by, or enter into any other agreement with, any person or entity dispensing medical cannabis.*

2525.5. *(a) A person shall not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the following notice to consumers:*

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

SEC. 6. *Section 19302.1 is added to the Business and Professions Code, to read:*

19302.1. *(a) The Governor shall appoint a chief of the bureau, subject to confirmation by the Senate, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.*

(b) Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe. In addition to every power granted or duty imposed with this chapter, the director shall have all other powers and duties generally applicable in relation to bureaus that are part of the Department of Consumer Affairs.

(c) The director may employ and appoint all employees necessary to properly administer the work of the bureau, in accordance with civil service laws and regulations.

(d) The Department of Consumer Affairs shall have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation, storage unrelated to manufacturing activities, distribution, and sale of medical marijuana within the state and to collect fees in connection with activities the bureau regulates. The bureau may create licenses in addition to those identified in this chapter that the bureau deems necessary to effectuate its duties under this chapter.

(e) The Department of Food and Agriculture shall administer the provisions of this chapter related to and associated with the cultivation of medical cannabis. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this chapter. The State Department of Public Health shall administer the provisions of this chapter related to and associated with the manufacturing and testing of medical cannabis.

SEC. 7. *Section 19319 is added to the Business and Professions Code, to read:*

19319. *(a) A qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and is therefore exempt from the licensure requirements of this chapter.*

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for

whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, is exempt from the licensure requirements of this chapter.

SEC. 8. *Section 19320 is added to the Business and Professions Code, to read:*

19320. *(a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.*

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

SEC. 9. *Section 19322 is added to the Business and Professions Code, to read:*

19322. *(a) A person or entity shall not submit an application for a state license issued by the department pursuant to this chapter unless that person or entity has received a license, permit, or authorization by a local jurisdiction. An applicant for any type of state license issued pursuant to this chapter shall do all of the following:*

(1) Electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance, pending trial or appeal.

(A) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(B) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(C) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.

(3) Provide evidence of the legal right to occupy and use the proposed location. For an applicant seeking a cultivator, distributor, manufacturing, or dispensary license, provide a statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit

cultivation, distribution, manufacturing, or dispensary activities to be conducted on the property by the tenant applicant.

(4) If the application is for a cultivator or a dispensary, provide evidence that the proposed location is located beyond at least a 600 foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.

(5) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(6) (A) For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

(B) For the purposes of this paragraph, "employee" does not include a supervisor.

(C) For purposes of this paragraph, "supervisor" means an individual having authority, in the interest of the licensee, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(7) Provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

(8) Provide any other information required by the licensing authority.

(9) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(10) For an applicant seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health.

(11) Pay all applicable fees required for licensure by the licensing authority.

(b) For applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis, the application shall also include a detailed description of the applicant's operating procedures for all of the following, as required by the licensing authority:

(1) Cultivation.

(2) Extraction and infusion methods.

(3) The transportation process.

(4) Inventory procedures.

(5) Quality control procedures.

SEC. 10. *Section 19323 is added to the Business and Professions Code, to read:*

19323. *(a) The licensing authority shall deny an application if either the applicant or the premises for which a state license is applied do not qualify for licensure under this chapter.*

(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) A local agency has notified the licensing authority that a licensee or applicant within its jurisdiction is in violation of state rules and regulation relating to commercial cannabis activities, and the licensing authority,

through an investigation, has determined that the violation is grounds for termination or revocation of the license. The licensing authority shall have the authority to collect reasonable costs, as determined by the licensing authority, for investigation from the licensee or applicant.

(4) The applicant has failed to provide information required by the licensing authority.

(5) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(6) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(7) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(9) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 19324 is added to the Business and Professions Code, to read:

19324. Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing. Within 30 days of service of the notice, the applicant may file a written petition for a license with the licensing authority. Upon receipt of a timely filed petition, the licensing authority shall set the petition for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

SEC. 12. Section 19325 is added to the Business and Professions Code, to read:

19325. An applicant shall not be denied a state license if the denial is based solely on any of the following:

(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

SEC. 13. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. *The Legislature finds and declares all of the following:*

(a) *The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).*

(b) *The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.*

(c) *Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis cultivation sites are actually safe for use on cannabis intended for human consumption.*

19332. (a) *The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.*

(b) *The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.*

(c) *The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.*

(d) *The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.*

(e) *The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:*

(1) *Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).*

(2) *Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.*

(3) *Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.*

(4) *Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).*

(f) *The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.*

(g) *State cultivator license types issued by the Department of Food and Agriculture include:*

(1) *Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.*

(2) *Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.*

(3) *Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.*

(4) *Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000*

square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19332.5. (a) Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The bureau may establish appellations of origin for marijuana grown in California.

(c) It is unlawful for medical marijuana to be marketed, labeled, or sold as grown in a California county when the medical marijuana was not grown in that county.

(d) It is unlawful to use the name of a California county in the labeling, marketing, or packaging of medical marijuana products unless the product was grown in that county.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 14. Article 7.5 (commencing with Section 19335) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 7.5. Unique Identifier and Track and Trace Program

19335. (a) The Department of Food and Agriculture, in consultation with the bureau, shall establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that utilizes a unique identifier pursuant to Section 11362.777 of the Health and Safety Code and secure packaging and is capable of providing information that captures, at a minimum, all of the following:

(1) The licensee receiving the product.

(2) The transaction date.

(3) The cultivator from which the product originates, including the associated unique identifier, pursuant to Section 11362.777 of the Health and Safety Code.

(b) (1) The Department of Food and Agriculture shall create an electronic database containing the electronic shipping manifests which shall include, but not be limited to, the following information:

(A) The quantity, or weight, and variety of products shipped.

(B) The estimated times of departure and arrival.

(C) The quantity, or weight, and variety of products received.

(D) The actual time of departure and arrival.

(E) A categorization of the product.

(F) The license number and the unique identifier pursuant to Section 11362.777 of the Health and Safety Code issued by the licensing authority for all licensees involved in the shipping process, including cultivators, transporters, distributors, and dispensaries.

(2) (A) The database shall be designed to flag irregularities for all licensing authorities in this chapter to investigate. All licensing authorities pursuant to this chapter may access the database and share information related to licensees under this chapter, including social security and individual taxpayer identifications notwithstanding Section 30.

(B) The Department of Food and Agriculture shall immediately inform the bureau upon the finding of an irregularity or suspicious finding related to a licensee, applicant, or commercial cannabis activity for investigatory purposes.

(3) Licensing authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.

(4) The bureau shall have 24-hour access to the electronic database administered by the Department of Food and Agriculture.

(5) The Department of Food and Agriculture shall be authorized to enter into memoranda of understandings with licensing authorities for data sharing purposes, as deemed necessary by the Department of Food and Agriculture.

(6) Information received and contained in records kept by the Department of Food and Agriculture or licensing authorities for the purposes of administering this section are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter or a local ordinance.

(7) Upon the request of a state or local law enforcement agency, licensing authorities shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities pursuant to this chapter.

19336. *(a) Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the bureau's collection of the fees, civil fines, and penalties imposed pursuant to this chapter.*

(b) Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the disclosure of information under this chapter.

SEC. 15. *Article 8 (commencing with Section 19337) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:*

Article 8. Licensed Transporters

19337. *(a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.*

(b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:

(1) Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.

(2) Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.

(c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

(d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.

(e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

(f) Transporting, or arranging for or facilitating the transport of, medical cannabis or medical cannabis products in violation of this chapter is grounds for disciplinary action against the license.

19338. (a) This chapter shall not be construed to authorize or permit a licensee to transport or cause to be transported cannabis or cannabis products outside the state, unless authorized by federal law.

(b) A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.

SEC. 16. Article 11 (commencing with Section 19348) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 11. Taxation

19348. (a) (1) A county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to this chapter.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.

(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.

(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law.

(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. The Legislature finds and declares that Section 14 of this act, which adds Section 19335 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to

demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 19. *No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.*

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

SEC. 20. This act shall become operative only if Assembly Bill 266 *and Assembly Bill 243* of the 2015–16 Session ~~is~~ *are* enacted and ~~takes~~ *take* effect on or before January 1, 2016.

SB-738

Pupil Health: Epinephrine Auto-
Injectors: Liability Limitation



SB-738 Pupil health: epinephrine auto-injectors: liability limitation. (2015-2016)

Senate Bill No. 738

CHAPTER 132

An act to amend Section 49414 of the Education Code, relating to pupil health.

[Approved by Governor July 16, 2015. Filed with Secretary of State July 16, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 738, Huff. Pupil health: epinephrine auto-injectors: liability limitation.

Existing law requires school districts, county offices of education, and charter schools to provide emergency epinephrine auto-injectors to school nurses and trained personnel who have volunteered, as specified, and authorizes school nurses and trained personnel to use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction. Existing law requires a qualified supervisor of health or administrator at a school district, county office of education, or charter school to obtain the prescription for epinephrine auto-injectors from an authorizing physician and surgeon, as defined, and authorizes the prescription to be filled by local or mail order pharmacies or epinephrine auto-injector manufacturers.

This bill would prohibit an authorizing physician and surgeon from being subject to professional review, being liable in a civil action, or being subject to criminal prosecution for the issuance of a prescription or order, pursuant to these provisions, unless the physician and surgeon's issuance of the prescription or order constitutes gross negligence or willful or malicious conduct. The bill would also update an entity reference.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

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

SECTION 1. Section 49414 of the Education Code is amended to read:

49414. (a) School districts, county offices of education, and charter schools shall provide emergency epinephrine auto-injectors to school nurses or trained personnel who have volunteered pursuant to subdivision (d), and school nurses or trained personnel may use epinephrine auto-injectors to provide emergency medical aid to persons suffering, or reasonably believed to be suffering, from an anaphylactic reaction.

(b) For purposes of this section, the following terms have the following meanings:

(1) "Anaphylaxis" means a potentially life-threatening hypersensitivity to a substance.

(A) Symptoms of anaphylaxis may include shortness of breath, wheezing, difficulty breathing, difficulty talking or swallowing, hives, itching, swelling, shock, or asthma.

(B) Causes of anaphylaxis may include, but are not limited to, an insect sting, food allergy, drug reaction, and exercise.

(2) "Authorizing physician and surgeon" may include, but is not limited to, a physician and surgeon employed by, or contracting with, a local educational agency, a medical director of the local health department, or a local

emergency medical services director.

(3) "Epinephrine auto-injector" means a disposable drug delivery system with a spring-activated needle that is designed for emergency administration of epinephrine to provide rapid, convenient first aid for persons suffering a potentially fatal reaction to anaphylaxis.

(4) "Qualified supervisor of health" may include, but is not limited to, a school nurse.

(5) "Volunteer" or "trained personnel" means an employee who has volunteered to administer epinephrine auto-injectors to a person if the person is suffering, or reasonably believed to be suffering, from anaphylaxis, has been designated by a school, and has received training pursuant to subdivision (d).

(c) Each private elementary and secondary school in the state may voluntarily determine whether or not to make emergency epinephrine auto-injectors and trained personnel available at its school. In making this determination, a school shall evaluate the emergency medical response time to the school and determine whether initiating emergency medical services is an acceptable alternative to epinephrine auto-injectors and trained personnel. A private elementary or secondary school choosing to exercise the authority provided under this subdivision shall not receive state funds specifically for purposes of this subdivision.

(d) Each public and private elementary and secondary school in the state may designate one or more volunteers to receive initial and annual refresher training, based on the standards developed pursuant to subdivision (e), regarding the storage and emergency use of an epinephrine auto-injector from the school nurse or other qualified person designated by an authorizing physician and surgeon.

(e) (1) Every five years, or sooner as deemed necessary by the Superintendent, the Superintendent shall review minimum standards of training for the administration of epinephrine auto-injectors that satisfy the requirements of paragraph (2). For purposes of this subdivision, the Superintendent shall consult with organizations and providers with expertise in administering epinephrine auto-injectors and administering medication in a school environment, including, but not limited to, the State Department of Public Health, the Emergency Medical Services Authority, the American Academy of Allergy, Asthma and Immunology, the California School Nurses Organization, the California Medical Association, the American Academy of Pediatrics, Food Allergy Research and Education, the California Society of Allergy, Asthma and Immunology, the American College of Allergy, Asthma and Immunology, the Sean N. Parker Center for Allergy Research, and others.

(2) Training established pursuant to this subdivision shall include all of the following:

(A) Techniques for recognizing symptoms of anaphylaxis.

(B) Standards and procedures for the storage, restocking, and emergency use of epinephrine auto-injectors.

(C) Emergency followup procedures, including calling the emergency 911 telephone number and contacting, if possible, the pupil's parent and physician.

(D) Recommendations on the necessity of instruction and certification in cardiopulmonary resuscitation.

(E) Instruction on how to determine whether to use an adult epinephrine auto-injector or a junior epinephrine auto-injector, which shall include consideration of a pupil's grade level or age as a guideline of equivalency for the appropriate pupil weight determination.

(F) Written materials covering the information required under this subdivision.

(3) Training established pursuant to this subdivision shall be consistent with the most recent Voluntary Guidelines for Managing Food Allergies In Schools and Early Care and Education Programs published by the federal Centers for Disease Control and Prevention and the most recent guidelines for medication administration issued by the department.

(4) A school shall retain for reference the written materials prepared under subparagraph (F) of paragraph (2).

(f) A school district, county office of education, or charter school shall distribute a notice at least once per school year to all staff that contains the following information:

(1) A description of the volunteer request stating that the request is for volunteers to be trained to administer an epinephrine auto-injector to a person if the person is suffering, or reasonably believed to be suffering, from anaphylaxis, as specified in subdivision (b).

(2) A description of the training that the volunteer will receive pursuant to subdivision (d).

(g) (1) A qualified supervisor of health at a school district, county office of education, or charter school shall obtain from an authorizing physician and surgeon a prescription for each school for epinephrine auto-injectors that, at a minimum, includes, for elementary schools, one regular epinephrine auto-injector and one junior epinephrine auto-injector, and for junior high schools, middle schools, and high schools, if there are no pupils who require a junior epinephrine auto-injector, one regular epinephrine auto-injector. A qualified supervisor of health at a school district, county office of education, or charter school shall be responsible for stocking the epinephrine auto-injector and restocking it if it is used.

(2) If a school district, county office of education, or charter school does not have a qualified supervisor of health, an administrator at the school district, county office of education, or charter school shall carry out the duties specified in paragraph (1).

(3) A prescription pursuant to this subdivision may be filled by local or mail order pharmacies or epinephrine auto-injector manufacturers.

(4) An authorizing physician and surgeon shall not be subject to professional review, be liable in a civil action, or be subject to criminal prosecution for the issuance of a prescription or order pursuant to this section, unless the physician and surgeon's issuance of the prescription or order constitutes gross negligence or willful or malicious conduct.

(h) A school nurse or, if the school does not have a school nurse or the school nurse is not onsite or available, a volunteer may administer an epinephrine auto-injector to a person exhibiting potentially life-threatening symptoms of anaphylaxis at school or a school activity when a physician is not immediately available. If the epinephrine auto-injector is used it shall be restocked as soon as reasonably possible, but no later than two weeks after it is used. Epinephrine auto-injectors shall be restocked before their expiration date.

(i) A volunteer shall initiate emergency medical services or other appropriate medical followup in accordance with the training materials retained pursuant to paragraph (4) of subdivision (e).

(j) A school district, county office of education, or charter school shall ensure that each employee who volunteers under this section will be provided defense and indemnification by the school district, county office of education, or charter school for any and all civil liability, in accordance with, but not limited to, that provided in Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. This information shall be reduced to writing, provided to the volunteer, and retained in the volunteer's personnel file.

(k) A state agency, the department, or a public school may accept gifts, grants, and donations from any source for the support of the public school carrying out the provisions of this section, including, but not limited to, the acceptance of epinephrine auto-injectors from a manufacturer or wholesaler.

ACR-97

Medical Training: Osteopathic Students



California.
LEGISLATIVE INFORMATION

ACR-97 Medical training: osteopathic students. (2015-2016)

ENROLLED SEPTEMBER 10, 2015
PASSED IN SENATE SEPTEMBER 08, 2015
PASSED IN ASSEMBLY SEPTEMBER 02, 2015
AMENDED IN ASSEMBLY SEPTEMBER 02, 2015
AMENDED IN ASSEMBLY SEPTEMBER 01, 2015
AMENDED IN ASSEMBLY AUGUST 19, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

**ASSEMBLY CONCURRENT
RESOLUTION**

No. 97

Introduced by Assembly Member Bonilla

(Coauthors: Assembly Members Rodriguez, Achadjian, Alejo, Travis Allen, Atkins, Baker, Bigelow, Bloom, Brown, Burke, Calderon, Campos, Chang, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh, Dahle, Daly, Dodd, Eggman, Frazier, Beth Gaines, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gonzalez, Gordon, Gray, Hadley, Harper, Holden, Irwin, Jones, Jones-Sawyer, Kim, Lackey, Levine, Linder, Lopez, Low, Maienschein, Mayes, Medina, Melendez, Mullin, Nazarian, Obernolte, O'Donnell, Olsen, Patterson, Quirk, Rendon, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Wagner, Waldron, Wilk, Williams, and Wood)

(Coauthors: Senators Hernandez and Leyva)

July 16, 2015

Relative to medicine.

LEGISLATIVE COUNSEL'S DIGEST

ACR 97, Bonilla. Medical training: osteopathic students.

This measure, among other things, would urge both private and public medical training institutions in the state to provide equal access to osteopathic and allopathic students to apply to training programs, would urge osteopathic medical schools, allopathic medical schools, and their training institutions to build on current successes of working toward greater collaboration and coordination of education and training for California's future physicians, and would urge efforts by training institutions and allopathic and osteopathic medical schools to work toward greater acceptance and integration of osteopathic and allopathic students.

Fiscal Committee: no

WHEREAS, California has a significant shortage and inequitable distribution of physicians throughout the state due to the aging population, current population growth, and the increasing number of insured; and

WHEREAS, According to a study by the Robert Graham Center in 2013, it was estimated that the state would need 8,243 more primary care physicians by 2030, a 32-percent increase of its current workforce; and

WHEREAS, The state's ability to meet the need for primary care osteopathic physicians (DOs) and allopathic physicians (MDs) is directly affected by the number of medical residency slots available in physician training programs across the state, and the current number of graduate medical education slots must be increased substantially; and

WHEREAS, DOs are one of the fastest growing segments of health care professionals in the United States. By 2016, more than 100,000 DOs are expected to be in active medical practice; and

WHEREAS, Approximately 60 percent of practicing DOs specialize in primary care fields such as family medicine, internal medicine, and pediatrics, and many DOs fill a critical need by practicing in rural and other medically underserved areas; and

WHEREAS, Beginning in 2020, osteopathic (DO) and allopathic (MD) residency programs will be overseen by a single unified accrediting body; and

WHEREAS, Quality medical training for DO and MD students is critical to their success as fully trained and licensed physicians, and all medical schools should provide the support necessary for their students to receive the best possible medical training; and

WHEREAS, Many public and private institutions have provided equal access to the application process for their medical training programs by all students and physicians, and have trained exemplary DO and MD students by choosing those candidates who best suit their programs; and

WHEREAS, In many areas of the state there are outstanding examples of medical training programs that have been integrated effectively and are providing DO and MD students with exceptional training opportunities; and

WHEREAS, Section 2064.2 of the Business and Professions Code states that no medical school or clinical training program shall deny access to elective clerkships or preceptorships in any medical school or clinical training program in this state solely on the basis that a student is enrolled in an DO medical school; and

WHEREAS, Section 2453 of the Business and Professions Code states that it is the policy of the state that holders of MD degrees and DO degrees shall be accorded equal professional status and privileges as licensed physicians and surgeons; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature urges both private and public medical training institutions in the state to provide equal access to DO and MD students to apply to training programs while still maintaining the integrity and competitiveness of their application process and the need to first serve enrolled students; and be it further

Resolved, That the Legislature urges DO medical schools, MD medical schools, and training institutions to build on current successes of working toward greater collaboration and coordination of education and training for California's future physicians and for these medical schools to develop a plan to adequately support medical training for their students and create positive partnerships with medical training programs that are open to both DO and MD students and graduates; and be it further

Resolved, That the Legislature urges efforts by training institutions and DO and MD medical schools to work toward greater acceptance and integration of DO and MD students in their medical training programs; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

TABLE 6

114TH CONGRESS
1ST SESSION

H. R. 3081

To amend title XVIII of the Social Security Act to permit certain Medicare providers licensed in a State to provide telemedicine services to certain Medicare beneficiaries in a different State.

IN THE HOUSE OF REPRESENTATIVES

JULY 15, 2015

Mr. NUNES (for himself, Mr. PALLONE, Mr. CARTWRIGHT, Mr. PETERS, Mr. RUSH, Mr. SARBANES, Mrs. WAGNER, Mr. YOUNG of Indiana, Mr. MARCHANT, Mr. TIBERI, Mr. COLLINS of New York, Mr. KELLY of Pennsylvania, Mr. PEARCE, Mr. PETERSON, Mr. CALVERT, Mr. HOLDING, Mr. ROE of Tennessee, and Mr. BOUSTANY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XVIII of the Social Security Act to permit certain Medicare providers licensed in a State to provide telemedicine services to certain Medicare beneficiaries in a different State.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “TELEmedicine for
3 MEDicare Act of 2015” or as the “TELE–MED Act of
4 2015”.

5 **SEC. 2. PERMITTING CERTAIN MEDICARE PROVIDERS LI-**
6 **CENSED IN A STATE TO PROVIDE TELEMEDI-**
7 **CINE SERVICES TO CERTAIN MEDICARE**
8 **BENEFICIARIES IN A DIFFERENT STATE.**

9 Title XVIII of the Social Security Act (42 U.S.C.
10 1395 et seq.) is amended by adding at the end the fol-
11 lowing new section:

12 **“SEC. 1899B. PERMITTING CERTAIN MEDICARE PROVIDERS**
13 **LICENSED IN A STATE TO PROVIDE TELE-**
14 **MEDICINE SERVICES TO CERTAIN MEDICARE**
15 **BENEFICIARIES IN A DIFFERENT STATE.**

16 “(a) IN GENERAL.—In the case of a Medicare par-
17 ticipating physician or practitioner who is licensed or oth-
18 erwise legally authorized to provide a health care service
19 in a State, such physician or practitioner may provide such
20 a service as a telemedicine service to a Medicare bene-
21 ficiary who is in a different State, and any requirement
22 that such physician or practitioner obtain a comparable
23 license or other comparable legal authorization from such
24 different State with respect to the provision of such health
25 care service by such physician or practitioner to such bene-
26 ficiary shall not apply.

1 “(b) ENFORCEMENT.—With respect to the provision
2 of a service pursuant to this section, the licensing or au-
3 thorizing State has jurisdiction to enforce the licensure or
4 other legal authorization requirements of such primary
5 State, including through disciplinary actions used by such
6 State as of the day before the date of the enactment of
7 this section.

8 “(c) PROCESS TO ESTABLISH TELEMEDICINE SERV-
9 ICE DEFINITION.—Not later than 9 months after the date
10 of the enactment of this section, the Secretary shall issue
11 guidance to the States for developing a definition of the
12 term ‘telemedicine services’ for purposes of applying this
13 section. For purposes of issuing such guidance, the Sec-
14 retary shall solicit input from relevant stakeholders, in-
15 cluding patients, health care providers, State government
16 officials, health technology developers, insurers, employ-
17 ers, licensing boards, community health organizations, and
18 other Federal agencies.

19 “(d) REPORT.—Not later than 12 months after the
20 date of the enactment of this section, the Secretary shall
21 submit to Congress a report on the plans to develop and
22 expand the use of current and emerging Internet and com-
23 munications technologies to expand access of Medicare
24 beneficiaries to health programs.

25 “(e) DEFINITIONS.—For purposes of this section:

1 “(1) MEDICARE BENEFICIARY.—The term
2 ‘Medicare beneficiary’ means an individual entitled
3 to benefits under part A or enrolled under part B.

4 “(2) QUALIFYING PHYSICIAN OR PRACTI-
5 TIONER.—The term ‘Medicare participating physi-
6 cian or practitioner’ means the following:

7 “(A) A physician (as defined in section
8 1861(r)) who is a participating physician or
9 supplier (as defined in section 1842(h)(1)).

10 “(B) A practitioner (as defined in section
11 1842(b)(18)(C)) who is a participating physi-
12 cian or supplier (as defined in section
13 1842(h)(1)).

14 “(f) CONSTRUCTION.—Nothing in this section may be
15 construed to remove, limit, or otherwise affect any obliga-
16 tion of a covered health care professional under the Con-
17 trolled Substances Act (21 U.S.C. 801 et seq.).”.

○

TABLE 7

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TABLE 8

Osteopathic Medical Board

Future Agenda Items

Agenda Item	Requestor

TABLE 9

Osteopathic Medical Board

Future Meeting Dates

Date	Place	Time
January 21, 2016	Sacramento, CA	10 a.m. – 5 p.m.

**Please note that all meetings should be held in the best interest of the Board. Meetings in resorts or vacation areas should not be made. Using Conference areas that do not require contracts and or payment is the best option for the Board. No overnight travel. If an employee chooses a mode of transportation which is more costly than another mode, a Cost Comparison form must be completed. Reimbursement by the State will be made at the lesser of the two costs. Taxi Service should be used for trips within but not over a 10-mile radius. Receipts are required for taxi expenses of \$10.00 and over. Tips are not reimbursable.*