

Arnold Schwarzenegger, Governor
State of California

Brian Stiger, Director
Department of Consumer Affairs



Larry L. Renner, BS, RCP
President

Barbara M. Stenson, RCP, RRT
Vice President

Lupe Aguilera
Member

Sandra Magaña
Member

Murray Olson, RCP, RRT
Member

Richard L. Sheldon, MD, FACP
Member

Charles B. Spearman, MEd, RCP
Member

Stephanie Nunez
Executive Officer



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Respiratory Care Board of California

444 North 3rd Street, Suite 270, Sacramento, CA 95811

Board Meeting Agenda

Friday, February 5, 2010

State Capitol
Room 112
10th & L Streets
Sacramento, CA 95814

10:00 a.m. Call to Order

1. Approval of November 13, 2009 Public Session Minutes
2. Director's Report (*Department of Consumer Affairs Representative*)
 - a. Consumer Protection Enforcement Initiative (CPEI)
 - b. SB 1441: Uniform Standards
 - c. SB 139: Healthcare Workforce Data
 - d. Other Items of Interest
3. Executive Officer's Report (*Stephanie Nunez*)
 - a. RCP/RRT/CRT Statistics
 - b. Ethics Course Update
 - c. Outreach / 25-Year Recognition Update
 - d. SB 1441 Implementation Plan
 - e. Enforcement Performance Improvement Plan
4. Enforcement Statistics (*Charles B. Spearman*)
5. Legislative Committee Report (*Larry L. Renner*)
 - a. Legislation of Interest
Assembly Bills: 583, 877, 978, and 1310
Senate Bill 638
and any other bills of interest to the Board
 - b. DCA Sponsored Legislation - CPEI

11:00 a.m. 6. Respiratory Care Program Hearing: Approval/Disapproval California College San Diego (CCSD)

7. Licenses Issued w/Deficient CCSD Transcripts:
Decision to Pursue Recission of Licenses

- Closed Session -

The Board will convene into Closed Session, as authorized by Government Code Section 11126(c), subdivision (3), for approximately 30 minutes.

- I. Non Adoption of Proposed Decision: Robert Walker, Applicant
- II. Deliberation of Any Other Disciplinary Matters

8. Public Comment on Items Not on the Agenda
9. Future Agenda Items

3:00 p.m. 10. Adjournment

- Save The Dates -

- May 11, 2010 (Tuesday): Board Meeting held in conjunction with CSRC conference. Recognizing 25 Years of Licensure (San Jose/San Francisco Bay Area)
- July 27, 2010 (Tuesday): Regulatory Next Practices: A Working Conference Meeting (Sacramento)
- October 29, 2010 (Friday): Final 2010 Board Meeting (Southern California)

NOTICE

Action may be taken on any item on the agenda. Time and order of agenda items are subject to change at the discretion of the President. Meetings of the Respiratory Care Board are open to the public except when specifically noticed otherwise in accordance with the Open Meeting Act. In addition to the agenda item which addresses public comment, the audience will be given appropriate opportunities to comment on any issue before the Board, but the President may, at his discretion, apportion available time among those who wish to speak. Contact person: Paula Velasquez, telephone: (916) 323-9983.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Paula Velasquez at (916) 323-9983 or sending a written request to: Paula Velasquez, Respiratory Care Board, 444 North 3rd Street, Suite 270, Sacramento, CA 95811. Providing your request at least five (5) business days before the meeting will help ensure availability of the requested accommodation.



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ARNOLD SCHWARZENEGGER, Governor

PUBLIC SESSION MINUTES

Friday, November 13, 2009

**Loma Linda University
Collins Auditorium
(in the Drayson Center)
25040 Stewart Street
Loma Linda, CA 92354
(909) 558-4975**

Members Present: Larry L. Renner, BS, RCP, RRT, RPFT, President (arrived at 8:45 a.m.)
Barbara M. Stenson, RCP, RRT
Lupe V. Aguilera
Murray Olson, RCP
Sandra Magaña
Richard L. Sheldon, M.D.
Charles B. Spearman, MSEd, RCP, RRT

Staff Present: Dianne Dobbs, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager
Liane Freels, Staff Services Manager
Stephanie Aguirre, Associate Governmental Program Analyst

CALL TO ORDER

The Public Session was called to order at 8:35 a.m. by Vice-President Stenson. A quorum was present.

APPROVAL OF MARCH 13, 2009 PUBLIC SESSION MINUTES

Mr. Olson moved to approve the March 13, 2009 Public Session minutes as written.

M/Olson/S/Sheldon

Unanimous: Aguilera, Magaña, Olson, Sheldon, Spearman, Stenson

MOTION PASSED

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REINSTATEMENT HEARING

Administrative Hearing Judge Nafarrete introduced himself and summarized the reinstatement hearing process.

Reden M. Camonayan

Catherine Santillan, Senior Legal Analyst, Office of the Attorney General, summarized and offered evidence in the Petition for Reinstatement regarding Reden M. Camonavan.

Mr. Camonavan presented his testimony.

Roy C. Stark

Mr. Spearman recused himself from this case.

Ms. Santillan summarized and offered evidence in the Petition for Reinstatement regarding Roy C. Stark.

Mr. Stark presented his testimony.

CLOSED SESSION I

The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 10:05 a.m. and reconvened into Public Session at 12:30 p.m.

MANDATORY BOARD MEMBER ETHICS TRAINING
(Dianne Dobbs, Legal Counsel)

Ms. Dobbs explained to the Board that Government Code Section 11146 requires all state employees and board appointees who are required to file an annual Form 700 Statement of Economic Interest, to complete an orientation course on the relevant ethics statutes and regulations that govern the conduct of state officials. The government code requires completion of this ethics orientation within the first six months of appointment, and as a refresher every two years thereafter.

Ms. Dobbs proceeded to provide the required ethics training to the Board. She added that this training is being provided to all DCA boards and bureaus, not as a replacement of the two year refresher, but to highlight certain important issues.

SERVICE RECOGNITION: GOPAL CHATURVEDI

President Renner welcomed past Board Member Gopal Chaturvedi to the meeting and presented him with a plaque in recognition of his years of service as a member of the Board. Mr. Renner, along with the entire Board, thanked Mr. Chaturvedi for his hard work and dedication to the profession and California's respiratory consumers. Mr. Chaturvedi thanked the Board and staff for honoring him.

COMMITTEE ON ACCREDITATION FOR RESPIRATORY CARE (CoARC)
(Barbara M. Stenson)

Standards

Vice-President Stenson summarized CoARC's new accreditation standards and advised the Board of CoARC's transition to an independent accreditor effective November 12, 2009.

1 **CA COLLEGE SAN DIEGO TRANSCRIPT AUDIT**
2 *(Christine Molina)*

3 Findings

4 Ms. Molina explained that in March 2009 the Board office received notification from the Program
5 Director at California College San Diego (CCSD) advising the Board of an individual that had been
6 erroneously issued an Associate Degree, discovered after the fact. A short time thereafter, the Board
7 received additional information about potential discrepancies which may have occurred with other
8 CCSD students. The Board carefully examined the CCSD transcripts of pending applicants, as well as
9 those who were licensed within the past year, and found additional occurrences of discrepancies. Ms.
10 Molina presented the audit findings as reported by CCSD as well as the audit results and discrepancies
11 discovered by Board staff (which includes current licensees).

12 Ms. Molina also advised the Board that CoARC was meeting the same day to discuss CCSDs
13 accreditation status, and that she would follow up on the outcome next week.

14 Discussion ensued.

15 President Renner moved to no longer longer accept the education of students who enroll in California
16 College of San Diego's (CCSD's) respiratory therapy program effective November 16, 2009.

17 M/Renner/S/Sheldon

18 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

19 MOTION PASSED

20 Discussion and Possible Action

21 The Board reviewed eight licensed RCPs with deficient transcripts. Licensees 1, 2 and 3 were reported
22 to the Board by CCSD. Licensees 4 through 8 were identified by RCB staff during an internal transcript
23 audit.

24 Ms. Molina explained that out of the three licensees identified by CCSD, only one completed additional
25 course work to rectify their discrepancy. The other two were deemed to have satisfied the
26 requirements by other means of verification.

27 Dr. Sheldon moved that this Board take no action against the licenses of Licensees 1, 2 & 3.

28 Discussion ensued.

29 Public comments were received.

30 President Renner moved that staff contact the employers of Licensees 1, 2 & 3 informing them their
31 employee was issued a license from a school (CCSD) where discrepancies had been discovered, and
32 request that the employer verify the employee is functioning as trained respiratory therapist.

33 Ms. Magaña suggests that Licensee 2 be removed from the scenario since the individual corrected and
34 met the licensing requirements.

35 Dr. Sheldon moved to amend his motion to include that staff contact employers requesting confirmation
36 that they are functioning as a fully trained respiratory therapist.

1 Public comments were received.

2 Dr. Sheldon moved that no sanctions be placed against the license of Licensees 1, 2 & 3 if their
3 employer confirms that the employee is fully trained and functioning at a level expected of a graduate of
4 respiratory therapy.

5 M/Sheldon/S/Spearman

6 Ayes: Aguilera, Olson, Renner, Sheldon, Spearman, Stenson

7 Nays: Magaña

8 MOTION PASSED

9 President Renner moved that staff contact Licensees 4 - 8 to ascertain whether or not the student met the
10 catalog requirements, and to determine if the student is willing to expeditiously rectify the matter.

11 Discussion ensued.

12 M/Renner/S/Aguilera

13 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

14 MOTION PASSED

15 **ETHICS COURSE**
16 *(Barbara Stenson)*

17 Review Law & Professional Ethics Course Statistics/Evaluations

18 Ms. Stenson entertained questions and/or comments regarding the Law & Professional Ethics Course
19 Statistics/Evaluations received from the AARC and the CSRC for the period of January 1, 2006 -
20 September 30, 2009.

21 Review, Amend or Eliminate Requirements and/or Providers

22 Vice-President Stenson reviewed the ethics course requirement alternatives established by the
23 Education Committee for the Board's consideration:

- 24 1. Continue to require the successful completion of the Law and Professional Ethics Course
25 offered by the AARC and CSRC every other renewal cycle for licensed RCP's and prior to
26 licensure for applicants and petitioners for reinstatement.
- 27 2. Amend the Respiratory Care Practice Act and its regulations, as appropriate, to allow other
28 education providers, in addition to the AARC and CSRC, to administer the Law an Professional
29 Ethics Course.
- 30 3. Amend the Practice Act and its regulations, as appropriate, to require only applicants for
31 licensure and petitioners for reinstatement to provide proof of successful completion of and
32 Ethics Course prior to licensure.
- 33 4. Amend the Respiratory Care Practice Act and its regulations, as appropriate, to eliminate the
34 requirement of the Law and Professional Ethics Course altogether.
- 35 5. Extend the requirement from every four years to every eight years.

36 Discussion ensued

37 Vice President Stenson moved that the ethics course requirement be extended from every four (4)
38 years to every eight (8) years for those licensees who are in good standing.

39 M/Stenson/S/Olson

1 Discussion ensued.
2 Public comments were received.
3 Vice-President Stenson withdrew her previous motion and moved to keep the Ethics Course as is, but
4 to review options again in two years to possibly extend six (6) or eight (8) years.
5 M/Stenson/S/Olson
6 Ayes: Aguilera, Magana, Olson, Renner, Spearman, Stenson
7 Abstain: Sheldon
8 MOTION PASSED

9 Consideration to Reinstate Approval of CSRC On-Line Course

10 Mr. Spearman moved to approve the reinstatement of CSRC's on-line ethics course once staff has
11 certified that the required changes have been made.
12 M/Spearman/S/Sheldon
13 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
14 MOTION PASSED

15 **CLOSED SESSION II**

16 The Board convened into Closed Session, as authorized by Government Code Section 11126c,
17 subdivision (3) at 3:20 p.m. and reconvened into Public Session at 3:50 p.m.

18 **2010 MEETING CALENDAR -SCHEDULE MEETING DATES**

- 19 ● February 5, 2010 (Sacramento)
20 ● May 11, 2010 (San Jose area)
21 ● October 29, 2010 (Southern California)

22 The Board will also attend the PACT Conference being held on Tuesday, July 27, 2010 in Sacramento.

23 **ELECTION OF OFFICERS**

24 Mr. Spearman moved to nominate Larry Renner as president.

25 M/Spearman/S/Sheldon
26 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
27 MOTION PASSED

28 Mr. Olson moved to nominate Barbara Stenson for vice-president.

29 M/Olson/S/Spearman
30 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
31 MOTION PASSED

32 **FISCAL REVIEW**

33 *(Larry L. Renner, RCP)*

34 President Renner summarized the Revenue and Expenditure report and entertained questions from the
35 Board.

1 **LEGISLATIVE COMMITTEE REPORT**

2 *(Larry L. Renner, RCP, Chair)*

3 Legislation of Interest

4 President Renner advised the Board that AB 1071, ABX4 20, and SB 132 were approved by the
5 Governor and filed with the Secretary of State.

6 President Renner entertained questions from the Board.

7 Board-Proposed Legislation: SB 819 and 821 (11b.)

8 President Renner advised the Board that both SB 819 and SB 821 which included the Board-
9 sponsored proposed legislation were signed by the Governor and filed with the Secretary of State.

10 **REPORT ON AARC's CONFERENCE "EDUCATING THE FUTURE RESPIRATORY
11 THERAPIST WORKFORCE - IDENTIFYING THE OPTIONS." APRIL 6-8, 2009**

12 *(Charles B. Spearman)*

13 Mr. Spearman stated that he attended the first two of AARC's conferences on the future of the
14 respiratory care profession. He outlined the objectives of the three meetings, discussed the outcome
15 and entertained questions and comments from the Board.

16 **ENFORCEMENT STATISTICS**

17 *(Charles B. Spearman)*

18 Mr. Spearman summarized the Enforcement Statistics and entertained questions from the Board.

19 **NEW ENFORCEMENT MODEL REVIEW**

20 *(Stephanie Nunez)*

21 Ms. Nunez reported that from mid-July through September she was asked by the Assistant Secretary of
22 the State and Consumer Services Agency to participate in creating an enforcement model that produces
23 a swift and fair resolution of complaints to be used by all DCA healing arts boards and bureaus. Ms.
24 Nunez outlined the model and added that DCA has hired an Enforcement Chief who will now be
25 overseeing the project.

26 **2009-10 OUTREACH PLAN**

27 *(Stephanie Nunez)*

28 25-Year Anniversary Lapel Pins

29 Ms. Nunez informed the Board that four lapel pins were designed to be sent to all active licensees in
30 celebration of the Board's 25th anniversary. Each design varies in color and shape. The Board reviewed
31 each and chose the blue/green oval shaped lapel pin.

32 Career Brochure Review (16b.)

33 Ms. Nunez presented the Board with it's new "Inspire to be a Respiratory Therapist" career brochure and
34 explained that, through DCA, we have the flexibility to print in small quantities. The Board's response
35 was positive.

1

General Update (16c.)

2 Ms. Nunez informed the Board that each respiratory care program in California was sent a supply of the
3 booklet entitled Licensure and the Application Process. This booklet was developed by the Board to
4 guide students through the application process. A copy was provided to each member for their
5 reference.

6 Ms. Nunez explained that the Board is in the process of developing a new “Inspire to be a Respiratory
7 Therapist” career website: www.2BeaRespiratoryTherapist.ca.gov which will be a stand alone website
8 but will also link from the current RCB website’s home page.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

9
10 No comments were received at this time.

FUTURE AGENDA ITEMS

11
12 The Board asked that Ms. Nunez provide future updates regarding the Enforcement Model project.

ADJOURNMENT

13
14 The Public Session Meeting was adjourned by President Renner at 4:05 p.m.

15
16 LARRY L. RENNER
17 President

STEPHANIE A. NUNEZ
Executive Officer



CONSUMER PROTECTION ENFORCEMENT INITIATIVE

"A Systematic Solution to a Systemic Problem"

The Department of Consumer Affairs (DCA) is the umbrella agency that oversees 19 healing arts boards that protect and serve California consumers. The healing arts boards regulate a variety of professions from doctors and nurses to physical therapists and optometrists. These licensees are some of the best in the country and provide excellent care to Californians on a daily basis. However, when a licensee violates the laws that govern his or her profession, enforcement action must be taken to protect the public.

In recent years some of DCA's healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner. In fact, some boards take an average of three years to investigate and prosecute these cases; this is an unacceptable timeframe that could put consumers' safety at risk.

DCA reviewed the existing enforcement process and found systemic problems that limit the boards' abilities to investigate and act on these cases in a timely manner. These problems range from legal and procedural challenges to inadequate resources. In response, DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process at the healing arts boards. The CPEI is a systematic approach designed to address three specific areas:

- Administrative Improvements
- Staffing and IT Resources
- Legislative Changes

Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline from 36 months to between 12 and 18 months.

I. Administrative Improvements

During the review of the enforcement process, DCA worked with the boards to identify areas that could be improved administratively to better coordinate broad enforcement objectives, improve the services provided to the healing arts boards, and establish streamlined enforcement processes and procedures that can be used by all boards. The following are some of the efforts that emerged from those discussions:

“365 Project”

DCA’s Division of Investigation (DOI) embarked on a project in 2009 to strategically focus on cases that were one year or older. DOI worked closely with boards to identify the cases upon which they should focus their resources. This project has produced impressive results, and in 2009 the DOI closed 50% more cases than the comparable period in 2008.

Delegation of Subpoena Authority

One of the initial administrative changes implemented by DCA was delegating subpoena authority to each executive officer as a tool to gather evidence and interview witnesses. DCA’s Legal Office conducted subpoena training for board staff, and this authority has started being exercised by boards. We expect to see increased use of subpoenas as a result of this change, and boards will be able to pursue cases that they otherwise would not have pursued.

Process Improvement

DCA and the boards are working to identify best practices for a number of enforcement processes and procedures, such as complaint intake, handling of anonymous complaints, vote by email protocols, and adjudication procedures. This effort will take advantage of the most effective practices utilized by the various boards, and entities in other states, and will ultimately shave time off all aspects of the enforcement process.

Enforcement Academy

DCA’s Strategic Organization, Leadership, & Individual Development Division is developing enhanced training programs for enforcement staff. The enforcement academy will teach investigators and other enforcement staff key skills used in complaint intake, investigation procedures, case management, database use, and other areas. Never before has DCA offered such a comprehensive enforcement training program. An initial training was offered in November 2009, and the full enforcement academy will begin its regular cycle in April 2010.

Deputy Director for Enforcement and Compliance

DCA established an executive level position that reports to the Director and is responsible for regularly examining each board’s enforcement program to monitor enforcement performance and compliance with all applicable requirements. This position monitors performance measures so that boards’ enforcement programs can be continuously assessed for improvement.

Performance Expectations with Other Agencies

DCA has been working with the Attorney General’s Office and the Office of Administrative Hearings (OAH) to establish performance agreements that will expedite the prosecution of cases. DCA and the AG’s Office are developing expectations for filing accusations, setting settlement conferences, and filing continuance requests. Further, DCA is working with OAH to establish timelines for setting cases for hearings, which, once implemented, could reduce a case timeline by months.

II. Enhancing Enforcement Resources

There are 36 licensing entities under the DCA (of which are 19 healing arts boards) and, with a few exceptions, all of these programs share the resources of the Department, from Division of Investigations (DOI), to Personnel to IT Support. While the healing arts boards fall under the umbrella of DCA they are separate semi-autonomous groups overseen by board members appointed by the Governor and the Legislature. Additionally, all of the licensing entities under DCA are special fund agencies funded exclusively through fees collected through licensees with no general fund support.

Enforcement Staff

DCA's review of the enforcement process identified a need for more focused staff resources in the areas of investigations and complaint intake. The majority of DCA's licensing entities share the resources of DCA's overburdened DOI. Annually, DOI's 48 investigative staff members receive over 1,300 cases, in topics ranging from nurses to repossessioners to smog check stations. Having so many investigations performed by DOI has resulted in a number of problems, including loss of control over the investigation by the boards, a lack of investigators with expertise in specific licensing areas, and excessive caseloads. These problems have led to excessive turn-around times and growing backlogs. Through the 365 Project, the DOI has worked with boards to reduce the case backlog, but the current structure has revealed a need for more significant changes.

In order to increase accountability in the investigative process, DCA is working to provide boards with the authority to hire non-sworn investigators to be housed within each board. This will enhance boards' control over investigations, allow for more appropriate workload distribution, and enable investigators to develop expertise. Additionally, to coincide with process improvement efforts, some boards will increase complaint intake staff. DCA is seeking a total of approximately 140 new enforcement positions (full year equivalent) across all healing arts boards. The vast majority of these positions are investigators and investigative supervisors, and the remainder is mostly complaint intake staff. In addition to increasing staffing, DCA will ensure that staff are properly trained, monitored, and assessed so that cases are expedited as quickly as possible.

Because DCA's boards are special fund agencies, new positions will not place a drain on the General Fund and boards will pay for new staff with existing resources or with fee increases where necessary. The number of positions requested is a result of an individual assessment of each board, and assumes workload savings associated with DCA's current process improvement efforts. The Governor's Budget includes the initial phase-in of these positions beginning July 2010.

Create a New Licensing and Enforcement Database

DCA's current licensing and enforcement database systems are antiquated and impede the boards' ability to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. The CPEI relies on advanced workflow capabilities and cross-entity external system communications that the aging system's technology cannot provide.

The implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. DCA intends to procure a Modifiable Commercial Off-The-Shelf (or "MOTS") enterprise licensing and

enforcement case management system. DCA's research has shown various MOTS licensing and enforcement systems exist that can provide intelligent case management to reduce enforcement and licensing turnaround times, detailed performance measurements, increased data quality, advanced configurability, and robust web presences for public self-service.

The Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-11.

III. Statutory Changes: Putting Consumers First

Each board within DCA has a statutory mandate to hold consumer protection as its paramount objective. Over the years, boards' enforcement authorities have been slow to keep up with legal trends and changes in the professions regulated, and due process protections have grown to protect licensees above consumers. DCA believes that now is the time to re-align consumer protection laws so that they place public protection first. In 2010, the DCA will pursue legislation to help boards carry out their critical missions of protecting consumers.

Increased Suspension Authority

One of the most important roles that professional licensing boards do to protect consumers is preventing potentially dangerous individuals from practicing. The CPEI would strengthen the boards' ability to do this in a number of ways, including authorizing the DCA Director to issue an order for a licensee to cease practice or restrict practice, upon the request of a board executive officer. This authority is necessary in the most egregious cases because the standard enforcement process can take a year to complete, at best, and even the expedited process in existing law (interim suspension order) can take months to complete. This proposal would also seek the statutory authority to revoke or deny a license to an individual for acts of sexual misconduct with a patient or conviction as a felony sex offender.

DCA is also seeking automatic suspension authority for licensees who test positive for drugs or alcohol when they are already in a diversion program or on probation for drug or alcohol related practice violations. In such instances, a board has already made a determination that a licensee presents a threat to the public; allowing the licensee to continue practicing would unacceptably place consumers in harm's way. Similarly, DCA believes that practicing under the influence of drugs or alcohol is as much a threat to public safety as driving under the influence. This proposal would make such activity a crime, and would allow law enforcement to quickly intervene when a patient's safety is at risk.

Additionally, the CPEI would provide for the automatic suspension of convicted felons for the duration of their sentence.

Increased Access to Critical Information

The CPEI would make improvements to the information that boards receive, so they can investigate possible violations of law. Specifically, it would prohibit the use of a gag clause in a civil settlement that would prohibit consumers or their legal counsel from filing a complaint with the appropriate board. Regulatory gag clauses are explicitly prohibited in legal malpractice settlements and there have been numerous court decisions that describe a compelling public interest in voiding regulatory gag clauses in other professions. The Center for Public Interest Law notes that the inclusion of gag clauses is an alarmingly pervasive practice that thwarts the ability of boards to carry out their consumer protection mission. The CPEI would also require court officials to report to the healing arts boards convictions and felony charges filed against the boards' licensees, and expand reporting by employers and supervisors regarding individuals who were suspended or terminated for cause.

Adequate access to medical records can shave months off the process to investigate a licensee. Medical records are used by healing arts boards' to determine whether a licensee caused harm to a patient. Any delay in an investigation of a licensee may result in a potentially dangerous licensee continuing to practice. Thus, it is essential that healing arts boards have quick access to medical records. The CPEI gives all of the healing arts boards the authority to inspect and copy, as applicable, any documents and records relevant to an investigation. In cases where a licensee fails

to cooperate with an investigation, the CPEI provides boards with additional authorities to ensure compliance.

Enforcement Process Efficiencies

DCA proposes to remove unnecessary workload and costs from the enforcement process. This can be done by streamlining the appeal process for citations, permitting boards to contract with collection agencies to retrieve unpaid fines and fees, authorizing executive officers to sign default decisions and certain stipulated settlements, and allowing licensees to agree to stipulated settlements before a formal accusation is filed. These are relatively small changes that could result in significant workload savings.

Efficiency and accountability will also be improved by tightening deadlines on boards and establishing deadlines on other state agencies. This proposal would reduce the time allotted for a board to act on the proposed decision from an Administrative Law Judge from 100 days to 45 days. DCA also believes that establishing a deadline for the Department of Justice to notify healing arts boards of arrests and convictions of licensees would greatly improve the board's ability to pursue cases in a timely manner.

Licensing Fees

Lastly, DCA is seeking to tie the maximum licensing fee amounts to the Consumer Price Index to keep up with inflation and ensure the boards have the resources to adequately run their enforcement programs.

FAQs – Consumer Protection Enforcement Initiative (CPEI)

What is the Consumer Protection Enforcement Initiative (CPEI)?

The CPEI is a *comprehensive initiative* the Department of Consumer Affairs (DCA) has launched to overhaul the enforcement process at the healing arts boards it oversees.

Why is the CPEI needed?

The program is needed to enable healing arts boards to more efficiently investigate and prosecute consumer complaints against licensees under their regulation. The *systemic* problems embedded in the enforcement process at some of these boards have pushed the timeline for investigation and prosecution of licensee violation cases to an average of three years.

How will the CPEI streamline the enforcement process?

The CPEI will target three critical ways to reform the enforcement process and ultimately reduce the average timeline from 36 months to between 12 and 18 months. The CPEI will address:

- **Administrative improvements**, such as focusing on cases one year or older, employing better methods for complaint intake, and developing enhanced training for enforcement staff;
- **Increased enforcement resources** that include authorizing boards to hire non-sworn investigators for more effective workload distribution;
- **Pursuit of legislation** to help boards better protect consumers in areas where their enforcement authorities have not kept up with legal trends.

What will the CPEI cost and how will it be funded?

DCA is requesting an additional \$27 million over the next two years in a Budget Change Proposal to the Governor. Because DCA is specially funded through professional licensing fees, the project will not drain the General Fund. Additional funds will come from existing board resources or license fee increases.

Who will benefit from the CPEI and how?

The initiative will benefit California consumers as well as the healing arts boards under DCA that serve them.

- DCA ensures consumer protection as its first priority and as the first priority of its health-related boards. Consumers will have increased confidence in their health professionals when boards can more speedily resolve complaints or exercise the authority to suspend or limit the practice of violators who may pose a potential threat.
 - Consumers can see efforts DCA has already made toward accountability in enforcement. DCA is issuing a regular [Enforcement Progress Report](#) through its Web site. The report provides practical information for consumers, including links to enforcement actions taken against licensees and updates on evolving enforcement reform.
- Healing arts boards will be able to use their staff and resources more effectively in enforcement matters.

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director
December 2009 (Corrected Version)
Corrections shown in red



Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

Janelle Wedge
Acupuncture Board

Paul Riches
Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Lori Hubble
Dental Hygiene Committee of CA

Richard De Cuir
Dental Board of California

Joanne Allen
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Medical Board

Heather Martin
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Mona Maggio
Board of Optometry

Donald Krpan, D.O.
Osteopathic Medical Board/Naturopathic Medicine

Virginia Herold
Board of Pharmacy,

Steve Hartzell
Physical Therapy Board

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

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Board of Registered Nursing

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Respiratory Care Board

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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

Any licensee in a board diversion program or whose license is on probation, who the board has reasonable suspicion has a substance abuse problem shall be required to undergo a clinical diagnostic evaluation at the licensee's expense. The following standards apply to the clinical diagnostic evaluation.

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license to conduct a clinical diagnostic evaluation;
 - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
 - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
 - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
 - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
 - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. His or her license shall be placed on inactive status during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least one (1) month of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

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

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, **who are practicing**, shall be randomly drug tested at least 50 times per year, **and at any time as directed by the board**.
2. Drug testing may be required on any day, including weekends and holidays.
3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.
11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

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

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to **Uniform Standard #1**;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

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

Reporting by the worksite monitor to the board shall be as follows:

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

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance, the board shall:

1. Place the licensee's license on inactive status; and
2. Immediately contact the licensee and instruct the licensee to leave work; and
3. Notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board should reactivate the license.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a “deferred prosecution” stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Inactivation of the license.
 - a) the license is put on inactive status, and
 - b) the licensee must undergo a new clinical diagnostic evaluation, and
 - c) the licensee must test clean for at least a month of continuous drug testing before being allowed to go back to work. (~~and~~)

2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to:

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

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

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

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

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

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

Specimen Collectors:

- a) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- b) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- c) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- d) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- e) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- f) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

- g) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- h) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- i) Must undergo training as specified in Uniform Standard #4 (6).

Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- a) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- b) must be licensed or certified by the state or other nationally certified organization;
- c) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;
- d) shall report any unexcused absence within 24 hours to the board, and,
- e) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

Work Site Monitors:

1. The worksite monitor must meet the following qualifications:
 - a) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
 - b) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional, if no monitor with like practice is available.
 - c) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

- d) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
 - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
 - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
 - c) Review the licensee's work attendance.
 3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
 4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
 - the licensee's name;
 - license number;
 - worksite monitor's name and signature;
 - worksite monitor's license number;
 - worksite location(s);
 - dates licensee had face-to-face contact with monitor;
 - staff interviewed, if applicable;
 - attendance report;
 - any change in behavior and/or personal habits;
 - any indicators that can lead to suspected substance abuse.

Treatment Providers

1. Treatment facility staff and services must have:
 - a) Licensure and/or accreditation by appropriate regulatory agencies;
 - b) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
 - c) Professional staff who are competent and experienced members of the clinical staff;

- d) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
 - e) Means to provide treatment/progress documentation to the provider.
2. The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:
- a) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
 - b) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
 - c) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

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

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

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

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- **Number of patients harmed while in diversion**

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, **or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.**

- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

Senate Bill No. 139

CHAPTER 522

An act to amend Sections 70101, 70106, 70120, 70124, 70125, 78261, 87482, 89267, and 92645 of, and to add Sections 66055.8, 66055.9, 70128.5, 78261.3, and 89267.3 to, the Education Code, and to add Article 5 (commencing with Section 128050) to Chapter 2 of Part 3 of Division 107 of the Health and Safety Code, relating to nursing education.

[Approved by Governor October 12, 2007. Filed with
Secretary of State October 12, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 139, Scott. Nursing education.

(1) The existing Donahoe Higher Education Act sets forth, among other things, the missions and functions of the various segments of postsecondary education in the state. These segments include the California State University, the California Community Colleges, and the various private and independent colleges and universities.

This bill would add to the Donahoe Higher Education Act a provision prohibiting a campus of the California State University or the California Community Colleges that operates a registered nursing program from requiring a student who has been admitted to that registered nursing program and who has already earned a baccalaureate or higher degree from a regionally accredited institution of higher education to complete general education requirements. The bill would instead authorize these segments to require those students to complete only the coursework that is necessary to prepare him or her for licensing as a registered nurse.

The bill would authorize any college, university, or other entity that operates an accredited registered nursing program to require any prospective student to provide criminal record clearance, as defined, prior to enrollment.

(2) Existing law establishes the Student Aid Commission as the primary state agency for the administration of state-authorized student financial aid programs available to students attending all segments of postsecondary education.

Existing law establishes the State Nursing Assumption Program of Loans for Education (SNAPLE), administered by the commission, under which any person enrolled in an institution of postsecondary education and participating in that loan assumption program is eligible to receive a conditional warrant for loan assumption, to be redeemed upon becoming employed as a full-time nursing faculty member at a California college or university.

Existing law establishes a loan assumption program for employees of specified state facilities within the SNAPLE program. This program provides

loan assumption benefits to persons who fulfill agreements to work full time for 4 consecutive years as clinical registered nurses in state-operated 24-hour facilities, as specified, that employ registered nurses and that, at the time the person commences employment at the facility, have a vacancy rate of greater than 10% in clinical registered nursing positions, as reported, pursuant to the bill, to the commission by the Department of Personnel Administration. The program provides for a progressive assumption of the amount of a qualifying loan over 4 consecutive years of qualifying clinical registered nursing service, up to a total loan assumption of \$20,000.

Under existing law, this program becomes inoperative on July 1, 2012, and is repealed on January 1, 2013.

This bill would make a person who has earned a baccalaureate or graduate level degree, and who meets the other requirements of the program, eligible to enter into an agreement for loan assumption under the program. The bill would require that, if a provision is added to the program and the commission deems it necessary to adopt a rule or regulation to implement that provision, the commission develop and adopt that rule or regulation no later than 6 months after the operative date of the statute that adds the provision.

The bill would make a person who is currently employed as a registered nurse in a state-operated 24-hour facility ineligible to enter into an agreement for loan assumption under this program. The bill would also specify that, in any fiscal year, the commission shall award no more than the number of warrants that are authorized by the Governor and the Legislature in the annual Budget Act for that year for the assumption of loans pursuant to the program.

(3) Existing law authorizes the Board of Governors of the California Community Colleges and the Chancellor of the California Community Colleges to award grants to community college districts with associate degree nursing programs to expand enrollment, reduce program attrition, or both. Under this provision, funds may be used for, among other purposes, the providing of diagnostic assessments.

This bill would provide that the board of governors solely, rather than the board of governors and the chancellor, would award these grants. The bill would authorize a community college district, irrespective of whether it participates in the program established by this provision, to use multicriteria screening measures, including any diagnostic assessment tool that is commonly used in registered nursing programs and is approved by the chancellor.

The bill would authorize a community college registered nursing program to use additional multicriteria screening measures if it determines that the number of applicants to that program exceeds its capacity. The bill would prohibit a community college district from excluding an applicant to a registered nursing program on the sole basis that the applicant is not a resident of that district or has not completed prerequisite courses in that district.

(4) Existing law establishes the California State University, under the administration of the Trustees of the California State University, as one of

the segments of public postsecondary education in this state. Existing law provides for the operation of 25 component institutions of the university.

Existing law establishes the University of California, under the administration of the Regents of the University of California, as one of the segments of public postsecondary education in this state. Existing law authorizes the provision of instruction at the 10 component institutions of the university. Existing law expresses legislative intent with respect to the expansion of baccalaureate degree nursing programs of those respective segments.

This bill would express legislative intent that the funding for the baccalaureate degree enrollment expansions referenced in these provisions be funded within the general enrollment growth funding that is traditionally provided to the respective segments during the annual budget process.

The bill would prohibit the California State University from disqualifying or prohibiting a student who possesses a baccalaureate or higher degree from enrolling in, and completing, a baccalaureate degree nursing program on the sole basis of that student's possession of the degree.

(5) Existing law establishes the Office of Statewide Health Planning and Development, which is charged with the administration of health policy and planning. Existing law establishes the California Health Data and Planning Fund, and authorizes moneys from that fund to be appropriated for expenditure for health-related programs of the office.

This bill would provide for the establishment of a health care workforce clearinghouse under the administration of the Office of Statewide Health Planning and Development. The bill would provide that the clearinghouse would serve as the central source of health care workforce and educational data in the state. The bill would provide that the activities of the clearinghouse would be funded by appropriations made from the California Health Data and Planning Fund.

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

SECTION 1. Section 66055.8 is added to the Education Code, to read:

66055.8. Notwithstanding any other provision of law, a campus of the California State University or the California Community Colleges that operates a registered nursing program shall not require a student who has been admitted to that registered nursing program and who has already earned a baccalaureate or higher degree from a regionally accredited institution of higher education to complete general education requirements, but rather shall require that student to complete only the coursework that is necessary to prepare him or her for licensing as a registered nurse.

SEC. 2. Section 66055.9 is added to the Education Code, to read:

66055.9. Notwithstanding any other provision of law, any college, university, or other entity that operates an accredited registered nursing program may require any prospective student to provide criminal record

clearance within the meaning of Section 1265.5 of the Health and Safety Code prior to enrollment.

SEC. 3. Section 70101 of the Education Code is amended to read:

70101. (a) Program participants shall meet all of the following eligibility criteria prior to selection into the program, and shall continue to meet these criteria, as appropriate, during the payment periods:

(1) The participant shall be a United States citizen or eligible noncitizen.

(2) The participant shall be a California resident attending, or having earned a baccalaureate or graduate level degree from, an eligible school or college.

(3) The participant shall be making satisfactory academic progress.

(4) The participant shall have complied with United States Selective Service requirements.

(5) The participant shall not owe a refund on any state or federal educational grant or have delinquent or defaulted student loans.

(b) Any person who has enrolled in, or graduated from, an institution of postsecondary education, and who is participating in the loan assumption program set forth in this article, may be eligible to receive a conditional warrant for loan assumption, to be redeemed pursuant to this chapter upon becoming employed as a full-time nursing faculty member at a California college or university or the equivalent of full-time service as a nursing faculty member employed part time at one or more California colleges or universities.

(c) (1) The commission shall award loan assumption agreements to undergraduate students with demonstrated academic ability and financial need, as determined by the commission pursuant to Article 1.5 (commencing with Section 69503) of Chapter 2, and to graduate students with demonstrated academic ability.

(2) The applicant shall have completed a baccalaureate level or graduate level degree program or be enrolled in an academic program leading to a baccalaureate level or a graduate level degree.

(3) The applicant shall be currently enrolled in, admitted to, or have successfully completed, a program in which he or she will be enrolled on at least a half-time basis each academic term as defined by an eligible institution. The applicant shall agree to maintain satisfactory academic progress.

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

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(5) The applicant shall have received, or be approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

(B) The Federal Direct Loan Program.

(C) Any loan program approved by the commission.

(6) The applicant shall have agreed to teach nursing on a full-time basis at one or more accredited California colleges or universities for at least three years, or on a part-time basis for the equivalent of three full-time academic years, commencing not more than 12 months after obtaining an academic degree, unless the applicant, within 12 months after obtaining the academic degree, enrolls in an academic degree program leading to a more advanced degree in nursing or a field related to nursing.

(7) An applicant who teaches on less than a full-time basis may participate in the program, but is not eligible for loan repayment until that person teaches for the equivalent of a full-time academic year.

(d) A person participating in the program pursuant to this section shall not receive more than one loan assumption agreement, and shall not be eligible to receive a grant pursuant to Article 3.51 (commencing with Section 78260) of Chapter 2 of Part 48.

SEC. 4. Section 70106 of the Education Code is amended to read:

70106. (a) The commission shall administer this article, and shall adopt rules and regulations for that purpose. The rules and regulations shall include, but need not be limited to, provisions regarding the period of time for which a warrant shall remain valid and the development of projections for funding purposes. In developing these rules and regulations, the commission shall solicit the advice of representatives from postsecondary education institutions, the Office of Statewide Health Planning and Development, and the nursing community.

(b) If a provision is added to this article and the commission deems it necessary to adopt a rule or regulation to implement that section, the commission shall develop and adopt that rule or regulation no later than six months after the operative date of the statute that adds the provision.

SEC. 5. Section 70120 of the Education Code is amended to read:

70120. (a) (1) Any person enrolled in an eligible institution, or any person who agrees to work full time as a registered nurse in a state-operated 24-hour facility that employs registered nurses, may be eligible to enter into an agreement for loan assumption, to be redeemed pursuant to Section 70122 upon becoming employed as a clinical registered nurse in a state-operated 24-hour facility that employs registered nurses and that has a clinical registered nurse vacancy rate of greater than 10 percent as reported annually to the commission by the Department of Personnel Administration pursuant to Section 70121. In order to be eligible to enter into an agreement for loan assumption, an applicant shall satisfy all of the conditions specified in subdivision (b).

(2) As used in this article, “eligible institution” means a postsecondary institution that is determined by the Student Aid Commission to meet both of the following requirements:

(A) The institution is eligible to participate in state and federal financial aid programs.

(B) The institution maintains an accredited program of professional preparation for licensing as a registered nurse in California.

(3) As used in this article, “state-operated 24-hour facility” includes, but is not necessarily limited to, a state-operated prison, psychiatric hospital, or veterans’ home.

(b) (1) The applicant has been admitted to, or is enrolled in, or has successfully completed an accredited program of professional preparation for licensing as a registered nurse in California. However, a person who is currently employed as a registered nurse in a state-operated 24-hour facility may be eligible to enter into an agreement for loan assumption under Article 1 (commencing with Section 70100), but is not eligible to enter into an agreement for loan assumption under this article.

(2) The applicant is currently enrolled, or has been admitted to a program in which he or she will be enrolled, on a full-time basis, as determined by the participating institution. The applicant shall agree to maintain satisfactory academic progress and a minimum of full-time enrollment, as defined by the participating eligible institution.

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

- (A) Grade point average.
- (B) Test scores.
- (C) Faculty evaluations.
- (D) Interviews.
- (E) Other recommendations.

(4) The applicant has received, or is approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (20 U.S.C. Sec. 1071 et seq.).

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

(5) The applicant has agreed to work full time for at least four consecutive years as a clinical registered nurse in a state-operated 24-hour facility that employs registered nurses and that has a clinical registered nurse vacancy rate of greater than 10 percent as reported annually to the commission by the Department of Personnel Administration.

(c) No applicant who has completed fewer than 60 semester units, or the equivalent, shall be eligible under this section to participate in the loan assumption program set forth in this article.

(d) An agreement shall remain valid even if the state-operated facility at which the applicant is employed ceases to be listed pursuant to Section 70121 after the applicant is employed there.

(e) A person participating in the program pursuant to this section shall not enter into more than one agreement.

SEC. 6. Section 70124 of the Education Code is amended to read:

70124. (a) Except as provided in subdivision (b), if a program participant fails to complete a minimum of four consecutive years of full-time employment as required by this article, under the terms of the agreement pursuant to paragraph (5) of subdivision (b) of Section 70120, the participant shall assume full liability for all student loan obligations remaining after the commission's assumption of loan liability for the last year of qualifying clinical registered nursing service pursuant to Section 70123.

(b) Notwithstanding subdivision (a), if a program participant becomes unable to complete one of the four consecutive years of qualifying clinical registered nursing service due to serious illness, pregnancy, or other natural causes, the term of the loan assumption agreement shall be extended for a period not to exceed one year. The commission shall make no further payments under the loan assumption agreement until the applicable work requirements as specified in Section 70122 have been satisfied.

(c) If a natural disaster prevents a program participant from completing one of the required years of work due to the interruption of employment at the employing state facility, the term of the loan assumption agreement shall be extended for the period of time equal to the period from the interruption of employment at the employing state facility to the resumption of employment. The commission shall make no further payments under the loan assumption agreement until the applicable employment requirements specified in Section 70123 have been satisfied.

SEC. 7. Section 70125 of the Education Code is amended to read:

70125. (a) The commission shall administer this article, and shall adopt rules and regulations for that purpose. The rules and regulations shall include, but need not be limited to, provisions regarding the period of time during which an agreement shall remain valid, the reallocation of resources in light of agreements that are not utilized by program participants, the failure, for any reason, of a program participant to complete a minimum of four consecutive years of qualifying clinical registered nursing service, and the development of projections for funding purposes.

(b) If a provision is added to this article and the commission deems it necessary to adopt a rule or regulation to implement that provision, the commission shall develop and adopt that rule or regulation no later than six months after the operative date of the statute that adds the provision.

SEC. 8. Section 70128.5 is added to the Education Code, to read:

70128.5. Notwithstanding any other provision of law, in any fiscal year, the commission shall award no more than the number of warrants that are authorized by the Governor and the Legislature in the annual Budget Act for that year for the assumption of loans pursuant to this article.

SEC. 9. Section 78261 of the Education Code is amended to read:

78261. (a) The Legislature finds and declares both of the following:

(1) The Legislature intends to facilitate both the expansion of associate degree nursing programs and the improvement in completion rates in those programs.

(2) The Legislature also intends that community colleges employ nationally recognized diagnostic assessment tools that are aligned with

national nursing licensure requirements. Both students and the state benefit when diagnostic assessments are supplemented with educational opportunities to assist students in meeting skill levels.

(b) It is the intent of the Legislature to create a Nursing Enrollment Growth and Retention program in the Chancellor's Office of the California Community Colleges. The purpose of this program shall be to provide grants to community college associate degree of nursing programs that meet either of the following conditions:

(1) The nursing program has low or moderate program attrition levels.

(2) The nursing program provides a comprehensive program of diagnostic assessment, prenursing preparation, and program-based support to students.

(c) (1) It is the intent of the Legislature that this program shall be funded, beginning in the 2006–07 fiscal year, by a redirection of the ten million dollars (\$10,000,000) provided annually pursuant to the Budget Act of 2005, along with an additional investment of two million eight hundred eighty-six thousand dollars (\$2,886,000) annually, for a total program budget of twelve million eight hundred eighty-six thousand dollars (\$12,886,000) annually. Unencumbered funds that were appropriated in the Budget Act of 2005 may be used for capacity building and equipment in the 2006–07 fiscal year.

(2) Up to 3 percent of the funds appropriated for this program may be used for statewide administration, program development, program evaluation, and program accountability. As used in this paragraph, "program development" includes, but is not necessarily limited to, activities related to partnerships or collaborations between community colleges and institutions of higher education offering baccalaureate degrees in order to increase the number of students completing bachelor of the science of nursing (BSN), master of the science of nursing (MSN), and master's entry programs in nursing (MEPN) courses of study.

(d) The Board of Governors of the California Community Colleges may award grants to community college districts with associate degree nursing programs to expand enrollment, reduce program attrition, or both. Funds shall be used only for the following purposes: expanding enrollment, providing diagnostic assessments, and offering preentry coursework to prospective nursing students and diagnostic assessments and supportive services to enrolled nursing students. For purposes of this section, supportive services include, but are not necessarily limited to, tutoring, case management, mentoring, and counseling services. Funds may also be used to develop alternative delivery models such as part-time, evening, weekend, and summer program offerings. In order to qualify for these funds, a community college associate degree nursing program shall do either of the following:

(1) Have a program attrition rate, as determined by the Board of Registered Nursing's Annual School Report or the Information Program Data System of the Chancellor's Office of the California Community Colleges, of 15 percent or less for the year prior to application for funding.

(2) Commit to implement a comprehensive program of diagnostic assessment, prenursing enrollment preparation, and program-based support to enrolled students, as defined in this article.

(e) Notwithstanding Section 78213 or any other provision of law, prior to awarding any funds to be used for reducing program attrition, the chancellor's office shall do all of the following:

(1) Identify, in collaboration with community college associate degree nursing programs, nationally recognized diagnostic assessment tools that determine the likelihood of academic success in community college registered nursing education programs.

(2) Establish, in collaboration with community college associate degree nursing programs, the systemwide proficiency level necessary for academic success for each diagnostic assessment tool.

(3) Define the kinds of educational and support services that qualify for funding under this program.

(f) As a condition of receiving grants under paragraph (2) of subdivision (d), a community college district shall, at a minimum, do all of the following:

(1) Utilize diagnostic assessment tools prior to enrollment to determine readiness for community college associate degree nursing programs.

(2) Offer, or identify, educational preentry coursework, including, but not necessarily limited to, tutorials, instructional resources, or noncredit instruction, aligned to the entry level nursing standards and curriculum for students who fail to demonstrate readiness based upon the diagnostic assessment tools.

(3) Provide access to prenursing coursework for all students who do not demonstrate readiness based upon the diagnostic assessment tools.

(4) Require that students demonstrate readiness through the diagnostic assessment or successful completion of the prenursing coursework specified above prior to commencing the registered nursing program.

(5) Ensure that students that participate in educational preentry coursework in order to demonstrate readiness based upon the diagnostic assessment tools are not disadvantaged in the program enrollment process.

(g) As a condition of receiving grant funds pursuant to paragraph (2) of subdivision (d), each recipient district shall report to the chancellor's office the following data for the academic year on or before a date determined by the chancellor's office:

(1) The number of students enrolled in the nursing program.

(2) The number of students taking diagnostic assessments.

(3) The number of students failing to meet proficiency levels as determined by diagnostic assessment tools.

(4) The number of students failing to meet proficiency levels that undertake preentry preparation classes.

(5) The number of students who successfully complete preentry preparation coursework.

(6) The average number of months between initial diagnostic assessment, demonstration of readiness, and enrollment in the nursing program for

students failing to meet proficiency standards on the initial diagnostic assessment.

(7) The average number of months between diagnostic assessment and program enrollment for students meeting proficiency standards on the initial diagnostic assessment.

(8) The number of students who completed the associate degree nursing program and the number of students who pass the National Council Licensure Examination (NCLEX).

(h) (1) Data reported to the chancellor under this article shall be disaggregated by age, gender, ethnicity, and language spoken at home.

(2) The chancellor's office shall compile and provide this information to the Legislature and the Governor by March 1 of each year.

(i) It is the intent of the Legislature that, pursuant to funding to be provided in the annual Budget Act, in the 2009–10 academic year, the California Community Colleges should increase the statewide enrollment of full-time equivalent registered nursing students by 450 and, beginning in the 2010–11 academic year and continuing each academic year thereafter, add 900 new full-time equivalent registered nursing students.

SEC. 10. Section 78261.3 is added to the Education Code, to read:

78261.3. Notwithstanding any other provision of law:

(a) Any community college district, irrespective of whether it participates in the program established by this article, may use any diagnostic assessment tool that is commonly used in registered nursing programs and is approved by the chancellor.

(b) If, after using an approved diagnostic assessment tool, a community college registered nursing program determines that the number of applicants to that program exceeds its capacity, the program is authorized to use additional multicriteria screening measures. This subdivision does not prohibit or prevent a community college registered nursing program from using an approved diagnostic assessment tool before or during a multicriteria screening process.

(c) A community college district may not exclude an applicant to a registered nursing program on the sole basis that the applicant is not a resident of that district or has not completed prerequisite courses in that district.

SEC. 11. Section 87482 of the Education Code is amended to read:

87482. (a) (1) Notwithstanding Section 87480, the governing board of a community college district may employ any qualified individual as a temporary faculty member for a complete school year but not less than a complete semester or quarter during a school year. The employment of those persons shall be based upon the need for additional faculty during a particular semester or quarter because of the higher enrollment of students during that semester or quarter as compared to the other semester or quarter in the academic year, or because a faculty member has been granted leave for a semester, quarter, or year, or is experiencing long-term illness, and shall be limited, in number of persons so employed, to that need, as determined by the governing board.

(2) Employment of a person under this subdivision may be pursuant to contract fixing a salary for the entire semester or quarter.

(b) No person, other than a person serving as clinical nursing faculty and exempted from this subdivision pursuant to paragraph (1) of subdivision (c), shall be employed by any one district under this section for more than two semesters or three quarters within any period of three consecutive years.

(c) (1) Notwithstanding subdivision (b), a person serving as full-time clinical nursing faculty or as part-time clinical nursing faculty teaching 60 percent or more of the hours per week considered a full-time assignment for regular employees may be employed by any one district under this section for up to four semesters or six quarters within any period of three consecutive academic years between July 1, 2007, and June 30, 2014, inclusive.

(2) A district that employs faculty pursuant to this subdivision shall provide data to the chancellor's office as to how many faculty members were hired under this subdivision, and what the ratio of full-time to part-time faculty was for each of the three academic years prior to the hiring of faculty under this subdivision and for each academic year for which faculty is hired under this subdivision. This data shall be submitted, in writing, to the chancellor's office on or before June 30, 2012.

(3) The chancellor shall report, in writing, to the Legislature and the Governor on or before September 30, 2012, in accordance with data received pursuant to paragraph (2), how many districts hired faculty under this subdivision, how many faculty members were hired under this subdivision, and what the ratio of full-time to part-time faculty was for these districts in each of the three academic years prior to the operation of this subdivision and for each academic year for which faculty is hired under this subdivision.

(4) A district may not employ a person pursuant to this subdivision if the hiring of that person results in an increase in the ratio of part-time to full-time nursing faculty in that district.

SEC. 12. Section 89267 of the Education Code is amended to read:

89267. It is the intent of the Legislature:

(a) That, pursuant to funding to be appropriated in the Budget Act of 2007, the trustees should increase, by at least 340, the number of full-time equivalent students in baccalaureate degree nursing programs, beginning in the 2007–08 fiscal year.

(b) That the trustees provide a report to the Governor and the Legislature on or before March 15, 2007, on the proposed expenditure plans to expand nursing programs to enroll an additional 340 full-time equivalent students as a result of the funds appropriated in the Budget Act of 2007.

(c) To support the expansion of future baccalaureate degree nursing enrollment with annual appropriations in the State Budget Act.

(d) That the funding for the baccalaureate degree enrollment expansions referenced in this section be funded within the general enrollment growth funding that is traditionally provided to the California State University during the annual state budget process.

(e) To encourage the university, in providing programs under this article, to establish partnerships or collaborations with community colleges to

facilitate the education of students in bachelor of the science of nursing (BSN) or entry-level master's nursing programs.

SEC. 13. Section 89267.3 is added to the Education Code, to read:

89267.3. The California State University may establish priorities for admission to baccalaureate degree nursing programs, but it shall not disqualify or prohibit any student who possesses a baccalaureate or higher degree from enrolling in, and completing, a baccalaureate degree nursing program on the sole basis of that student's possession of the degree.

SEC. 14. Section 92645 of the Education Code is amended to read:

92645. It is the intent of the Legislature that all of the following occur:

(a) That, pursuant to funding to be appropriated in the Budget Act of 2007, the Regents of the University of California should offer at least 175 full-time equivalent students in baccalaureate degree nursing programs, at least 140 state-supported full-time equivalent students in accelerated master's level nursing programs, including entry-level master's programs and entry-level master's clinical programs, at least 41 full-time equivalent associate degree nursing (ADN) transitional to bachelor's of science of nursing (BSN) and full-time equivalent master of science of nursing (MSN) students, and at least 40 full-time equivalent students in traditional master of science in nursing (MSN) degree programs by the 2007–08 academic year.

(b) That the regents provide a report to the Governor and the Legislature on or before March 15, 2007, on the proposed expenditure plans to expand nursing programs to enroll the additional students identified in subdivision (a).

(c) That the expansion of future baccalaureate, accelerated master's degree, ADN transitional to BSN and MSN degrees, and traditional MSN degree nursing enrollment be supported with appropriations in the annual Budget Act.

(d) That the funding for the baccalaureate degree enrollment expansions referenced in this section be funded within the general enrollment growth funding that is traditionally provided to the University of California during the annual state budget process.

SEC. 15. Article 5 (commencing with Section 128050) is added to Chapter 2 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 5. Health Care Workforce Clearinghouse

128050. The Office of Statewide Health Planning and Development shall establish a health care workforce clearinghouse to serve as the central source of health care workforce and educational data in the state. The clearinghouse shall be responsible for the collection, analysis, and distribution of information on the educational and employment trends for health care occupations in the state. The activities of the clearinghouse shall be funded by appropriations made from the California Health Data and Planning Fund in accordance with subdivision (h) of Section 127280.

128051. The Office of Statewide Health Planning and Development shall work with the Employment Development Department's Labor Market Information Division, state licensing boards, and state higher education entities to collect, to the extent available, all of the following data:

- (a) The current supply of health care workers, by specialty.
- (b) The geographical distribution of health care workers, by specialty.
- (c) The diversity of the health care workforce, by specialty, including, but not necessarily limited to, data on race, ethnicity, and languages spoken.
- (d) The current and forecasted demand for health care workers, by specialty.
- (e) The educational capacity to produce trained, certified, and licensed health care workers, by specialty and by geographical distribution, including, but not necessarily limited to, the number of educational slots, the number of enrollments, the attrition rate, and wait time to enter the program of study.

128052. The Office of Statewide Health Planning and Development shall prepare an annual report to the Legislature that does all of the following:

- (a) Identifies education and employment trends in the health care profession.
- (b) Reports on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas.
- (c) Recommends state policy needed to address issues of workforce shortage and distribution.

CALIFORNIA LICENSED RCPs HOLDING CRT/RRT CREDENTIALS

Assumptions Based on All RCP Licenses Ever Issued and Current and Active NBRC Credentials in California**										
	<u>10/15/2005</u>		<u>5/10/2006</u>		<u>7/31/2007</u>		<u>8/31/2008</u>		<u>8/31/2009</u>	
	No.	%	No.	%	No.	%	No.	%	No.	%
California RCP Licenses Issued	24,740	100%	25,150	100%	26,461	100%	27,856	100%	29,131	100%
RRT Credentials Issued	7,555	30.5%	7,676	30.5%	8,194	31.0%	6,292	22.6%	7,282	25.0%
CRT Credentials Issued*	11,272	45.6%	11,354	45.1%	12,373	46.8%	13,663	49.0%	15,047	51.7%
Subtotal	18,827	76.1%	19,030	75.7%	20,567	77.7%	19,955	71.6%	22,329	76.7%
Non Credentialed	5,913	23.9%	6,120	24.3%	5,894	22.3%	7,901	28.4%	6,802	23.3%
Total	24,740	100%	25,150	100%	26,461	100%	27,856	100%	29,131	100%

Actual Figures Based on Cross Comparison of Names of Active Licensees and Active NBRC Credentials in California**							
	No Earlier Data Available	<u>7/31/2007</u>		<u>8/31/2008</u>		<u>8/31/2009</u>	
		No.	%	No.	%	No.	%
Active Licensees	No Earlier Data Available	16,368	100%	16,003	100%	16,576	100%
RRT Credentials Issued		5,500	33.60%	4,891	30.56%	5,601	33.79%
CRT Credentials Issued*		6,559	40.07%	4,910	30.68%	5,015	30.25%
Subtotal		12,059	73.67%	9,801	61.24%	10,616	64.04%
Non Credentialed		4,309	26.33%	6,202	38.76%	5,960	35.96%
Total		16,368	100.00%	16,003	100.00%	16,576	100.00%

* The actual number of CRT credentials issued is the figure shown PLUS the number of RRT credentials issued for each year. The CRT credential is represented in this manner to help narrow and identify licensees holding the highest level of credential.

held in California in accordance with the NBRC's policy change requiring recertification for those credentials issued after July 1, 2002.

D R A F T
Respiratory Care Board of California
2010 Enforcement Improvement Plan
(Prepared January 25, 2010)

PURPOSE

On December 16, 2009, at the Department of Consumer Affairs (DCA) quarterly Executive Leadership Forum, Paul Riches, Deputy Director requested all executive officers submit an Enforcement Improvement Plan. Specifically, the plan is to address improvements that will be made in enforcement programs over the next twelve months without any additional resources. The deadline given to submit the plan was on or about February 8, 2010.

On January 4, 2010, Mr. Riches requested that the plans also include:

- A review of existing complaints to identify if any may be expedited by using Administrative Subpoenas issued under the Director's authority.
- Plans to implement the Uniform Standards adopted by the Substance Abuse Coordination Committee to the extent possible with existing legal authority by July 1, 2010.
- Plans to make regulation changes required to implement the Uniform Standards.

BACKGROUND

The Respiratory Care Board of California (RCB) was created in 1982 and began licensing respiratory care practitioners (RCPs) in 1985. To date, the RCB has licensed nearly 30,000 people with approximately 17,000 active licensees. Since its inception, the RCB has continually strived to improve efforts toward consumer protection, while at the same time increase efficiency in its operations. Following are key milestones of the RCB's enforcement program.

1985 Criminal Background Checks

Since inception of the RCB, it has required both State and Federal criminal background checks prior to licensure.

c. 1994 Conviction Statement on Renewal Form

The RCB added the "conviction statement" to its renewal form. Each licensee is required to report convictions as part of his/her application for renewal.

c. 1999 In-House Desk Investigations

The RCB first attempted to conduct its own desk investigations (paper cases). The RCB previously used the investigative services of the Medical Board of California (1985-1996) and the Division of Investigation (1997-2001). However, quality, case turn-around time, and costs were unacceptable and prompted the RCB to attempt its own desk investigations. Prior to 2000, nearly all of the complaints received by the RCB came in the form of rap sheets, which mostly entailed recovering official criminal records to proceed with prosecution.

1998 In-House Probation Program Established

The RCB established its own probation program in 1998. Standard and specialty terms and conditions were revised to eliminate loopholes and new positions were established. Probationers were expected to meet each and every term and condition and were held accountable. Work schedules were required and staff would drop in unannounced at their work sites and collect witnessed urine specimens. The RCB noted a significant increase in positive drug tests. RCB staff worked diligently with the Office of the Attorney General to see that all violations of probation would be pursued. The RCB reduced its expenses slightly, but more importantly, the probation program had established quality and integrity in monitoring probationers. The Council on Licensure, Enforcement and Regulation (CLEAR) later recognized the RCB's probation program and honored them with the program of the year.

1999 Mandatory Reporting Established by Law

As a result of the infamous "Angel of Death" case, mandatory reporting was established, though it took several years to publicize. Employers are required to report suspensions and terminations in certain instances and licensees are required to report any known violation.

c. 2000 National Data Bank Reporting

The RCB began reporting all disciplinary actions to the Healthcare Integrity and Protection Data Bank, a national health care fraud and abuse data collection center. The data bank contains adverse actions against health care providers, suppliers, and practitioners.

2001 Additional Authority to Obtain Records

The RCB amended its law to give staff more access and authority to retrieve records as part of an investigation. This legislative amendment increased the number of records that were provided to the RCB, without the use of a subpoena, as part of an investigation.

c. 2002 Mandatory Complaints Filed & Subpoena Authority Pursued

Mandatory complaints began to filter in after much publicity in the respiratory care arena. These types of complaints required staff to become well versed in rules to acquire evidence concerning patient records. The RCB also developed guidelines and processes to recruit qualified experts. From time to time the investigations of these complaints require the issuance of subpoenas. Transferring these cases to an investigative agency for the sole purpose to issue a subpoena resulted in 3-9 months wait time. While, this was only needed for a handful of cases, the RCB has found this wait time unacceptable. It wasn't until September 2009, that the newly appointed DCA director, Brian Stiger, agreed to grant boards this authority upon the completion of training.

c. 2002 In-House Case Guidelines Established

The RCB established "In-House Review and Penalty Determination" guidelines to address a large majority of the types of complaints received. The guidelines help provide consistency in the discipline imposed and prioritize the cases that should be referred to the Office of the Attorney General for formal discipline. The guidelines are also a valuable tool to prospective students, applicants, and licensees in understanding the possible consequences for their actions.

c. 2002 Citation and Fine Program Expanded

In concert with the establishment of the In-House Review and Penalty Determination guidelines, the RCB expanded its citation and fine program to provide an alternative “penalty” to formal discipline for various violations. A citation allows the RCB to establish a public record for consumer and employer awareness, as well as for use if any future violations were to occur. This measure provided greater efficiency and ensured the availability of funds to prosecute high priority complaints.

c. 2002 Unlicensed Practice Explored

As recommended by the Joint Legislative Sunset Review Committee, the RCB began exploring the unlicensed practice of respiratory care that it believed was occurring most predominately in subacute units, sleep labs and in connection with home medical device companies.

c. 2003 Contractual Drug Screening Services

The RCB contracted for services to perform random drug screenings. Drug tests were performed more often and an increase in positive drug tests came about. Productivity was significantly increased and there was a substantial savings in staff and travel expenditures.

c. 2002 Electronic Member Voting

Prior to 2002, disciplinary cases forwarded to members for vote, required making nine copies of usually large documents, and preparing and mailing them to members. In 2002, staff began to e-mail members the documents which resulted in a savings of staff time and reduced the turn around time from 30 to 14 days.

c. 2003 Cost Recovery Database/Invoicing Established

The RCB established its own cost recovery database with regular monthly invoices. In nearly every decision, the respondent is ordered to repay the RCB for its actual costs. In those cases where licenses are revoked or surrendered, respondents rarely make an effort to repay the RCB. In other cases where licenses were disciplined but remained valid, some delay payment. Until 2003, the RCB had tracked payments manually and never invoiced respondents. In 2003, RCB staff created a database providing for automated monthly invoicing and tracking. The effort was successful in increasing the collection of outstanding costs, as well as providing for greater efficiency and record management. The database was later used to collect all outstanding fines as well.

2004 Contractual Collection Agency Services

In 2003, the RCB sought and gained legislative authority to release information for the purposes of contracting with a collection agency. In 2004, the RCB implemented its contract with a Collection Agency to collect outstanding cost recovery/fines. The RCB has recouped approximately \$150,000 dollars over the last 5+ years. This is approximately 10-15% of the total outstanding costs that were never going to be recouped and is significant when added to our own recovery efforts, and that of the Intercept Program administered by the Franchise Tax Board.

2005 E-Mail Subscriber List Added to Website

The RCB established an E-Mail Subscriber List on its website - an opportunity lent to all boards by DCA. Interested parties may provide their e-mail address through the RCB’s website to receive announcements from the RCB. Every week the RCB issues one e-mail identifying final decisions ordered and it routinely uses the system to notify parties of upcoming RCB meetings or big news items.

2001-05 RCB Reductions

The RCB was able to dramatically reduce its workforce and expenditures through re-engineering its processes. The RCB reduced its number of PYs from 24.5 to 17.5 PYs. The RCB also reduced its budget by 20% in three years from nearly \$3.1 million in FY 01/02 to less than \$2.5 million in FY 04/05. Reductions were made despite increases in personnel salaries and benefits, Office of the Attorney General rates (which nearly doubled during this time), and other augmentations made outside the RCB's control.

2006 Law and Professional Ethics Course

The RCB implemented its requirement for applicants and licensees to take a new Law and Professional Ethics course at the time of licensure and with every other renewal. The RCB previously gained legislative authority allowing only the state and national associations to provide the course with the approval of the RCB. One third of this course is dedicated to familiarizing licensees with the Respiratory Care Practice Act.

c. 2006 Authority to Cite and Fine Unlicensed Practice

The RCB gained legislative authority to cite and fine unqualified and/or unlicensed persons (and their employers) for misrepresentation or the unlicensed practice of respiratory care.

c. 2005 Unlicensed Practice Complaints

The review of unlicensed practice in subacute facilities, sleep labs and in home care unveiled several unlicensed practice complaints. These types of complaints require yet another type of investigation, probably the most difficult, in ascertaining evidence and coordinating expert guidance and review. Prior to 2001, nearly all complaints received by the RCB were in the form of a rap sheet. New mandatory reporting and unlicensed practice complaints received led to the evolution of the RCB's enforcement program and by 2009, made up a significant portion of the complaints received.

2006 Disciplinary Pleadings/Decisions Posted on Website

In the RCB's efforts to provide as much public disclosure as possible, it supplemented its newsletter and summary sheet on the disciplinary actions, by posting all pleadings and decisions on its website.

2007 RCB Workforce Study Published

In 2006, the RCB contracted the services of the Institute for Social Research of the California State University, Sacramento, to conduct a study to forecast the state's respiratory care practitioner workforce needs. Separately, in 2007, legislation was introduced and chaptered (SB 139) to establish a health care workforce clearinghouse under the administration of the Office of Statewide Health Planning and Development. The clearinghouse is to serve as the central source of health care workforce and educational data in the state. The RCB's Workforce Study that was published in 2007, has been instrumental in assisting the RCB to make decisions concerning the workforce, as well as assisting the Office of Statewide Health Planning and Development in establishing its own method to collect data for all healthcare workers.

2007 Regulations Promulgated to Address Unlicensed Practice in Home Care

In 2007, the RCB established regulations that clearly delineate what tasks unlicensed and licensed persons may perform in the home. These regulations were sent to all Home Medical Device Retailers [licensed by the California Department of Public Health (CDPH)]. The regulations provide clear grounds for the RCB to pursue the issuance of citations and fines for unlicensed practice and assist in investigations pursued jointly by the CDPH and the RCB.

2008 Disciplinary Pleadings Linked Directly to On-Line License Verification

The RCB took advantage of the DCA's on-line license verification system in or about 2004. This system allowed any person to visit the RCB's website and ascertain whether an individual held a current license and if he or she had any previous discipline. As previously mentioned, the RCB began posting the actual pleadings and decisions to its website in 2006. In 2007, the RCB worked directly with the DCA to link these two sources. In 2008, the RCB was the first board to link all of its disciplinary pleadings and decisions directly to the on-line license verification system.

2008 Non Sworn Senior Investigator Position Established

The RCB established a non sworn investigator *temporary* position in the latter part of 2008. In 2009, the RCB hired a retired investigator to fill this position. The investigator has been primarily used for unlicensed cases, though as a result of many Executive Orders, the RCB has been unable to use this valuable resource.

2009 Interim Suspension Order (ISO) Policy Adopted

The RCB formally adopted its ISO policy in March 2009, prioritizing the most egregious cases that require immediate action.

2009 Probation Database Established

The probation database was created allowing for more effective probation case tracking and automated violation letters.

2009 Polysomnography Technicians (Sleep Techs) Regulation Established

Following the RCB's research and determination to reduce the unlicensed practice of respiratory care occurring in sleep labs, it moved, in 2005, to pursue the regulation of sleep technicians. In 2007, following a well publicized incident where an unlicensed sleep tech was accused of molesting several patients, Senator Jeff Denham agreed to carry the RCB's language. Several legislative bills later, SB 132 (sponsored by the California Society for Respiratory Care, and the California Sleep Society) was signed by the Governor in 2009 and will require registration of polysomnographic (sleep) technicians including criminal background checks and competency requirements. This Polysomnographic Technologists Act will be administered by the Medical Board of California.

EXISTING RESOURCES/BACKLOG

While this “improvement plan” does not rely on any additional resources, it is important to note that existing resources are more scarce today, to address *existing* workload, than they have been since the inception of the RCB in 1982.

The RCB has maximized its existing resources over the last nine years, through re-engineering its processes and procedures (many noted above). The RCB actually reduced its workforce from 25 staff positions to 18 positions from 2001 through 2004, yet continued to effectively absorb additional workload and be proactive in many enforcement and outreach efforts; many that are now being presented in the Consumer Protection Enforcement Initiative (CPEI). The number of new applications has increased steadily over the last nine years from **397** in FY 00/01 to **1360** in FY 08/09 - over *tripling* the workload. The number of applications that have been referred to the Enforcement Program has increased from **63** in FY 00/01 to **270** in FY 08/09. Other complaints received has also nearly doubled from **256** in FY 00/01 to **493** in FY 08/09.

Employee furloughs have crippled the RCB’s personnel resources. In December 2008, the RCB was subject to a Governor’s Executive Order which began furloughing employees two days a month. At this time, RCB staff had the option of using the “furlough days” at their discretion. In July 2009, the furlough days were increased to three days per month and were mandated to be taken the first three Fridays of each month. As a result, the RCB’s workforce has essentially been cut 15% (or equivalent to the loss of 3 of the 18 positions) and workload has suffered. The number of pending enforcement cases has slowly been accumulating as shown below:

Average Number of PENDING Cases by Type

	<u>FY 07/08</u>	<u>FY 08/09</u>	<u>FY 09/10*</u>
Applicant Cases (Criminal Background)	113	124	132
Subsequent Rap Sheets for Licensees	121	115	158
Consumer Complaints	22	29	29
Mandatory Complaints (from Employers)	15	46	80
Citations/Unlicensed Practice by RCPs	25	29	44

* As of January 2010

In the latter part of FY 08/09, the number of mandatory reporting complaints received, began to climb. These types of complaints require significant resources to investigate and prosecute. The number of mandatory complaints received has risen from one-two a month to six-ten a month and have remained relatively steady, inferring a new trend. The RCB currently has 80 of these types of complaints pending compared to 15 at the end of FY 07/08 and 46 at the end of FY 08/09.

The RCB also had a high level staff member participating on the Department’s Best Practices Committee since 2008. This Committee has also been instrumental in the progression of the Department’s Consumer Protection Enforcement Initiative (CPEI) over the last several months. Unfortunately, due to the need to pool our resources, it was necessary to pull this staff member from this committee in November, 2009.

In the latter half of 2009, significant personnel resources were dedicated to numerous budget drills and the DCA’s CPEI. This coupled with the mandatory furloughs has drained the RCB’s workforce dedicated to investigating and processing complaints.

A new Executive Order released in January 2010, requires state agencies to cut an additional 5% from its salaries and wages budget. As a result, the RCB is forced to keep vacant, a permanent position and two additional temporary positions it was in the process of filling to address the enforcement backlog.

IMPROVEMENT PLAN

In order for the RCB to aggressively pursue and implement many of the objectives outlined in the CPEI, and carry out its mandate, with consumer protection being its highest priority, it will be necessary to make major shifts in personnel resources. Goals and objectives outlined in the RCB's latest Strategic Plan that do not meet the highest standard for consumer protection must be modified or delayed, in order to provide sufficient resources to the CPEI and the RCB's enforcement program.

Enforcement Backlog

First and foremost, the RCB's improvement plan must address the backlog of higher priority enforcement cases. In order to do this, we must evaluate the strengths of existing staff and reassign duties accordingly. It is imperative those staff members with enforcement expertise begin working on the backlog of the most difficult complaints. The RCB may also use the services of the Division of Investigation, as appropriate. The RCB will need to alter its outreach campaign significantly, reducing it to a website and mailings. Resources that were slated to visit high schools and colleges and attend career fairs, must be redirected to the Enforcement Program. Lower enforcement priorities will likely be delayed, including continuing education audits, the issuance of citations and fines (for less serious violations), and processing applications for licensure. Mandatory Reporting and Consumer complaints will be given the most attention, as well as rap sheets for licensees with serious convictions.

Enforcement Program Training

The RCB will have all enforcement staff (as appropriate) complete the New Enforcement Academy once established by DCA. Managers are slated to attend in the Spring and other staff in the Fall.

Non Sworn Investigator Class

The DCA, in concert with the Department of Personnel Administration, has recently put in place a process allowing boards to use the Non-Sworn Special Investigator series classifications. The RCB is in the process of reclassing its existing vacancy to a Non-Sworn Special Investigator. The position will be ready to fill once an additional vacancy comes about or the Executive Order is no longer in effect.

Subpoena Authority

The RCB completed the training process to receive subpoena authority and received authorization from DCA today (1/25/10). Over the next several months, the RCB will reevaluate high priority cases to determine if these cases may be expedited using this new authority.

SB 1441 (Substance Abusing Licensees Standards) Implementation

In December 2009, Uniform Standards were established as required by SB 1441 (2008 statutes), to provide some consistency among Healing Arts Boards' and their methods for addressing substance using/abusing licensees. Once the proposed legislative language prepared by DCA is provided to the boards, the RCB will move forward, in consult with its legal counsel, to determine if it needs additional legislative amendments and which regulatory amendments it will need. The RCB hopes to have its regulatory proposal prepared by its May 2010 meeting.

One of the most significant and absolute changes made in SB 1441, was to require each probationer, subject to drug testing, to be tested a minimum of 104 times per year for the first year, and 50 times a year, for each subsequent year (while on probation). The RCB does not need any additional authority to implement this standard. As such, the RCB staff notified the Office of the Attorney General, in January 2010, to inform respondents of these new testing standards, who are considering to settle their enforcement case with probationary terms and conditions. All new probationers will be subject to these new standards. The RCB increased random testing for existing probationers in November 2009, from 8 to 16 times per year, and will continue to increase the number of tests, as appropriate.

National Database Search

The RCB will explore the authority and resources needed to access a national database to determine if disciplinary action has been taken in another state for new and existing licensees. The RCB currently reports disciplinary action to the Healthcare Integrity and Protection Data Bank. It will need to evaluate the cost to access the database, the benefits, and the authority and resources needed to include this as part of its application processes.

Automate Applicant Criminal Background Checks

In January 2010, the RCB began to participate in a DCA initiative, that will enable the DCA's Office of Information Services to establish electronic reporting on criminal background checks from the Department of Justice to the RCB. In the future, we hope DCA will continue with this project to see that subsequent arrests/convictions are reported electronically.

Policies

The RCB will work toward establishing policies for Complaint Level/Priority, Anonymous Complaints, and Complaint Intake.

Expert Witness Guidelines/Recruitment

The RCB will be editing and revising its current Expert Witness Guidelines/Recruitment materials to be current with new standards and laws.

Reevaluate Enforcement Program/Resources

Staff will reevaluate the RCB's Enforcement Program as a whole, to determine if there are any additional areas where processes can be streamlined or alternate paths established, while at the same time implementing many of the new standards, policies and tools listed in this "Improvement Plan." In the latter part of the year, RCB staff will begin to examine the Enforcement Program and perform a detailed work analysis to determine if the program is sufficiently staffed in order to meet the new goal of completing cases in less than 18 months.

CPEI Resources

The RCB has been heavily involved in the development and execution of the CPEI since its inception in August 2009. It will continue its involvement by providing resources to DCA to:

Provide testimony to the Legislature on CPEI legislative proposals and budget hearings.

Provide staff resources for budget meetings held with Department of Finance, Legislative Budget Committees and any other source.

Provide staff resources necessary to assist in the design and development of the new database as it relates to the RCB's processes.

Provide staff resources to provide monthly statistics to the DCA's Deputy Director of Enforcement Compliance, as well as the development of performance measures.

RCB Meetings

The RCB will increase its transparency by making all of its agenda materials available on-line, in addition to the agenda notice and minutes that are currently posted. It will also be including a "Director's Report" on each of its agendas to encourage DCA Executives to provide regular updates to the board members themselves, on the activities and direction of the DCA, and increase communication between DCA and the RCB.

CLOSING REMARKS

In recent years, the State of California has undergone trials and tribulations, that will make their mark during one of the most difficult economic times in history. The RCB, one of the smallest agencies in the State, has shared in this anguish. However, with the fallout of the Board of Registered Nursing in 2009, also came opportunities for all of the healing arts boards under the DCA umbrella, to make historical milestones in improving consumer protection.

The RCB has prided itself on being a leader in consumer protection since the early 1990s. Despite bureaucratic hurdles, the RCB has continually moved forward advancing consumer protection. While these, are indeed, the most difficult economic times it has faced, the RCB stands committed to its mandates to:

- 1) Protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care (B&P §3701) and
- 2) Ensure protection of the public is its highest priority in exercising its licensing, regulatory, and disciplinary functions (B&P §3710.1).

Implementing the new standards in SB 1441 and objectives in the CPEI, as well as re-engineering its Enforcement Program, will be challenging to say the least. However, the RCB welcomes the opportunities that are before it, as well as the challenges that lie ahead, in order to achieve better consumer protection.

ENFORCEMENT STATISTICS

Agenda Item: 4
Meeting Date: 02/05/10

Data through December 31, 2009

Applicant Licensed Unlicensed	CASELOAD	FY 00/01	FY 01/02	FY 02/03	FY 03/04	FY 04/05	FY 05/06	FY 06/07	FY 07/08	FY 08/09	FY 09/10
A	Applications Received	397	526	680	713	853	1003	1283	1359	1360	553
L	Total Licensed	21,942	22,414	23,056	23,674	24,408	25,246	26,338	27,545	28,847	29,612
A L U	Enforcement Budget	\$361,031	\$725,452	\$568,422	\$436,421	\$494,771	\$514,365	\$557,312	\$584,409	\$579,161	\$640,576
L	Licenses Active	15,327	15,202	15,268	15,367	15,503	15,835	16,511	17,202	18,077	18,597
A	Applicants Investigated (RCB Staff)	63	99	98	113	141	205	238	269	270	137
A	Applicants Denied/Initial	15	12	17	19	11	23	19	31	46	26
L U	Complaints Received	256	470	603	521	515	495	476	472	493	271
A L U	Cases to Investigation (sworn investigators)	21	6	3	0	4	3	9	5	11	0
L U	Citations Issued	15	25	5	68	99	57	71	63	102	20
A L	Cases to the DAG	88	107	105	125	46	56	71	64	99	33
L	Prob. Cases to AG for Revocation	27	21	15	15	13	13	10	9	17	15
A L U	Cases to the DA	4	2	0	1	0	1	0	1	0	0
L	Accusations Filed	85	90	90	102	60	34	51	51	46	25
A	Statement of Issues Filed	9	11	17	17	9	15	21	22	40	12
A L	Stipulated Settlements	88	66	97	85	71	34	46	59	61	31
A L	Disciplinary Hearings Completed/Final Decisions	27	20	19	19	11	13	7	14	9	6
L	Revocations/Surrenders	63	35	44	36	31	27	24	29	30	20
A	Applications Denied (Final Decision)	4	1	2	2	0	3	2	3	1	2
A L	Public Reprimands	8	22	52	50	20	5	6	9	6	1
A L	Probationers (New)	73	42	46	38	53	27	32	40	48	23
L	Probationers (Active)	143	138	80	81	100	80	77	84	108	106
L U	Fines Imposed	\$15,000	\$25,000	\$5,000	\$51,600	\$61,050	\$33,600	\$33,413	\$32,450	\$60,950	\$89,025
L U	Fines Reduced, Withdrawn, Dismissed	\$1,000	\$5,000	\$2,000	\$1,550	\$1,350	\$900	\$900	\$1,225	\$2,715	\$1,350
L U	Fines Collected	\$14,400	\$18,729	\$9,379	\$23,386	\$41,942	\$37,941	\$31,919	\$31,061	\$30,121	\$21,464
A L	Cost Recovery Requested	\$245,762	\$169,256	\$230,033	\$213,720	\$233,873	\$198,758	\$183,032	\$208,563	\$198,892	\$94,658
A L	Cost Recovery Awarded	\$242,747	\$162,692	\$226,878	\$195,354	\$223,996	\$173,771	\$174,142	\$168,976	\$184,082	\$88,974
A L	Cost Recovery Collected	\$78,253	\$68,036	\$107,028	\$130,994	\$130,378	\$142,061	\$120,820	\$96,454	\$55,820	\$35,184
L	Probation Monitoring Costs Collected	\$119,774	\$146,344	\$111,907	\$83,447	\$100,746	\$102,596	\$81,613	\$79,748	\$85,176	\$43,663
A L U	Franchise Tax Board Collected	\$3,411	\$12,696	\$20,508	\$16,064	\$13,676	\$20,288	\$13,542	\$17,697	\$10,440	\$362
A L U	Collection Agency Collected *	Not Applicable			\$17,402	\$32,285	\$56,826	\$19,414	\$22,568	\$2,292	\$1,100

* Amount recovered by the Board's collection agency. This amount is also reflected in Fines, Cost Recovery, or Probation Monitoring Costs Collected depending on the account in which the money was ordered.

2010 LEGISLATION OF INTEREST

Agenda Item: 5a
Meeting Date: 2/5/10

AB 583	Author:	Hayashi [D]
	Title:	Health Care Practitioners: Disclosure of Education
	Introduced:	02/25/2009
	Status:	Senate Inactive File
	Summary:	Requires health care practitioners, with the exception of nurses, to display the type of license and the highest level of academic degree he or she holds either on a name tag or in writing given to patients.
	Position	OPPOSE UNLESS AMENDED In 2009, the author agreed to exempt respiratory care practitioners in the same manner as nurses, however, the bill was made inactive before this amendment occurred. If the bill again becomes active, RCB staff will work with legislative staff to ensure the amendment occurs.

AB 877	Author:	Emmerson [R]
	Title:	Healing Arts
	Introduced:	02/26/2009
	Status:	Held in Assembly Appropriations
	Summary:	This bill would require the Director of Consumer Affairs to appoint a scope of practice committee of five members, as specified, to perform occupational analyses, and prepare written reports, as specified, on any bills seeking to substantively expand the scope of a healing arts practice. The bill would require that the reasonable cost of an analysis and report be paid by the affected licensing board, as specified.
	Position	WATCH

AB 978	Author:	Perez [D]
	Title:	State Chief Information Officer
	Introduced:	02/26/09
	Status:	Assembly Appropriations
	Summary:	This bill would required the State Chief Information Officer to develop an online master application for businesses to file for state permits and licenses, and work in collaboration with other state agencies to accomplish this duty.
	Position	

AB 1310	Author:	Hernandez [D]
	Title:	Healing Arts: Database
	Introduced:	02/27/2009
	Status:	Held in Senate Appropriations
	Summary:	This bill would require certain healing arts boards to collect specified information from their licensees and would require those boards and the Department of Consumer Affairs to, as much as practicable, work with OSHPD to transfer that data to the Health Care Workforce Clearinghouse. The bill would further require OSHPD, in consultation with the division and the department, to select a database and to also add the collected data to the database. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.
	Position	WATCH

SB 638	Author:	Negrete McLeod [D]
	Title:	Regulatory Boards
	Introduced:	02/27/2009
	Status:	Held in Senate Business and Professions Committee
	Summary:	Abolishes the Joint Committee on Boards, Commission and Consumer Protection and authorizes the appropriate policy committees of the Legislature to carry out its duties. Subjects interior design organizations, the State Board of Chiropractic Examiners, the Osteopathic Medical Board and the Tax Education Council to review on unspecified dates. Requires a board, bureau or entity if their annual report contains certain information, to post it on its Internet website.
	Position	WATCH

AMENDED IN ASSEMBLY MAY 7, 2009

AMENDED IN ASSEMBLY APRIL 21, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 978

Introduced by Assembly Member V. Manuel Perez

February 26, 2009

~~An act to add Chapter 3.9 (commencing with Section 7297) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to taxation.~~
An act to add Section 11547.5 to the Government Code, relating to the State Chief Information Officer.

LEGISLATIVE COUNSEL'S DIGEST

AB 978, as amended, V. Manuel Perez. ~~Transactions and use taxes: cities: counties: economic development.~~ *State Chief Information Officer: duties.*

Existing law requires the State Chief Information Officer, until January 1, 2013, to work to improve organizational maturity and capacity in the effective management of information technology, and to establish performance management and improvement processes to ensure state information technology systems and services are efficient and effective.

This bill would require the State Chief Information Officer to develop an online master application for businesses to file for state permits and licenses, and work in collaboration with other state agencies to accomplish this duty.

~~Existing law authorizes various local governmental entities, in accordance with certain requirements and limitations, to adopt ordinances to levy transactions and use taxes pursuant to the~~

~~Transactions and Use Tax Law and to contract with the State Board of Equalization to perform all functions incident to the administrative and operation of the ordinance.~~

~~This bill would additionally authorize the city council of a city and the board of supervisors of a county to impose a transactions and use tax at a rate of 0.125% by the adoption of an ordinance, as specified, if certain conditions are met. Revenues from the tax could be used only for funding economic development within the county, including the construction and acquisition of facilities within the county, as provided.~~

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

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

- 1 SECTION 1. *The Legislature finds and declares all of the*
2 *following:*
- 3 (a) *California's dominance in many economic areas is based,*
4 *in part, on the significant role small businesses play in the state's*
5 *\$1.8 trillion economy. Businesses with less than 100 employees*
6 *comprise more than 98.3 percent of all businesses and are*
7 *responsible for employing more than 57.9 percent of all workers*
8 *in the state.*
- 9 (b) *Small businesses function as economic engines, especially*
10 *in challenging economic times. During the nation's economic*
11 *downturn from 1999 to 2003, microenterprises (businesses with*
12 *less than five employees) created 318,183 new jobs or 77 percent*
13 *of all employment growth, while larger businesses with more than*
14 *50 employees lost over 444,000 jobs.*
- 15 (c) *Regulatory burdens and costs continue to be a major concern*
16 *for small businesses. For the last 10 years, the federal Small*
17 *Business Administration has conducted a study that analyzes the*
18 *costs of federal government regulations on businesses. This*
19 *research shows that small businesses continue to bear a*
20 *disproportionate share of the federal regulatory burden. On a per*
21 *employee basis, it costs about two thousand four hundred dollars*
22 *(\$2,400), or 45 percent, more for small firms to comply with federal*
23 *regulations than their larger counterparts.*
- 24 (d) *While the specific financial impact of state regulations on*
25 *small businesses is unknown, state agencies are required to*

1 consider the costs of adopting regulations on the California
2 economy, in general, and on small business, specifically.

3 (e) Given these difficult economic times for small businesses,
4 it is fair and appropriate to expend resources to reduce the cost
5 of applying for state administered licenses and permits by
6 developing an online master application.

7 SEC. 2. Section 11547.5 is added to the Government Code, to
8 read:

9 11547.5. (a) The State Chief Information Officer shall develop
10 an online master application for businesses to file for state permits
11 and licenses, and work in collaboration with the Secretary of State
12 and the Secretary of Consumer Services to accomplish this duty.
13 The State Chief Information Officer may delegate the development
14 of the actual application to an appropriate state agency.

15 (b) The State Chief Information Officer shall do all of the
16 following:

17 (1) Establish the requirements for the initiation of the
18 information technology project.

19 (2) Define the resource requirements and proposed technical
20 solution that is in compliance with statewide strategies, policies,
21 and procedures.

22 (3) Consult with state agencies during the initial project
23 planning to ensure that project proposals are based on well-defined
24 programmatic needs, clearly identify programmatic benefits, and
25 consider feasible alternatives to address the identified needs of
26 businesses that apply for multiple state licenses and permits over
27 a period of time.

28 (4) Work with the Secretary of State and the Secretary of
29 Consumer Services to ensure that boards and commissions have
30 the appropriate technical assistance to use and maintain the online
31 application system.

32 SECTION 1. ~~Chapter 3.9 (commencing with Section 7297) is~~
33 ~~added to Part 1.7 of Division 2 of the Revenue and Taxation Code,~~
34 ~~to read:~~

35
36 CHAPTER 3.9. CITY AND COUNTY TRANSACTIONS AND USE
37 TAXES: ECONOMIC DEVELOPMENT PROJECTS
38

39 ~~7297. (a) In addition to the tax levied pursuant to Part 1.5~~
40 ~~(commencing with Section 7200), and any other tax authorized by~~

1 this part, the city council of a city and the board of supervisors of
2 a county may impose a transactions and use tax for the purposes
3 described in paragraph (5), by the adoption of an ordinance in
4 accordance with this part if each of the following conditions are
5 met:

6 (1) The ordinance imposing the city wide tax is submitted to
7 and approved by the voters of the city by a two-thirds vote of those
8 voters voting on the ordinance in accordance with Article 3.7
9 (commencing with Section 53720) of Chapter 4 of Part 1 of
10 Division 2 of Title 5 of the Government Code.

11 (2) The ordinance imposing county wide tax is submitted to and
12 approved by the voters of the county by a two-thirds vote of those
13 voters voting on the ordinance in accordance with Article 3.7
14 (commencing with Section 53720) of Chapter 4 of Part 1 of
15 Division 2 of Title 5 of the Government Code.

16 (3) The ordinance includes an expenditure plan describing the
17 specific purposes for which the revenues from the tax may be
18 expended.

19 (4) The tax is imposed at a rate of 0.125 percent for a period
20 not to exceed eight years.

21 (5) The revenues collected from the tax are used only for funding
22 economic development projects, including, but not limited to, the
23 construction and acquisition of facilities within the city or county.

24 (6) The transactions and use tax conforms to Part 1.6
25 (commencing with Section 7251) including the limitation in Section
26 7251.1 on the combined rate of all taxes in the city or county
27 imposed pursuant to that part.

28 (b) The city council or the board of supervisors may impose a
29 transactions and use tax in any succeeding period not to exceed
30 eight years per period, if all of the conditions specified in
31 subdivision (a) are met for that succeeding period.

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HEALTH BOARDS ENFORCEMENT MODEL

January 25, 2010

The Department of Consumer Affairs (DCA) is the umbrella agency for 18 healing arts boards whose core responsibilities are found in their examination, licensing, and enforcement programs. The examination of prospective licensees and implementation of strict licensing requirements ensure that those entering the profession demonstrate at least a minimum level of competence in their chosen field. Once licensed, the vast majority of practitioners serve consumers competently and professionally. However, when a person holding a license fails to uphold the established level of professionalism or ethics, swift and just enforcement must be taken in order to protect the integrity of the issued license.

Today, however, the boards' enforcement programs plagued with legal and procedural impediments that drastically delay the boards' ability to protect consumers and the integrity of their licensees.

Both licensees and consumers have an interest in quick resolution of complaints and discipline. Consumers need prompt disciplinary action against licensees who do not perform to professional standards. Professional licensees have an interest in timely review of consumer complaints to keep the trust of their patients.

The Medical Board and Dental Board are the only two health boards with staff investigators. And all boards use the Office of the Attorney General to prosecute cases through the Office of Administrative Hearings. However, the level of services provided varies from board to board. In addition, many boards are unaware of best practices or policies employed by other boards.

Numerous reports, audits, and reviews have recently noted the deficiencies of the professional enforcement process. Piecemeal recommendations for additional staff, streamlined operations, and better coordination among those involved have been implemented with minimal success.

A disciplinary process that takes three years or more to complete is simply not acceptable. Consumers and licensees deserve much better, and all stakeholders must work with DCA to quickly ensure improved consumer protection through effective enforcement.

The DCA recognizes that it does not operate in a vacuum. Consumer advocates, professional associations, and other government agencies must be involved in the development of a new enforcement system that produces swift and fair resolution of complaints.

The following suggestions for a new enforcement model are based on three elements. These are **Increased Accountability**, **Greater Efficiency**, and **Putting Consumers First**.

INCREASED ACCOUNTABILITY

Enforcement Staff

Most boards do not have investigators or prosecutors on their staff and rely on outside entities to perform these services (e.g. DCA's Division of Investigation, the Office of the Attorney General, and the Office of Administrative Hearings). Housing investigators within the Division of Investigation does not allow investigators to specialize and can leave multiple boards vying for limited investigative staff. To the greatest extent possible, each board will retain and manage its own enforcement staff for maximum accountability. To achieve this, the following actions are recommended:

- Hire investigators directly within each board. Additionally, other staffing options, such as hiring paralegals to prepare less complex accusations, statements of issues, and stipulated settlements, will be considered.
- Hire expert consultants on staff and housed within each board. This would be similar to the Medical Board's vertical enforcement program, where on-staff experts would be utilized to review complaints or provide guidance to enforcement staff as necessary during the investigatory process.
- Seek statutory authority for the DCA to hire a staff of prosecuting attorneys that would be assigned to boards as necessary.
- Establish within DCA a small unit of sworn peace officers to provide services in those rare cases where the peace-officer training/status is needed. The DCA would also ensure that those requests for criminal background checks through CLETS are timely completed.
- Administrative changes should be made, in consultation with the Department of Finance, to enable boards to make budgetary changes more quickly to respond to changing conditions. Currently, budget cycles, restrictions on spending special funds, and other impediments often times force boards to be reactive rather than proactive when dealing with enforcement matters. Additionally, the DCA should work with the Department of Finance and State Personnel Board to look into ways of improving its recruitment and retention of enforcement personnel.

Administrative Hearings

Boards within DCA often experience significant delays in the prosecution of cases because of the long timeline for having a hearing set at the Office of Administrative Hearings (OAH). Currently, hearings are scheduled out between 100 and 150 days. In addition, many cases that may take less than two hours to hear, can only be calendared

for a half or full day. Hearing date delays are doubled and sometimes tripled, as a result of continuances granted by the OAH. Failure to be prepared for hearing when it is calendared between 30 and 120 days out should not be grounds to grant a continuance.

The DCA shall work with the OAH (OAH) and the umbrella agency to both, the State and Consumer Agency, to establish within the OAH: 1) a process to allow cases to be calendared in as early as 30 days and no later than 120 days, as requested by the board's attorney 2) a process to calendar cases for shorter increments of time for "short cause" cases, and 3) guidelines to deny all hearing continuances, except in extremely rare and extenuating circumstances.

Enforcement Compliance Officer

The DCA will establish an Enforcement and Compliance Officer. This position will report to the Director and will regularly examine each board's enforcement program to monitor enforcement performance and ensure compliance with all applicable requirements. Additionally, the Enforcement and Compliance Officer will conduct a complete audit of each board's enforcement program and prepare a full report, requiring board cooperation every 3-4 years. Findings will be shared with all boards and upon request, to any person. The enforcement monitor will also promote consistency and provide oversight.

Caseload/Timelines

Each board, with direction from DCA, will develop a policy for investigative caseload and timelines. Each board will be held accountable to those guidelines during regular audits by the DCA's Enforcement Compliance Officer. Assuming all of the reforms contained in this proposal are enacted, the DCA expects investigations to take no more than one year and in many cases far less time.

Performance Accountability

The DCA will seek a statutory change that requires each board and their executive officer to meet the performance standards provided above in "Caseload/Timelines." Provide that failure to meet those standards after two consecutive audits is grounds for the Executive Officer to be dismissed by the DCA director and/or members to be dismissed by their respective appointing authorities.

Director/Ex-Officio Member

The DCA will seek a statutory change to add the DCA director or his/her designee as an Ex-Officio member of each board. The addition will ensure accountability between the Board and the Department when coordination of enforcement and other efforts are needed.

Professional Development

Administrative action by the DCA to ensure continuing availability of training for enforcement staff. Training will be available to all boards' enforcement staff, and will include teaching best practices for record collection, performing investigations, and so forth. The training will be provided on a regular basis by DCA.

Special Fund Recognition

Each of DCA's Boards and Bureaus are funded by fees paid by licensees. There are occasions when statewide policies and budgetary process restrictions prevent them from utilizing all available resources. Consideration should be given to provide additional flexibility to specially funded programs in order for them to more effectively respond to changing conditions.

Case Tracking System

The DCA will seek a statutory mandate to require a new tracking database to be implemented within three years. DCA shall work with the Office of the Chief Information Officer to develop and implement the database. Boards currently use the DCA's CAS database system, as well as other self-created systems to monitor their enforcement workload. Several attempts have been made (over the last 10 years) to replace the existing CAS, though they have been quashed in the process. The CAS system is 17 years old, cumbersome, unreliable and inefficient. In order to hold board's accountable and measure outcomes, a new system must be put in place and exemptions to speed the development should be provided. The new system will be user-friendly, designed to track status and time frames of both internal and external processes. The system will allow cross license checking for every health board and will be linked to any other external system used in the enforcement process.

GREATER EFFICIENCY

Access to Records

Obtaining records is a key part of completing investigations. Investigators and prosecutors require personnel records, medical records, and criminal history records in the enforcement process. The DCA will seek:

- Statutory authority for each board to inspect and copy records, and obtain certified records at any place where care, treatment or services are provided, without the need for releases and subpoenas. This includes, but is not limited to, personnel records, patient medical records, inspection of the facility, and, when probable cause exists, licensee medical records (including drug/alcohol test results, physical and psychological records, rehabilitation records). Require facility, employer and licensee to cooperate. Failure to provide records as requested may result in a citation and fine not to exceed \$100,000. With personal information, licensees and facilities would be able to obtain a court order preventing or limiting disclosure, with the burden of proof placed on the licensee or facility. Improper access to confidential records by employees of facility may be punished.
- A statutory requirement that each state agency *must* share all public and confidential records with DCA boards, upon request as part of an investigation. Improper access to confidential records by employees of facility may be punished.

Failure to Produce Records/Appear for Interview

The DCA will seek statutory authority for each board's executive officer to request the director issue an order to cease practice if the respondent or their legal representation fails to produce documents or participate in an interview, as requested by board staff. Time periods for failing to cooperate may be as little as 10 days.

The suspension may affect both individual licensees and facility licensees (i.e., pharmacies) and may remain in effect for up to 180 days. The executive officer will be responsive within the same time frames if the licensee/facility is willing to cooperate and will lift the suspension within 24 hours of receipt of previously requested documentation/interviews.

Automatic Suspension while Incarcerated for Felony or Serious Misdemeanor

The DCA will seek a statutory mandate to allow all boards to use section 2236.1 of the Medical Practice Act. Section 2236.1 provides for the automatic suspension of a license where the holder has been incarcerated following a conviction of a felony and regardless of incarceration, a conviction of any crime referred to in Section 2237, or a conviction of sections 187, 261, 262, or 288 of the Penal Code.

Subpoenas

Administrative action by the DCA to provide training and grant authority to specific personnel to issue and enforce subpoenas. Even with authority to access records and the threat of a citation and fine, some facilities have still required a subpoena to access records.

Subject Matter Experts

Each board will develop a process to acquire new and qualified subject matter experts as needed to supplement the work of on-staff expert consultants. Subject matter experts will be utilized as needed for investigations requiring specialized expertise, to provide a final review of investigative materials, and provide expert testimony during hearings.

Citation and Fine Process

The DCA will seek statutory amendments to provide additional options for the citation and fine process for all boards. Under existing law, the option for an informal or formal hearing is given to licensees. New procedures would allow the executive officer and two board members to hear the appeal and render a decision, which may be appealed to the full board. Hearings may be held in person or telephonically. This option may allow some boards to hear citation and fine cases faster, but without incurring attorney and hearing costs.

In addition, the DCA will seek a statutory change to recover costs associated with an appeal, if a board chooses to use an ALJ to hear the appeal. This measure is similar to existing laws that provide for "cost recovery" of cases heard by an Administrative Law Judge where the original violations are upheld.

Egregious Complaints

Most boards currently have established guidelines that advise when to seek an Interim Suspension Order. Each board will similarly develop a policy to identify cases that may qualify as egregious, warranting expedited handling and immediate suspension.

Intake Process/Complaint Handling

Administrative action by each board, with DCA's assistance, to establish core guidelines to address how complaints will be received, reviewed and assigned. The guidelines will also address the best practices employed by several boards on how to process each complaint, including appropriate resources to retrieve and review records, and acceptable timeframes. In addition, the guidelines will address when the focus of an board investigation will be referred criminally to the local district attorney.

Development of Complaint Forms and Handling of Anonymous Complaints

Often times, consumer complaints lack sufficient detail to investigate. In cases where a consumer is willing to identify himself or herself, a standardize form may be developed to ensure appropriate information is provided by the consumer so that an effective investigation can be initiated. Further, each board will adopt a policy to identify how it wishes to handle anonymous complaints.

Fees for Records

Only a small number of external governmental agencies charge boards for producing records. However, under current practices, completing the payment can delay delivery of the requested records. A statutory mandate will be sought to compel any law enforcement agency, court, other government entity, health facility or employer who charges a fee for copies of any records, produce and deliver those copies prior to receiving payment from a board.

Board Member Voting

In order to accelerate the timeframe by which Board's render final disciplinary decision, each Board will establish a process for board member to vote through mail, delivery services and/or electronic means. In addition, the DCA will seek a statutory change to reduce the time to vote on a non-adopted ALJ proposed decision and make a final decision (or remand back to the ALJ) from 100 days to 45 days.

Default License Surrenders/Revocations

In many cases, the licensee does not contest the disciplinary action and/or voluntarily surrenders his/her license. In these cases, legislative authority will be pursued to allow the executive officer to sign all default decisions with an order for license surrender.

PUTTING CONSUMERS FIRST

After a license is issued, the law grants the licensee a property right to his/her license. As such, a board cannot take action against a licensee without cause, and when a board seeks to take action, the licensee is entitled to certain due process protections, including a hearing. While due process cannot be taken away, the state has discretion in regards to the amount of due process afforded. Over time, due process protections have grown to favor licensees at the expense of consumers. The DCA believes that it is time to put consumers ahead of licensees when disciplinary actions are at issue.

Burden of Proof

A significant contributor to the lengthy enforcement process centers around the burden of proof required of revoking a license. The standard is currently a “clear and convincing” standard of proof that requires a significant burden before a license might be revoked. If an appropriate standard for burden of proof were established, such as a “preponderance” standard, investigations and hearings could be streamlined considerably. Statutory changes will be pursued to establish an appropriate burden of proof to discipline or suspend a license.

Director’s Order to Cease Practice

The DCA will seek legislative authority to allow the DCA Director (or his/her designee), at the request of an Executive Officer, to issue an order to cease practice, based on probable cause that the licensee has engaged in conduct that poses an imminent risk of serious harm to the public health, safety and welfare. Such conduct may include, but is not limited to, involvement in serious crimes (e.g. murder, kidnapping, serious bodily harm, sexual assault, etc...), acts occurring at work (e.g. under the influence of drugs or alcohol, serious patient neglect, etc...) or any other act that rises to the level of “imminent risk of serious harm.” The licensee and his/her legal representation and employer (if known) shall be provided with at least one hour notice of the hearing. The suspension will have a 180 day cap. However, the executive officer will be responsible for reviewing the case upon receipt of any new information to determine if the order to cease practice should remain in place. The executive officer will notify the Director immediately if he/she believes the order should be lifted.

Diversion Programs

A number of healing arts boards administer diversion programs for licensees with substance abuse or mental health problems. Diversion programs are intended to remove licensees from practice as quickly as possible, and to provide licensees with substance abuse and mental health problems an opportunity to rehabilitate. Diversion programs generally provide a licensee the option of entering into an ongoing monitoring program of some sort, in exchange for the board ceasing an investigation. However, there have been a number of problems with diversion programs, ranging from policy concerns with the general premise of such programs, to practical concerns regarding the efficacy of such programs.

Despite the intent of diversion programs, these programs allow licensees who are violating the law to escape enforcement. Many diversion programs allow licensees with substance abuse or mental health problems to enter into the program confidentially, leaving consumers in the dark.

The DCA proposes to eliminate all diversion programs effective January 1, 2012, and to make it the policy of the healing arts boards to place licensees who have substance abuse or mental health problems on probation, where restrictions can be placed on their practice and where they can be monitored. Additionally, placing these licensees on probation does not allow them to escape enforcement or keep their illegal actions confidential from consumers.

Prior to elimination of all diversion programs, the DCA will seek a statutory change requiring the license of a licentiate terminated from the diversion program for failure to comply with program requirements to be placed on suspension, by operation of law, until such time that the licentiate petitions the board for reinstatement of his or her license and is granted a probationary or unrestricted license.

Drug Testing Contract

In addition to eliminating diversion programs, the DCA will establish a department-wide contract with a vendor to perform random drug testing for licensees who are on probation for substance abuse problems. The DCA's Enforcement and Compliance Officer will also audit the vendor on a regular basis.

Suspension for Positive Drug/Alcohol Test While on Probation

The DCA will seek statutory authority to allow the board to order a licensee, who is required to abstain from drugs and/or alcohol, to cease practice if he or she tests positive for alcohol and/or drugs, not lawfully prescribed.

Immediate Suspension for Positive Drug/Alcohol Test

The DCA will seek authority to compel any licensee to submit to a drug/alcohol screening, without a subpoena, upon receipt of a complaint or any information where the board has probable cause to believe the licensee is under the influence of drugs or alcohol while at work. The licensee shall be provided one hour notice of the hearing to compel him/her to provide a sample for biological testing. If the licensee refuses to submit a sample, or if the test results indicate the licensee was under the influence, the license would be suspended through the "Director's Order to Cease Practice" as described above.

Immediate Stipulated Settlement

The DCA will seek statutory language to ensure that a board can enter into a legally binding stipulated settlement prior to filing a formal accusation or drafting a statement of issues. The stipulated settlement may include revocation, surrender, probation, citation and fine, or any other form of discipline. The language will also provide that if the stipulation includes probation, that the terms and conditions may not be modified, nor can the respondent petition for early termination of probation.

Mandatory Revocation

The DCA will seek a statutory mandate requiring any Administrative Law Judge presiding over a disciplinary hearing to order revocation of a license if it is found that the licensee committed unlawful sexual contact with a patient or any other act of sexual misconduct, or was convicted of a felony sex offense.

Additionally, current law requires some boards to deny an application or revoke the license of an individual who is required to register as a sex offender as a result of a felony conviction. This provision will be replicated for all or most healing arts boards.

Mandatory Reporting

In order to take action against licensees who violate the law, boards must be aware of the wrongdoing. Board rely on consumers and other parties to file complaints against those licensees so that they may begin an investigation. The following statutory changes will be sought to improve reporting of violations by licensees:

- Require court clerks, district attorneys and city attorneys to notify *all* health boards of charges and/or convictions.
- Also require boards with knowledge that a licensee holds a license by another board, to report to that board any discipline taken.
- Prohibit “regulatory gag clause,” where civil settlement prohibits consumer or consumer’s legal counsel from filing complaint with board.
- Require employers of licensees and certain other licensees to report known violations made by another licensee. Authorize the issuance of a citation and fine for failure to report.
- Require all licensees to self report any arrest, conviction, or violation of their specific licensing act immediately, and upon application for license renewal.

National Database Search

The DCA will seek statutory authority for each board to charge an applicant for licensure for the actual costs to check bona fide databases for disciplinary information. Each board will develop a policy to perform a search on any known bona fide national or other bona fide database as appropriate. The costs to perform searches on current licensees will be paid by the board.

Fingerprinting

While all new fingerprints are performed electronically, not all records at the Department of Justice are kept electronically for licensees who were fingerprinted in the past. Retrieving non-electronic records adds unnecessary time to investigations. The DCA will pursue statutory changes to require the Department of Justice to place all fingerprint records in its electronic system within four years.

Transparency

The DCA will seek a statutory requirement that all boards post all disciplinary actions on their web sites, including public reprimands, citations and fines, accusations, statements of issues, stipulated settlements, etc. or information that the case has been forwarded for formal disciplinary action.

Patient Notification

Business and Professions Code Section 138 require all licensees to notify consumers that they are a licensee of their respective board. However, compliance with this requirement has been slow. The DCA will take administrative action to ensure that all boards are enforcing this requirement.

Fiscal Resources

In order to ensure that enforcement changes can be successfully implemented, boards will seek to increase their licensing fees as necessary. The DCA will seek statutory language so that all fees may be increased administratively through approval by the Department of Finance in as little as 60 days.

In addition to, or in lieu of, pursuing fee increases, all boards should consider the following changes relating to cost recovery for enforcement workload:

- Pursue statutory changes as necessary to make cost recovery statutes for all boards authorize the collection of the actual cost.
- Administrative action by DCA to procure one department-wide contract with a collection agency.

ENFORCEMENT CHANGES FOR HEALTH BOARDS

Preface - Title & Intent Language

- 1. Information Provided on the Internet**
- 2. Director's Authority to Audit Enforcement Programs of Health Boards**
- 3. Cost Recovery for Actual Costs of Investigation and Enforcement and Probation Monitoring**
- 4. Allow Boards to Contract with Collection Agency**
- 5. Allow Health Boards to Hear Appeals of Citations and Fines**
- 6. Authority for Health Boards to Contract for Investigative Services with Medical Board and Attorney General's Office**
- 7. Create Within the Division of Investigation a Health Quality Enforcement Unit**
- 8. Authority of Board of Registered Nursing to Hire Investigators, Nurse Consultants and Other Personnel**
- 9. New Enforcement Article for all Health Care Boards**
- 10. Authority for Executive Officers to Adopt Default Decisions and Stipulated Settlements**
- 11. Authority for Health Boards to Enter Into Stipulated Settlements Without Filing an Accusation**
- 12. Director's Authority to Immediately Suspend License**
- 13. Automatic Suspension of License While Incarcerated**
- 14. Mandatory Revocation for Acts of Sexual Exploitation and Registration as Sex Offender**
- 15. Prohibition of Gag Clauses in Civil Dispute Settlement Agreements**

- 16. Access to Medical Records/Documents Pursuant to Investigations**
- 17. Access to Records/Documents from Governmental Agencies**
- 18. Payment to Agencies for Record/Documents Received**
- 19. Employer of Health Care Practitioner Reporting Requirements**
- 20. Annual Enforcement Reports by Boards to the Department and Legislature**
- 21. Enforcement Timeframes for the Attorney General's Office**
- 22. Misdemeanor for Violation of Article 10.1 – Healing Arts Licensing Enforcement Act**
- 23. Deny License for Mental Illness or Chemical Dependency**
- 24. Require Boards to Check Information Maintained by the National Practitioner Databank**
- 25. Conviction of Sexual Misconduct – Crime Substantially Related**
- 26. Unprofessional Conduct for Drug Related Offenses**
- 27. Unprofessional Conduct for Failure to Cooperate with Investigation of Board**
- 28. Reporting by Licensee of Arrest, Conviction or Disciplinary Action**
- 29. Report of Crime or Personal Injury Judgment by Clerk of the Court**
- 30. Report of Charges of Felony by DA, City Attorney, or Clerk of Court**
- 31. Report of Preliminary Hearing Transcript of Felony by Clerk of Court**
- 32. Notification of Future Arrests or Convictions from DOJ**
- 33. Authority of Department to Adjust Fees Consistent with CPI**
- 34. Unlicensed Practice – Public Crime**

35. Sunset Dates for Diversion Programs

36. Requirement for a New Information Technology System

37. Adopt Vertical Enforcement/Prosecution Model for Health Boards

POSSIBLE FUTURE AMENDMENTS

- 1. Create Health Quality Hearing Panel at OAH to hear Health Care Cases**
- 2. Eliminate Authority of Boards to Adopt or Non-Adopt ALJ Decision**
- 3. Allow Boards to Conduct Disciplinary Hearings**
- 4. No Transfer of Board's Special (Reserve) Funds to General Fund**
- 5. Create Individual Board "Emergency Reserve Enforcement Fund" (use unencumbered/reserve funds for enforcement purposes only)**

Title

This measure shall be known and may be cited as the Consumer Health Care Enforcement Reform Act.

Intent Language

Add the following to the bill to read:

(a) The Legislature finds and declares the following:

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

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

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

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

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

(1) Information Provided on the Internet

Existing law (Section 27 of the B&P Code) requires certain specified boards within the Department of Consumer Affairs (DCA) to disclose on the Internet information on their respective licensees. This includes:

- (1) The status of every license.
- (2) Suspensions and revocations of licenses issued and other related enforcement action.
- (3) Licensee's address of record. However, the licensee may provide a post office box number or other alternate address, instead of his or her home address as the address of record.

The information shall not include personal information, including home telephone number, date of birth or social security number.

Boards and Bureaus currently required to disclose this information on the Internet include:

- (1) Acupuncture Board
- (2) Board of Behavioral Sciences
- (3) Dental Board'
- (4) Board of Optometry
- (5) Engineer's Board
- (6) Structural Pest Control Board
- (7) Bureau of Automotive Repair
- (8) Bureau of Electronic and Appliance Repair
- (9) Cemetery and Funeral Bureau
- (10) Contractor's Board

Existing law also requires the Medical Board of California (MBC) to disclose on the Internet the following information regarding physicians and surgeons:

- (1) With regard to the status of the license, whether or not the licensee is in good standing, or subject to a temporary restraining order, interim suspension order or to any enforcement actions as specified.
- (2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction.
- (3) Any felony convictions reported to the MBC after a specified date.
- (4) All current accusations filed by the Attorney General as defined.
- (5) Any malpractice judgment or arbitration award reported to the board after a specified date.
- (6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason.
- (7) Any misdemeanor convictions that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.
- (8) Appropriate disclaimers and explanatory statements including an explanation of what types of information are not disclosed.

Generally allows this information to be posted for a period of 10 years, unless otherwise provided.

This bill will additionally require all the other specified healing arts boards to disclose the above information on the Internet by adding these boards to the existing list of boards under Section 27 of the B&P Code and adding a new section (Section 720.32 of the B&P Code) which is similar to those disclosures provided under Section 2027 for physicians and surgeons.

Reason for this Change: There is no reason why all boards under the DCA should not be subject to same basic requirements for disclosure over the Internet that other boards and bureaus are currently required to disclose to the public. One of the issues raised by the LA Times is that the public is unaware of problem licensees; whether they have had prior disciplinary action taken against them or whether their license is currently in good standing. There were instances in which the LA Times looked up on the Internet or the Board's website and never saw prior disciplinary or criminal convictions of nurses. (It should be noted that most boards and bureaus under DCA have websites but there is not always consistency in information being provided by boards not listed under Section 27 of the B&P Code, or by boards not required to make disclosures similar to those required of the Medical Board under Section 2027.)

Concerns Raised: Some nurses organizations are concerned about making the "address of record" available on the Internet. Should nurses be the only health professional who does not have to provide an "address of record" to be made available to the public?

Amend Section 27 of the Business and Professions Code, to read:

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

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

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

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

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

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

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

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

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

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

(9) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, crematories, and cremated remains disposers.

(10) The Cemetery and Funeral Bureau shall disclose information on its licensees, including embalmers, funeral establishments, and funeral directors.

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

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

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

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

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

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

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

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

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

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

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

(22) The Naturopathic Medicine Committee shall disclose information on its licensees.

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

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

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

Add Section 720.28 to the Business and Professions Code, to read:

720.28 (a) Unless otherwise provided, on or after July 1, 2013, the board shall post on the Internet the following information in its possession, custody, or control:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), subject to an interim suspension order (ISO), or subject to any of the enforcement actions as described in Section 803.1.

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

(3) Any felony convictions reported to the board after January 3, 1991.

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

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

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

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

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

(b) (1) From July 1, 2013, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to July 1, 2013, shall be posted for a period of 10 years from July 1, 2013.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the board's Internet Web site. Notwithstanding the provisions of this paragraph, if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(c) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed practitioners.

(2) Director's Authority to Audit Enforcement Programs of Health Boards

Existing law (Section 116 of the B&P Code) authorizes the Director of DCA to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill will additionally authorize the Director to audit and review the aforementioned activities by any of the healing arts boards.

Reason for this Change: There is no reason why the Director should only be limited to auditing and taking specific actions on behalf of consumers for only the Medical Board and the Podiatric Board. The Director should be authorized to take any of the aforementioned actions and audit any of the healing arts boards as necessary. This could be in addition to any reviews or audits by the Legislature and would allow the Director to make recommendations for changes to the board's disciplinary/enforcement system.

Concerns Raised: There have been no concerns raised about this change.

Amend Section 116 of the Business and Professions Code, to read:

116. (a) The director or his or her designee may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine. **any of the healing arts boards established under Division 2 (commencing with Section 500) or under any initiative act referred to in that division** The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both.

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

(3) Cost Recovery for Actual Costs of Investigation, Prosecution and Probation Monitoring

Existing law (Section 125.3 of the B&P Code) specifies that in any order issued in resolution of a disciplinary proceeding before any board (other than the Medical Board) with the DCA, the administrative law judge may direct the licensee found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. Provides that the Medical Board shall not be able to collect from a physician and surgeon investigation and prosecution costs. However, an increase in the amount of the licensing fee shall compensate for any loss of revenue obtained from the costs resulting from investigation and prosecution of disciplinary cases.

This bill will allow boards (other than the Medical Board) to receive the actual costs of the investigation and enforcement of a disciplinary case or for a citation issued by the board. The board shall also be able to receive probation monitoring costs for a licensee who is placed on probation by the administrative law judge.

Reason for this Change: According to the DCA, current law allows boards to only collect reasonable costs of investigation. This can create a problem, as the reasonable cost is determined by an Administrative Law Judge, and is often significantly less than the actual cost of the investigation. This can be especially damaging to small boards, because one or two very expensive investigations can take up a significant amount of their appropriation and their fund reserves. Authorizing boards to collect the actual costs of an investigation will prevent boards from losing significant funds on drawn-out cases. Additionally, making the respondent responsible for the actual cost of an investigation is fairer to licensees who obey the law, as this can help prevent boards from paying for higher investigation costs by increased licensing fees.

Further, while some boards have explicit statutory authority to recover costs associated with probation monitoring, not all boards do. Such a requirement can be made a term of probation without statutory authority, but the statutory authority will give boards more explicit authority, lead to quicker resolution of probation terms, and authorize boards to refuse to renew the license of a licensee who has not paid probation costs.

Concerns Raised: There have been no concerns raised about these changes.

Amend Section 125.3 of the Business and Professions Code:

125.3. (a) **(1)** Except as otherwise provided by law, in any order issued in resolution of a **penalty or disciplinary proceeding or hearing on a citation issued pursuant to section 125.9 or regulations adopted thereto,** before any board **identified in section 101,** within the department or before the Osteopathic Medical Board, upon

request of the entity bringing the proceeding, the board or the administrative law judge may direct a licentiate any licensee or applicant found to have committed a violation or violations of the licensing act law to pay to the entity a sum not to exceed the reasonable actual costs of the investigation, prosecution and enforcement of the case.

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

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

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

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

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

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

(g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

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

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

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

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

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

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

(4) Allow Boards to Contract with Collection Agency

This bill adds a new section (Section 125.4 of the B&P Code) which will allow a board to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts.

Reason for this Change: All of the Department's boards are authorized to issue administrative citations, which may include an administrative fine, to licensees for violations of law, and to non-licensees for unlicensed activity. However, most boards come far from ever collecting all administrative fines due to them. In order to improve effectiveness in boards' fine collection efforts, the Department will procure a contract with a collection agency that can serve all boards. Legislation is needed to allow the department the ability to provide the collection agency with social security numbers.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 125.4 to the Business and Professions Code, to read:

125.4. Notwithstanding any other provision of law, the board may contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts, and may release personal information to the collection services, including the birth date, telephone number, and social security number of any applicant or licensee for this purpose. The contractual agreement shall provide that the collection service shall use or release personal information only as authorized by the contract, and shall provide safeguards to ensure that personal information is protected from unauthorized disclosure. The contractual agreement shall hold the collection service liable for unauthorized use or disclosure of personal information.

(5) Allow Health Boards to Hear Appeals of Citation and Fines

Existing law (Section 125.9 of the B&P Code) allows boards to establish by regulation a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board where the licensee is in violation of the applicable licensing act or any regulation. Specifies that in no event shall the fine assessed exceed \$5,000 for each violation. In assessing the fine, the board shall give due consideration to the appropriateness of the amount of the fine with respect to such factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations. The licensee shall be provided an opportunity to contest the finding of a violation and the assessment of a fine at a hearing conducted in accordance with the Administrative Procedures Act (APA).

This bill will allow the healing arts boards to appoint two members of the board to conduct a hearing to hear an appeal of the citation decision and assessment of a fine. The board would not be required to conduct the hearing in accordance with the APA.

Reason for this Change: According to the Department, all boards are authorized to issue administrative citations, which may include an order of abatement or a fine of up to \$5,000, so long as the board has regulations in place establishing a system for the issuance of the citations. Existing law permits a licensee who is issued a citation to appeal the citation and request a hearing pursuant to the APA. However, an administrative hearing can impose a large cost on a board; a board can spend \$8,000 on legal costs to uphold a \$600 fine.

In lieu of the APA hearing process, the Department proposes establishing an appeal process wherein a licensee who appeals the citation would be granted a hearing before the executive officer and two board members of the board that issued the citation. This process would still provide licensees with due process, but on a more appropriate—and less resource consuming—level than a full APA hearing.

The Department's proposed statutory amendments would allow boards to continue to utilize the APA hearing process, at their discretion. This is necessary because some boards issue many administrative citations, and hearing them all before board members would be unreasonable.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Amend Section 125.9 of the Business and Professions Code, to read:

125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may

establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

(b) The system shall contain the following provisions:

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

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

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

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

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

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

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

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

—~~(5)~~ **(6)** Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.

(c) The system may contain the following provisions:

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

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

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

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

(6) Authority for Health Boards to Contract for Investigative Services with Medical Board and Attorney General's Office

Existing law (Section 155 of the B&P Code) specifies that the director may employ such investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law and that it is the intent of the Legislature that inspectors used by boards shall not be required to be employees of the Division of Investigation, but may be either employees, or under contract to the boards.

This bill will allow the healing arts boards to contract with either the Medical Board or with the Department of Justice to provide investigative services as determined necessary by the executive officer of the board.

Reason for this Change: Health boards should be provided with the greatest flexibility in obtaining investigative services and in completing cases in a timely manner. By allowing health boards to contract with the Medical Board or the Department of Justice, or to utilize the investigative services of the Division of Investigation, boards will be provided with the broadest opportunity to move cases forward in a more expeditious manner.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Amend Section 155 of the Business and Professions Code to read:

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

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

(c) **It is the intent of the Legislature that investigators used by the healing arts boards as described in Section 720, shall not be required to be employees of the Division of Investigation and the healing arts boards may contract for investigative services provided by the Medical Board of California or provided by the Department of Justice.**

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

(7) Create Within the Division of Investigation a Health Quality Enforcement Unit

Existing law (Section 159.5 of the B&P Code) specifies that within the DCA there is the Division of Investigation and that the Division is in charge of a person with the title of chief of the Division. Also provides that all personnel that provide investigative services shall have peace officer status.

This bill will create within the division a special unit titled the "Health Quality Enforcement Unit to focus on health care quality cases and to work closely with the Attorney General's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

Reason for this Change: It has been argued by the Center for Public Interest Law and others that because of the critical importance of the board's public health and safety functions, the complexity of cases involving misconduct of health care practitioners, and the evidentiary burden in the board's disciplinary cases, that using a vertical enforcement and prosecution model for those investigations could be more effective and efficient in pursuing disciplinary actions against health care licensees. (See discussion regarding vertical enforcement and prosecution under Item # 29.)

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Amend Section 159.5 of the Business and Professions Code to read:

159.5. There is in the department the Division of Investigation. The division is in charge of a person with the title of chief of the division. **There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate proceedings against licensees and applicants within the jurisdiction of the boards listed under Section 720.** Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, ~~to the agencies in the department~~ shall be in the division and the personnel shall be appointed by the director. ~~However, if, pursuant to the Governor's Reorganization Plan No. 2 of the 1970 Regular Session, any agency has any investigative, inspectional, or auditing positions of its own, the agency shall retain those positions until the director determines, after consultation with, and consideration of, the views of the particular agency concerned, that the positions should be transferred to the division in the interests of efficient, economical, and effective service to the public, at which time they shall be so transferred.~~

(8) Authority of the Board of Registered Nursing to Hire Investigators, Nurse Consultants and Other Personnel

Existing law (Section 160 of the B&P Code) specifies that those investigators of the Division of Investigation of DCA, the Medical Board and the Dental Board shall have the authority and status of peace officers. Also provides that the Board of Registered Nursing (BRN) may employ personnel as it deems necessary (Section 2715 of the B&P Code).

This bill will allow the BRN to hire a certain number of investigators for the Board with the authority and status of peace officers rather than only being able to rely on those peace officer investigators under the Division of Investigation. Will also permit the BRN to employ investigators, nurse consultants, and other personnel as it deem necessary and that investigators employed by the Board provided appropriate training.

Reason for this Change: It is the opinion of the BRN and others that the Board could pursue investigations more quickly if they were able to hire both sworn (peace officer) and non-sworn investigators, as well as nurse consultants and not always have to rely on the Division of Investigation.

Concerns Raised: There have been no concerns raised about these changes.

Amend Section 160 of the Business and Professions Code to read:

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

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

Amend Section 2715 of the Business and Professions Code to read:

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

~~Except as provided by Section 159.5, the~~

The board, in accordance with the provisions of the Civil Service Law, may employ such **investigators, nurse consultants, and other** personnel as it deems

necessary to carry into effect the provisions of this chapter. **Investigators employed by the board shall be provided special training in investigating nursing practice activities.**

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

Amend Section 830.3 of the Penal Code to read:

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

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

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

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

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

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

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

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

(h) All investigators of the State Departments of Health Care Services, Public Health, Social Services, Mental Health, and Alcohol and Drug Programs, the

Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) New Enforcement Article for all Health Care Boards

This bill creates a new article (commencing with Section 720 of the B&P Code) that deals with health care licensing enforcement by all of the “healing arts boards.” It lists all the boards which are considered as a “healing arts board.”

Reason for this Change: Many of the requirements that now only apply to the Medical Board and the Podiatric Board will now have general application to all healing arts boards by creating a new article in the B&P Code and including those provisions which should apply to all health arts boards. This article will also include new provisions which will have general application to all healing arts boards.

Concerns Raised: There have been no concerns raised about this change.

Add Article 10.1 (commencing with Section 720) to Chapter 1 of Division 2 of the B&P Code, to read:

Article 10.1. Healing Arts Licensing Enforcement

Add Section 720 to the B&P Code, to read:

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

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

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

(10) Authority for Executive Officers to Adopt Default Decisions and Stipulated Settlements

This bill adds a new section (Section 720.2 of the B&P Code) that would authorize the executive officer of specified healing arts boards, where a disciplinary action has been filed by the board, to revoke the license of a licensee if they have failed to file a notice of defense, appear at the hearing, or has agreed to surrender his or her license, to adopt a proposed default decision or a proposed settlement agreement.

Reason for this Change: According to the Attorney General's Office (AG) a majority of filed cases settle and the receipt of a Notice of Defense can trigger either settlement discussions or the taking of a Default Decision. Stipulated settlements are a more expeditious and less costly method of case resolution. The executive officer of the board can provide summary reports of all settlements to the board and the board can provide constant review and feedback to the executive officer so that policies can be established and adjusted as necessary. Also, there have been instances of undue delays between when a fully-signed settlement has been forwarded to the board's headquarters and when it has been placed on the board's agenda for a vote. Delegating this authority to the executive officer will result in a final disposition of these matters much quicker. The fact that BRN, for example, has reduced the number of its annual meetings has only increased the need for this.

According to the Center for Public Interest Law (CPIL), it is taking the AG too long to prepare a proposed default decision. In 2004-2005, it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. As argued by CPIL, filing a proposed default decision is "not rocket science" and should only take a matter of hours.

Concerns Raised: There have been no concerns raised about this change.

Add Section 720.2 to the B&P Code, to read:

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

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

(11) Authority for Health Boards to Enter Into Stipulated Settlements Without Filing an Accusation

This bill adds a new section (Section 720.4 of the B&P Code) that would authorize a healing arts board to enter into a settlement with a licensee or applicant prior to the board's issuance of an accusation or statement of issues against the licensee. Specifies that no person who enters into a settlement with the board may petition to modify the terms of the settlement or petition for early termination of probation if probation is part of the settlement and that any settlement shall be considered discipline and a public record and shall be posted on the board's Internet site.

Reason for this Change: According to the Department, the APA requires a board to file an accusation or statement of issues against a licensee before the board can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, boards have experienced licensees who are willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process.

Existing law would be clarified to ensure that a board can enter into a legally binding stipulated settlement prior to filing a formal accusation or drafting a statement of issues. Such a stipulated settlement could include revocation, surrender, probation, citation and fine, or any other form of discipline, and would be a public record. The Department's proposed legislative language would also provide that if the stipulation includes probation, that the terms and conditions may not be modified, nor can the respondent petition for early termination of probation.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.4 to the B&P Code, to read:

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

(b) No person who enters a settlement pursuant to this section may petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(c) Any settlement executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet site.

(12) Director's Authority to Immediately Suspend License

This bill adds a new section (Section 720.6 of the B&P Code) that would authorize the director of DCA to issue a temporary order to suspend the license of a licensee if the director received evidence from a board that the licensee has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, or the licensee has failed to comply with a request to inspect or copy records made pursuant to (Section 720.16). Provides that the licensee shall have an opportunity to present oral or written arguments before the director and shall receive notice of the hearing before the director at least twenty-four hours in advance. Specifies that a licensee who fails or refuses to comply with an order of the director to cease practice would be subject to revocation or suspension of their license by the board and could be assessed an administrative fine not to exceed \$25,000. Provides that the order to cease practice shall be vacated within 120 days or until the board files a petition for an interim suspension. Requires the board to review the basis for the suspension and determine if the suspension should be continued or vacated and provide such information to the director. The temporary suspension order of the director is subject to judicial review. The order to suspend practice shall be posted on the board's website.

Reason for this Change: According to the DCA, under existing law, the Interim Suspension Order (ISO) process provides boards with an avenue for expedited enforcement when action must be taken swiftly. Currently, the ISO process can take weeks to months to achieve, allowing licensees who pose an egregious risk to the public to continue to practice for an unacceptable amount of time. To ensure the public is protected, the DCA is proposing that the Director be given the authority to issue a cease practice or restricted practice order, upon the request of an executive officer. The order would be in effect for up to 180 days, giving the board more time to gather further evidence to support a petition for an ISO. This would allow boards to expeditiously remove licensees from practice if necessary to protect the public while the investigation continues forward.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.6 to the B&P Code, to read:

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

(b) (1) The executive officer of the board shall, to the extent practicable, provide telephonic, electronic mail, message, or facsimile written notice to the licensee of hearing of the petition at least twenty-four hours prior to the hearing. The licensee

and his or her counsel and the executive officer or his or her designee shall have the opportunity to present oral or written argument before the director. After presentation of the evidence and consideration of any arguments presented, the director may issue an order that the licensee cease all practice and activities that require a license by that health care license board when, in the opinion of the director, the action is necessary to protect the public health, safety or welfare.

(2) The hearing specified in this subdivision is not subject to the provisions of Chapter 5 (commencing with section 11500) of the Government Code.

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

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

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

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

(g) Should the position of Director of DCA be vacant the individual serving as Chief Deputy Director of DCA may fulfill the duties of this section.

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

(13) Automatic Suspension of License While Incarcerated

This bill adds a new section (Section 720.8 of the B&P Code) that would provide that the license of a licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed, and would require the board to notify the licensee of the suspension and of his or her right to a specified (due process) hearing. The board would be required to review the license suspension immediately upon receipt of court documents regarding the conviction to determine if the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of the licensee. Specifies that the conviction of certain serious crimes are conclusively presumed to be substantially related. Provides that the board may set aside or decline to impose suspension of the license when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the practice regulated by the board.

Reason for this Change: This new section is identical to Section 2236.1 of the B&P Code which is applicable to physicians and surgeons and podiatrists. There is no reason why other health professionals should not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent health care professional from practicing while in prison or while released pending appeal of their convictions. Years may pass before a convicted licensee's license can be revoked. According to the LA Times, "in some cases, nurses with felony records continue to have spotless licenses - - even while serving time behind bars." The LA Times gave examples of at least five nurses who had felony convictions and yet continued to have a license in good standing.

Concerns Raised:

Add Section 720.8 to the B&P Code, to read:

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

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

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

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

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

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

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

(14) Mandatory Revocation for Acts of Sexual Exploitation and Registration as Sex Offender

This bill adds a new section (Section 720.10 of the B&P Code) that a decision issued by an administrative law judge that contains a finding that a health care practitioner engaged in any act of sexual exploitation, as defined in Section 729 of the B&P Code, with a patient, or has committed an act of been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. Also adds a new section (Section 720.12 of the B&P Code) that would require the board to deny a license to an applicant or revoke the license of a licensee who has been required to register as a sex offender.

Reason for this Change: The new section 720.10 is similar to language which currently exists for physicians (Section 2246 of the B&P Code), for psychologists (Section 2960.1 of the B&P Code), for respiratory care therapists (Section 3752.7 of the B&P Code), for marriage and family therapists (Section 4982.26 of the B&P Code), and for clinical social workers (Section 4992.33 of the B&P Code). The new section 720.12 is similar to language which currently exists for physicians (Section 2221 (d) and Section 2232 of the B&P Code), for dentists (Section 1687 of the B&P Code), for physical therapists (Section 2660.5 of the B&P Code) and for psychologists (Section 2964.3 of the B&P Code). There is no reason why other health professionals should not be subject to the same requirements for revoking a license for acts of sexual exploitation or conviction of a sex offense, or denying or revoking a license of a person who is a registered sex offender.

Concerns Raised: There were no concerns raised about language in SB 294 which dealt with revoking a license for acts of sexual misconduct or conviction of a sex offense by a licensee. The language to deny or revoke a license of a registered sex offender was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.10 to the B&P Code, to read:

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

Add Section 720.12 to the B&P Code, to read:

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

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

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

(3) The board shall not reinstate or reissue the individual's licensure. The board shall not issue a stay of license denial and place the license on probation.

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

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

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

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

(15) Prohibition of Gag Clauses in Civil Dispute Settlement Agreements

This bill adds a new section (Section 720.14 of the B&P Code) that would prohibit a licensee from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with, or filing a complaint with a board based on any action arising from his or her practice. (This is known as a “gag clause” in a malpractice settlement.)

Reason for this Change: The new section 720.14 is similar to language which currently exists for physicians (Section 2220.7 of the B&P Code). AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. There is no reason why other health professionals should not be subject to the same prohibition which would prevent them from including a “gag clause” in a malpractice settlement and thus preventing a board from receiving information about a practitioner who may have violated the law. The use of gag clauses still persists. Gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses can cause delay and thwart a boards effort to investigate possible cases of misconduct, thereby preventing the board from performing its most basic function – protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as a healthcare professional.

Concerns Raised: There were no concerns raised about language in SB 294 which dealt with providing a prohibition against gag clauses in civil dispute settlements.

Add Section 720.14 to the B&P Code, to read:

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

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

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

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

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

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

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

(16) Access to Medical Records/Documents Pursuant to Investigations

This bill adds a new section (Section 720.16 of the B&P Code) that would authorize the Attorney General and his or her investigative agents and boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. Specifies that if a board complies with Section 2225 of the B&P Code they are not subject to this new section.

Adds new section (Section 720.18 of the B&P code) that would subject a licensee or a health facility to civil and criminal penalties if they fail to comply with a patient's medical record request, as specified, within 15 days, or if they fail or refuse to comply with a court order mandating release of record. Provides that this new section shall not apply to a licensee who does not have access to, or control over, certified medical records. Specifies that if a board complies with Section 2225.5 of the B&P Code they are not subject this new section.

Reason for this Change: New sections 720.16 and 720.18 are similar to language which currently exists for physicians and surgeons and podiatrists (Sections 2225 and 2225.5 of the B&P Code) and section 720.18 is also similar to language which currently exists for dentists and psychologists (Sections 1684.5 and 2969 of the B&P Code). When a board or the Attorney General is trying to obtain important documents and medical records pursuant to a disciplinary action of a licensee, requirements for obtaining these documents and records should be consistent with those of other health care practitioners. Language has been included which protects those licensees who may not be responsible for medical records or have no access or control over these records. Also, medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to a board; and, (2) the board or the Attorney General have sought a court order and the court has issued a subpoena mandating the release of records. Under both circumstances penalties would apply if the records are not supplied by those who have both possession and control over the records.

Concerns Raised: (concerns which have been raised by nurses groups and others)

Add Section 720.16 to the B&P Code, to read:

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

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

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

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

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

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

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

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

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

Add Section 720.18 to the B&P Code, to read:

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

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide

the authorizing patient's certified medical records to the board within 10 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 10th day, up to one hundred thousand dollars (\$100,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the boards in obtaining the patient's authorization. A board shall pay the reasonable costs of copying the certified medical records, but shall not be required to pay such cost prior to the production of the medical records.

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

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

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

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

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be

punishable by a fine not to exceed five thousand dollars (\$5,000) and shall be reported to the State Department of Public Health and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

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

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

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

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

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

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

(17) Access to Records/Documents from Governmental Agencies

This bill adds a new section (Section 720.20 of the B&P Code) that would require a state agency upon receiving a request from a board to provide all records in the custody of the agency including but not limited to confidential reports, medical records and records related to closed or open investigations. A state agency shall also be required to notify the board if it is conducting an investigation against a licensee and shall cooperate with the board in providing all requested information.

Reason for this Change: According to the Department, when the Department's regulatory programs are conducting an investigation on one of their licensees, there can be significant delays caused by the amount of time it takes to secure records from various state agencies. This proposal would solve this problem by requiring these agencies to release information relevant to investigations, upon the request of a board.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.20 to the B&P Code, to read:

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

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

(18) Payment to Agencies for Record/Documents Received

This bill adds a new section (Section 720.22 of the B&P Code) that would require all local and state law enforcement agencies, state and local governments, state agencies and licensed health care facilities, and employers of any licensee of a board to provide records requested prior to receiving payment from the board.

Reason for this Change: According to the Department, only a small number of external governmental agencies charge boards for producing records (i.e., Federal courts, several Los Angeles county agencies). However, under current practices, procedures involved in receiving approval for and completing the payment can delay delivery of the requested records.

The Department recommends a statutory mandate to compel any law enforcement agency, court, government entity, health facility, or employer who charges a fee for copies of any records to produce and deliver those copies prior to receiving payment from a board.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.22 to the B&P Code, to read:

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

(19) Employer of Health Care Practitioner Reporting Requirements

This bill adds a new section (Section 720.24 of the B&P Code) that would require any employer of a health care licensee to report to the respective board the suspension or termination for cause any health care licensee in its employ. This report shall be kept confidential except as provided under subdivision (c) of Section 800 of the B&P Code dealing with release of information within the central file of the licensee. This new provision shall also not be in conflict with nor change any of the current reporting requirements of a peer review body or licensed health care facility or clinic pursuant to Section 805 of the B&P Code.

Reason for this Change: This new section 720.24 is similar to language which currently exists for vocational nurses (Section 2878.1 of the B&P Code), psychiatric technicians (Section 4521.2 of the B&P Code) and respiratory care therapists (Section 3758 of the B&P Code). The Medical Board, the Board of Podiatric Medicine, Board of Behavioral Sciences, Board of Psychology and Dental Board also have more extensive reporting requirements for peer review bodies and hospitals which are specified in Section 805 of the B&P Code. There is no reason why the remaining health-related boards should not have similar reporting requirements for those licensees who have been suspended or terminated from employment for specified disciplinary reasons.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.24 to the B&P Code, to read:

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

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

- (1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.
- (2) Unlawful sale of a controlled substance or other prescription items.
- (3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
- (4) Falsification of medical records.
- (5) Gross negligence or incompetence.
- (6) Theft from patients or clients, other employees, or the employer.

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

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

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

(20) Annual Enforcement Reports by Boards to the Department and Legislature

This bill adds a new section (Section 720.26 of the B&P Code) that would require the boards to report annually, by October 1, to the DCA and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation or alcohol or drug abuse.

Reason for this Change: The new section 720.26 is similar to language which currently exists for physicians and surgeons (Section 2313 of the B&P Code). There is no reason why other health-related boards should not be subject to the same requirements as the Medical Board in submitting an annual enforcement report both to the DCA and the Legislature.

Concerns Raised: There were no concerns raised about language in SB 294 which dealt with the requirement for annual enforcement reports by the boards.

Add Section 720.26 to the B&P Code, to read:

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

- (1) The total number of consumer calls received by the board and the number of consumer calls or letters designated as discipline-related complaints.
- (2) The total number of complaint forms received by the board.
- (3) The total number of reports received by the board pursuant to Section 801, 801.01, and 803, as applicable.
- (4) The total number of coroner reports received by the board.
- (5) The total number of convictions reported to the board.
- (6) The total number of criminal filings reported to the board.
- (7) If the board is authorized to receive reports pursuant to Section 805, the total number of Section 805 reports received by the board, by the type of peer review body reporting and, where applicable, the type of health care facility involved, and the total number and type of administrative or disciplinary actions taken by the board with respect to the reports, and their disposition.
- (8) The total number of complaints closed or resolved without discipline, prior to accusation.
- (9) The total number of complaints and reports referred for formal investigation.
- (10) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.
- (11) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.
- (12) The total number of final licensee disciplinary actions taken, by category.
- (13) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

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

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

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

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

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

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

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

(21) Enforcement Timeframes for the Attorney General's Office

This bill adds a new section (Section 720.30 of the B&P Code) that would require the Office of the Attorney General to serve an accusation within 60 calendar days after receipt of a request for accusation from a board. Would also require the Attorney General to serve a default decision within five days following the time period allowed for the filing of a Notice of Defense and to set a hearing date within three days of receiving a Notice of Defense, unless instructed otherwise by the board.

Reason for this Change: There are delays in the prosecution of cases at the AG's Office that is contributing to the lengthy enforcement and disciplinary process that can take on average up to 2 to 3 years. According to statistics provided by the AG's Office, the average time for the AG to file an accusation for a board is taking from 5 to 8 months, and to complete prosecution can take on average about 400 days. There were also concerns raised about the time it takes the AG to prepare a proposed default decision. The filing of a default decision is made once a licensee has failed to file a "notice of defense" when an accusation has been served on him or her. If the licensee fails to file a notice of defense within a specified timeframe, he or she is subject to a default judgment because of a failure to appear or make a defense of their disciplinary case. In 2004-2005 it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. However, filing of a proposed default decision is "not rocket science" and should only take a matter of days.

Concerns Raised: There were no concerns raised about language in SB 294 which dealt with the requirement for annual enforcement reports by the boards.

Add Section 720.30 to the B&P Code, to read:

720.30. (a) The Office of the Attorney General shall serve an accusation within 60 calendar days of receipt from a board or bureau.

(b) The Office of the Attorney General shall serve a default decision within five days following the time period allowed for the filing of a Notice of Defense.

(c) The Office of the Attorney General shall set a hearing date within three days of receiving a Notice of Defense, unless board or bureau gives the Office of the Attorney General instruction otherwise.

(22) Misdemeanor for Violation of Article 10.1 – Healing Arts Licensing Enforcement Act

Existing Law Sections 2314 and 2315 for the Medical Practices Act, Section 2799 of the Nurses Practice Act, Sections 1700 and 1701 of the Dental Practice Act, Sections 4321 of the Pharmacy Act, and other healing arts licensing acts all specify that a violation of any of the provisions of their specific acts is a misdemeanor and provides specific penalties for a violation of any provision of their Practice Act or for specified provisions.

This bill adds a new section (Section 720.32 of the B&P Code) that makes a violation of these new enforcement provisions that apply to all healing arts boards (Article 10.1 of the B&P Code) a misdemeanor. This misdemeanor provision is similar to Sections in the Medical Practices Act and would provide for increased penalties for a violation of Section 736, for the use of a controlled substance, dangerous drugs or alcohol to extent that it would be dangerous or injurious to the licensee or the public or to the extent it would impair the ability of the licensee to practice safely.

Reason for this Change: Since the provisions in new Article 10.1 relate to similar enforcement provisions within different Practice Acts, a violation of any of these provisions should also be a misdemeanor with specific penalties that would be applicable. As a health care practitioner, the use of a controlled substance, dangerous drugs or alcohol is considered as a more egregious act since it directly jeopardizes the care of patients and therefore would carry a more severe penalty.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.32 to the B&P Code, to read:

720.32. (a) Unless it is otherwise expressly provided, any person, whether licensed pursuant to Division 2 or not, who violates any provision of this article is guilty of a misdemeanor and shall be punished by a fine of not less than two hundred dollars (\$200) nor more than one thousand two hundred dollars (\$1,200), or by imprisonment for a term of not less than 60 days no more than 180 days, or by both such fine and imprisonment.

(b) A violation of Section 736 is a misdemeanor punishable by a fine of up to ten thousand dollars (\$10,000), imprisonment in the county jail of up to six months, or both the fine and imprisonment.

(23) Deny License for Mental Illness or Chemical Dependency

Existing Law (Section 480 of the B & P Code) allows a board to deny a license on various grounds, including conviction of a crime, commission of any crime involving dishonesty, fraud or deceit or any act if committed would be grounds for suspension or revocation of a license. Section 820 of the B & P Code also allows a licensing agency to order a licentiate to be examined by one or more physicians whenever it appears that any person holding a license, certificate, or permit may be unable to practice their profession safely because of a mental illness, or physical illness affecting competency.

This bill is similar to what Section 820 authorizes for existing licenses, adds a new section (Section 720.34 of the B&P Code) which would grant the healing arts boards the authority to deny a license, certificate or permit to an applicant who may be unable to practice his or her profession safely because of mental or physical illness. The bill would also provide the applicant an opportunity to appeal the board's denial by submitting to a board approved psychological or physical examination to evaluate his/her competency to practice.

Reason for this Change: Boards lack the authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the applicant's fitness to practice is compromised based on suspected mental illness or chemical dependency. Boards have the authority to deny an applicant a license for criminal convictions, dishonesty, fraud or deceit, or any act if committed by a licensee would be grounds for disciplinary action. This proposed language would solidify the Board's authority to protect the public, given the potential harm/damage to public safety of a substance abusing licensee or one with mental illness or other physical illness.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 720.34 to the B&P Code, to read:

720.34. (a) Whenever it appears that any applicant for a license, certificate or permit under this division or under any initiative act referred to in this division may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate and may be received as direct evidence in proceedings conducted pursuant to subdivision (c).

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

(c) A health care licensing board shall not grant a license, certificate or permit until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

(24) Require Boards to Check Information Maintained by the National Practitioner Databank

Existing Federal Law, establishes the National Practitioner Data Bank (NPDB) which is a confidential repository of information related to the professional competence and conduct of physicians, dentists and other health care practitioner. The NPDB establishes reporting requirements for hospitals, health care entities, Boards of Medical Examiners, professional societies or physicians, dentists, or other health care practitioners which take adverse licensure or professional review actions, and entities making payments as a result of medical malpractice actions or claims. The NPDB also enable individuals or entities to obtain information from the NPDB. In enacting the NPDB, the United States Congress intended to improve the quality of health care by encouraging State licensing boards, hospitals, and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history.

Existing law (Section 2310 of the B & P Code) provides that if a physician and surgeon possess a license or is otherwise authorized to practice medicine in California or by any agency of the federal government and that license or authority is suspended or is revoked outright and is reported to the NPDB, the physician and surgeon's certificate shall be suspended automatically for the duration or the suspension or the revocation.

This bill adds a new section (Section 820.36 of the B&P Code) which would require health care licensing boards to check the National Practitioner Data Bank, or any other national professional or council databases before issuing a license, certificate or permit to any applicant from another state or prior to renewing the license, certificate or permit of an individual who is also licensed in another state.

Reason for this Change: There is no reason for boards not to check the NPDB or other national professional or council databases to find out whether applicants or licensees have been sanctioned or disciplined by other states prior to granting or renewing of a license.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 820.36 of the B&P Code, to read:

820.36. (a) Each health care licensing board shall conduct a search on the National Practitioner Data Bank and any other national professional or council databases prior to granting a license, certificate, or permit to an applicant who is licensed by another state.

(b) Each health care licensing board shall conduct a search on the National Practitioner Data Bank or any other national professional or council databases prior

to granting renewal of a license, certificate, or permit, if the licensee holds a similar license, certificate, or permit in another state.

(c) Health care licensing boards may charge a fee to cover the actual cost to conduct the search on the National Practitioner Data Bank or any other national professional or council databases, as specified in subsection (a) and (b).

(25) Conviction of Sexual Misconduct – Crime Substantially Related

Existing Law provides in provisions related to physicians and surgeons, dentists and other health professionals that a conviction of sexual misconduct or a felony requiring registration as a registered sex offender shall be considered a crime substantially related to the qualifications, functions, or duties of a board licensee.

This bill amends Section 726 of the B&P Code so that it would apply these similar provisions to all health professionals.

Reason for this Change: There is no reason why other health professionals who have been convicted of sexual misconduct, or have been required to register as a sex offender pursuant to a felony conviction, should not be subject to the same standard and finding the such a crime is substantially related to the qualifications, functions, or duties of a board licensee.

Concerns Raised: There were no concerns raised about this language in SB 294.

Amend Section 726 to the B&P Code, to read:

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

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

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

(26) Unprofessional Conduct for Drug Related Offenses

This bill adds a new section (Section 734 of the B&P Code) that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct. Adds new section (Section 735 of the B&P Code) that a violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. Adds new section (Section 736 of the B&P Code) that the use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or the public, or to the extent that such use impairs the ability of the licensee to practice safely, or if a crime is committed regarding the use, consumption or self-administration of any substances specified, shall constitute unprofessional conduct.

Reason for this Change: These new sections are identical to Sections 2237, 2238 and 2239 of the B&P Code which are applicable to physicians and surgeons and podiatrists. There is no reason why other health professionals should not be subject to the same requirements regarding certain drug related offenses which would be considered as unprofessional conduct on the part of the practitioner.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 734 to the B&P Code, to read:

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

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

Add Section 735 to the B&P Code, to read:

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

Add Section 736 to the B&P Code, to read:

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

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

(27) Unprofessional Conduct for Failure to Cooperate With Investigation of Board

This bill adds a new section (Section 737 of the B&P Code) that a failure to furnish information in a timely manner to the board or cooperate in any disciplinary investigation constitutes unprofessional conduct.

Reason for this Change: This new section is similar to other state statutes and to Section 6068 (i) of the B&P Code. This statutory requirement was recommended by the Attorney General's Office. According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the board. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required their licensees to cooperate with investigations being conducted by disciplinary authorities. (See listing of statutes provided by the AG's Office.) The AG argues that the enactment of a statutory requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 737 to the B&P Code, to read:

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

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

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

(28) Reporting by Licensee of Arrest, Convictions or Disciplinary Action

Existing Law (Section 802.1 of the B&P Code) requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she been convicted of a felony or misdemeanor.

This bill would expand that requirement to any licensee of a hearing arts board and require the licensee to submit a written report for the for the following reasons:

(1) If there is bringing of an indictment or information charging a felony against the licensee. (2) The conviction of the licensee of any felony or misdemeanor. (3) Any disciplinary action taken by another health arts board of this state or a healing arts board of another state.

Reason for this Change: There is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

Concerns Raised: (concerns raised by nursing profession)

Amend Section 802.1 to the B&P Code, to read:

802.1. (a) (1) ~~A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine~~ **Any licensee of a board established under this division or under any initiative act referred to in this division shall submit a written** report either of *any of* the following to the entity that issued his or her license:

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

(B) **The arrest of the licensee.**

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

(D) Any disciplinary action taken by another licensing entity or authority of this state or of another state.

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

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

(29) Report of Crime or Personal Injury Judgment by Clerk of Court

Existing Law (Section 803 of the B&P Code) requires the clerk of the court within 10 days after a judgment by a court that a crime has been committed by a licensee, or that a licensee is liable for any death or personal injury for an amount in excess of \$30,000, to notify healing arts boards, as specified.

This bill amends Section 803 to require that the clerk of the court provide notice to any of the of the listed healing arts boards for which the licensee is licensed, if there is a judgment for a crime committed or for any death or personal injury in excess of \$30,000, for which the licensee is responsible due to their negligence, error or omission in practice, or his or her rendering unauthorized professional services.

Reason for this Change: There is no reason the clerk of the court should not report a judgment for a crime or for personal injury to any other health arts boards as listed. Most healing arts boards are currently covered under this provision.

Concerns Raised: There were no concerns raised about this language in SB 294.

Amend Section 803 of the B&P Code, to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from ~~the Board of Behavioral Science Examiners or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200))~~ **any of the healing arts boards established under this division or under any initiative act referred to in this division** has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

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

(30) Report of Charges of Felony by DA, City Attorney, or Clerk of Court

Existing Law (Section 803.5 of the B&P Code) requires the district attorney, city attorney, other prosecuting agency, or clerk of the court report to specified healing arts boards if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the board.

This bill amends Section 803.5 to require that the any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Reason for this Change: There is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

Concerns Raised: There were no concerns raised about this language in SB 294.

Amend Section 803.5 of the B&P Code, to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify ~~the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board,~~ **the appropriate healing arts board established under this division or under any initiative act referred to in this division** and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

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

(31) Report of Preliminary Hearing Transcript of Felony by Clerk of Court

Existing Law (Section 803.6 of the B&P Code) requires the clerk of the court to transmit any felony preliminary hearing transcript report to specified healing arts boards if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the board.

This bill amends Section 803.6 to require that the any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Reason for this Change: There is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

Concerns Raised: There were no concerns raised about this language in SB 294.

Amend Section 803.6 of the B&P Code, to read:

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

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

(32) Notification of Future Arrests or Convictions from DOJ

This bill creates a new section (803.7 of the B&P Code) to require the Department of Justice to provide reports within 30 days of subsequent arrests, convictions or other updates of licensees.

Reason for this Change: According to the Department, while all new fingerprints are performed electronically, not all records at the DOJ are kept electronically for licensees who were fingerprinted in the past. Retrieving non-electronic records adds unnecessary time to investigations. The Department is not in a position to recommend how exactly the DOJ can reduce the amount of time it takes to complete subsequent arrest and conviction notices, but believes that a benchmark should be set. This would speed up the time it takes to receive some arrest and conviction notices, and will allow boards to take action against licensees sooner. unlicensed practice presents a serious threat to the public health and safety.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Section 803.7 to the B&P Code, to read:

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

(33) Authority of Department to Adjust Fees Consistent with CPI

This bill creates a new article and section under Division 2 (Article 15, Section 870 of the B&P Code) to allow the department to annually establish a maximum fee amount for each board, adjusted consistent with the California Consumer Price Index.

Reason for this Change: According to the Department, in almost every instance, boards' fees are set at a specific dollar amount that does not adjust with inflation. Most boards have minimum and maximum fee amounts established in statute, and the exact amount is set by the board through regulations. Even though boards are able to adjust their fees by regulation to reflect inflation, licensee population increases, and increased workload due to legislative mandates, legislation is still required from time to time in order to increase the statutory maximum even if it is to keep up with inflation. Legislative fee increases are time consuming, can require more resources than a regulatory or administrative fee increase. Allowing boards to annually administratively adjust their statutory maximum in manner consistent with the California Consumer Price Index rather than through legislation will provide them with greater flexibility and allow them to better ensure that fees closely reflect the actual cost of administering their regulatory operations. . .

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Article 15 (commencing with Section 870) to Chapter 1 of Division 2 of the B&P Code, to read:

Article 15. Healing Arts Licensing Fees

Add Section 870 of the B&P Code, to read:

803.6. (a) Notwithstanding any provision of law establishing a fee or a fee range in this division, the department may annually establish a maximum fee amount for each board or bureau, adjusted consistent with the California Consumer Price Index.

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

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

(34) Unlicensed Practice – Public Crime

This bill creates a new article and section under Division 2 (Article 16, Section 880 of the B&P Code) to specify it is a public offense, punishable by a fine not to exceed \$100,000 or imprisonment, to engage in any practice, including healing arts practice, without a current and valid license.

Reason for this Change: According to the Department, unlicensed practice presents a serious threat to the public health and safety. However, it can be difficult for a board to get a district attorney to prosecute these cases criminally because the penalties are often significantly less than the cost to prosecute the case. While district attorneys do prosecute the most egregious cases, the inconsistent prosecution of these cases diminishes the deterrent effect. If the penalty for unlicensed practice is substantially increased, the deterrent will be increased two-fold: not only will the punishment be more severe, but district attorneys will be more likely to prosecute these cases.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Add Article 16 (commencing with Section 870) to Chapter 1 of Division 2 of the B&P Code, to read:

Article 15. Unlicensed Practice Public Crime

Add Section 880 of the B&P Code, to read:

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

(1) Any person who does not hold a current and valid license to practice a healing art under this Division, to engage in such practice.

(2) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in Division 2 or to violate any provision of this Division.

(3) Any person who represents himself or herself as engaging or authorized to engage in a healing art of Division 2 who is not authorized to do so.

(b) Notwithstanding any other provision of law, any person who is licensed under Division 2, but who is not authorized to provide some or all services of another healing art, who practices or supervises the practice of those unauthorized services, is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars (\$100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(35) Sunset Dates for Diversion Programs

Existing Law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists, registered nurses, physician assistants, pharmacists and veterinarians whose competency may be impaired due to, among other things, alcohol and drug abuse. Subject a licensee to disciplinary action by his or her respective board for failure to comply with a diversion program's requirements.

This bill would place a sunset date on all diversion programs operated by boards for January 1, 2013.

Reason for this Change: In regard to the sunset dates placed on diversion programs, this will provide sufficient opportunity for these programs to be reviewed and audited by the Legislature to assure they are operating properly and monitoring those practitioners who participate in these programs. This is similar to action taken by the Legislature with the diversion program of the Medical Board which because of its deficiencies was allowed to sunset in 2008.

Concerns Raised:

(Dentists)

Add Section 1699.2 of the B&P Code, to read:

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

(Osteopathic Physicians and Surgeons)

Add Section 2372 of the B&P Code, to read:

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

(Physical Therapists and Physical Therapist Assistants)

Add Section 2669.2 of the B&P Code, to read:

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

(Registered Nurses)

Add Section 2669.2 of the B&P Code, to read:

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

(Physician Assistants)

Add Section 3534.12 of the B&P Code, to read:

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

(Pharmacists or Intern Pharmacists)

Add Section 4375 of the B&P Code, to read:

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

(Veterinarians and Registered Veterinarian Technicians)

Add Section 4873.2 of the B&P Code, to read:

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

(36) Requirement for a New Information Technology System

This bill provides that it is the intent of the Legislature that the DCA shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees.

Reasons for this Change: DCA's current licensing and enforcement database systems are antiquated and impede the boards' ability to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. The CPEI relies on advanced workflow capabilities and cross-entity external system communications that the aging system's technology cannot provide.

The implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. DCA intends to procure a Modifiable Commercial Off-The-Shelf (or "MOTS") enterprise licensing and enforcement case management system. DCA's research has shown various MOTS licensing and enforcement systems exist that can provide intelligent case management to reduce enforcement and licensing turnaround times, detailed performance measurements, increased data quality, advanced configurability, and robust web presences for public self-service.

The Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-11.

Concerns Raised: There were no concerns raised about this language in SB 294.

Add Section to the Bill, to read:

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

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

(37) Adopt Vertical Enforcement and Prosecution Model for All Health Boards

Existing Law (Sections 12529, 12529.5 and 12529.6 of the Government Code) establishes in the Department of Justice the Health Quality Enforcement Section (HQES) to investigate and prosecute cases against licensees and applicants for the Medical Board (MBC), Board of Podiatric Medicine (BPM) and the Board of Psychology (BP), or any committee under the jurisdiction of these boards. Requires the Attorney General (AG) to ensure that the HQES is properly staffed with a sufficient number of experienced and able employees who are capable of handling the most complex and varied types of disciplinary actions against licensees. Requires attorneys for the AG to work closely with each major intake and investigatory unit of the specified boards, to assist in developing uniform standards and procedures for the handling of complaints and investigations. Also states that because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by physicians and surgeons, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a "vertical prosecution" model for those investigations is in the best interest of the people of California. Requires that each complaint that is referred to a district office of the board for investigation shall be simultaneously and jointly assigned to an investigator and the deputy AG in the HQES that is responsible for prosecuting the case if the investigation results in the filing of an accusation. States that the joint assignment of the investigator and the deputy AG shall exist for the duration of the disciplinary matter. States the during the assignment, the investigator assigned shall, under the direction but not the supervision of the deputy attorney advise the board on legal matters as specified. Sunsets these requirements regarding vertical prosecution on January 1, 2013, but requires by March 1, 2012 a report and recommendations to the Governor and the Legislature on the vertical enforcement model (VE).

This bill amends Section 12529, 12529.5 and 12529.6 to expand the use of the vertical enforcement and prosecution model for cases handled by all other health boards.

Reason for this Change: After a complaint has been investigated by a board (those boards not covered by VE) and there is a determination that the investigatory file contains sufficient evidence to justify disciplinary action, the board uses an attorney from the Licensing Section of the AG's Office to file and prosecute the disciplinary action against its licensee. Similar to DOI investigators, the Licensing Section attorneys are generalists who do not specialize in any particular type of disciplinary action. They prosecute all sorts of DCA licensees, from barbers to landscape architect to nurses. They have high caseloads and are not necessarily familiar with all of the practice acts of the health professions or their regulations.

In contrast, the investigators of the MBC and the HQES prosecutors work together from the time a complaint is referred for investigation in a VE model format. VE increases the efficiency of MBC investigators because the prosecutor is involved in the design of the investigation, reviews the evidence as it comes in, and is able to

direct the closure of cases in which proof of a violation by clear and convincing evidence is not surfacing. This is beneficial for both the accused licensee and the public: non-meritorious cases are closed more quickly (benefiting the licensee), thus allowing the investigator/prosecutor team to move on to attack meritorious cases more quickly to benefit the public. The DOI investigators do not work in VE format with HQES or the Licensing Section prosecutors. A generalist investigator completes an investigation with little or not legal guidance on the elements of the offense, and then hands off a “completed investigation” to a generalist prosecutor who has had no role in the design of the investigation and who thereafter has no investigative assistance. This creates enormous inefficiencies.

Pursuant to recent studies conducted by the MBC on the utilization of the VE model, the use of VE by investigators of the MBC and prosecutors of the HQES have had a positive effect on case processing times, shortening the actual prosecution of cases. Also it has been remarked that the actual quality and preparation of cases has improved as well, especially as to meeting the evidentiary requirements in prosecuting cases. The HQES attorneys are familiar with medical records required, use of medical experts, and other issues inherent in quality of care disciplinary matters in which health professionals may be involved. The Licensing Section and HQES should be restructured so that HQES serves not only MBC, BPM and Board of Psychology, but also the other health related boards such as the BRN, Dental Board, Board of Pharmacy and others which handle either complex or serious disciplinary matters. A special unit within DOI should also be created so that similar to MBC investigators, those investigators of DOI can work in a VE model with HQES attorneys and acquire more expertise in the investigation and handling of health care cases. It should be noted that unlike the Medical Board, however, not every case of the other healing arts boards would need to be subject to a VE model. Generally, cases which are considered as more complex and which would benefit from using the VE model should be referred to the new HQE unit of DOI which would work in a VE model with HQES.

Concerns Raised: The following language was not part of SB 294, so it is unknown at this time if there would be any concerns on the part of the other health professions.

Amend Section 12529 of the B&P Code, to read:

12529. (a) There is in the Department of Justice the Health Quality Enforcement Section. The primary responsibility of the section is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or any committee under the jurisdiction of the Medical Board of California, **or any other healing arts boards described under subdivision (a) of Section 720 as requested by their executive officer.**

(b) The Attorney General shall appoint a Senior Assistant Attorney General of the Health Quality Enforcement Section. The Senior Assistant Attorney General of the Health Quality Enforcement Section shall be an attorney in good standing licensed to practice in the State of California, experienced in prosecutorial or administrative

disciplinary proceedings and competent in the management and supervision of attorneys performing those functions.

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the board.

(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, ~~and the committees under the jurisdiction of the Medical Board of California,~~ **and any other healing arts boards described under subdivision (a) of Section 720,** with the intent that the expenses be proportionally shared as to services rendered.

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

Amend Section 12529.5 of the B&P Code, to read:

12529.5. (a) All complaints or relevant information concerning licensees that are within the jurisdiction of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology shall be made available to the Health Quality Enforcement Section. **Complaints or relevant information may be referred to the Health Quality Enforcement Section as determined by the executive officer of any other healing arts boards described under subdivision (a) of Section 720,**

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the boards described in subdivision (d) of Section 12529 **Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology, and shall assign attorneys to work on location at the Health Quality Enforcement Unit of the Division of Investigation of the Department of Consumer Affairs** to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards, ~~or committees~~ **and the Division of Investigation** in designing and providing initial and in-service training programs for staff of the boards or committees, including, but not limited to, information collection and investigation.

(d) The determination to bring a disciplinary proceeding against a licensee of the boards shall be made by the executive officer of the boards or committees as appropriate in consultation with the senior assistant.

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

Amend Section 12529.6 of the B&P Code, to read:

12529.6. (a) The Legislature finds and declares that the **healing arts boards** ~~Medical Board of California~~, by ensuring the quality and safety of medical health care, performs one of the most critical functions of state government. Because of the critical importance of the board's public health and safety function, the complexity of cases involving alleged misconduct by **health care practitioners** ~~physicians and surgeons~~, and the evidentiary burden in the board's disciplinary cases, the Legislature finds and declares that using a vertical enforcement and prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, ~~as of January 1, 2006~~, each complaint that is referred to a district office of the ~~board~~ **Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, or the Health Quality Enforcement Unit** for investigation shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction but not the supervision of the deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.

(d) This section does not affect the requirements of Section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned, nor for complaints that have not been assigned to the Health Quality Enforcement Unit.

(e) It is the intent of the Legislature to enhance the vertical enforcement and prosecution model as set forth in subdivision (a). The Medical Board of California, other healing arts boards and the Division of Investigation shall do all of the following:

(1) Increase its computer capabilities and compatibilities with the Health Quality Enforcement Section in order to share case information.

(2) Establish and implement a plan to ~~locate~~ **collocate, when feasible**, its enforcement staff and the staff of the Health Quality Enforcement Section ~~in the same offices, as appropriate~~, in order to carry out the intent of the vertical enforcement and prosecution model.

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

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

Amend Section 12529.7 of the B&P Code, to read:

12529.7. By March 1, 2012, the ~~Medical Board of California~~ **Department** in consultation with the **boards and 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.

CCSD Review
12/9/2009 - 12/23/09
Conducted by Respiratory Care Board

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
JAV (Other Deficiencies #1) Enrolled/First Term: 4/1/02 Graduate: Undetermined Licensed: 8/24/09	Transcript Date: 11/11/08	7/22/2003	CIS120R	Introduction to Computers	B	
				No Clinical Education Listed		
			Reflects	Respiratory Therapy AS Degree Awarded		10/20/2003
	RCB Letter Date: 5/14/09	Identified that APP101R, RES190, and RES290 were not completed.				
	CCSD Letter Dated: 6/15/09	CIS120R Introduction to Computers was a substitute for APP101 Computer Fundamentals. "The required clinical experience documented in courses RES190 and RES290 were not recorded on the transcript. The transcript has been updated to include these completed courses."				
	Transcript Date: 6/15/09	4/7/2003	CIS120(D-1)	Introduction to Computers	B	
		5/5/2003	RES190R(D-1)	Clinical Experience 1: Basic Competencies and Case Studies	P	
		7/28/2003	RES290(D-3)	Clinical Experience II: Advanced Competencies And [nothing else entered]	P	10/20/2009
	Transcript Date: 11/20/09	4/7/2003	CIS120(D-1)	Introduction to Computers	B	
		5/5/2003	RES190R(D-1)	Clinical Experience 1: Basic Competences and Case Studies	P	
	7/28/2003	RES290(D-3)	Clinical Experience II: Advanced Competencies And [nothing else entered]	P		
	11/9/2009	RES195A	Clinical Experience- 1st rotation	none	10/20/2003	
RESPONSE: JAV graduated on 10/20/2003 after completing all course requirements for the Associate of Science in Respiratory Therapy program.						
RCB Note:	<p>Issue #1: Did this student re-enroll in this program for the 11/9/09 clinical experience course or is this an error?</p> <p>RESPONSE: No. Following graduation the student returned to audit some courses in order to be better prepared to enter the work force.</p> <p>Issue #2: Is the "Clinical Experience" properly noted? One uses the number "1" and one uses the roman numeral "II." Why does the database allow for different course names with the same codes?</p> <p>RESPONSE: This is the way the course was entered into the system in 2006. Because it is no longer an active course, the difference in the course listing was not changed.</p> <p>Issue #3: Was CIS120R part of a catalog prior to 04/05? Please provide the 2002-03 or 2003-04 catalogs.</p>					

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
COR (Other Deficiencies #3) Enrolled/First Term: 6/14/04 Graduate: 4/17/06 Licensed: 6/24/09	CCSD Letter Date: 5/27/09			Provides that "The SOC220 Sociology course is a general education course and substitutes for the general education course SOC220R Ethical and Legal Issues in Health Care."		
	Transcript Dated: 11/20/09	9/6/2004	SOC220	Sociology	A	4/17/2006
	CCSD Letter Date: 12/8/09			The chart attached to this letter provides that MAN224 OR MAN320, both Business Law replaced SOC220R, Ethical and Legal Issues in Health Care. The chart also provides that those courses with an "R" indicate the student was in the Respiratory Program. No catalogs provide SOC220 as part of the Respiratory Therapy program. Nothing on the chart indicates SOC220 substitutes for any course.		
				RESPONSE: COR graduated on 4/17/2006 after completing all course requirements for the Associate of Science in Respiratory Therapy program.		
RCB Note:				What documentation provides an analysis or accreditation approval allowing SOC220 be taken in place of SOC220R?		
				RESPONSE: The designation of an R at the end of a course number signified that Respiratory Therapy students were enrolled in that course. This assisted the scheduler in keeping those students in a particular Respiratory Therapy cohort together. SOC220 was listed as a requirement in the 2004-2005 catalog. The 2005-2006 catalog changed the general education courses from SOC220 and BUS220 to MAN103 and MAN320. Because COR took SOC220 pursuant to the 2004 catalog, both SOC220 and BUS220 are acceptable as her general education course requirements.		

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
TEA (Other Deficiencies #4)	Enrolled: 9/6/04 Graduate: 6/20/06	11/09 RCB		These five student transcript reflected the incorrect course codes. The correct course codes are RES100 and RES255. The codes reported were RES(D1) and RES255B.		
SIL	Enrolled 10/30/06 Graduate: 9/26/08	CCSD Letter Dated: 12/8/09		This letter has a footnote that indicates "'Three' of the issues involving four graduates result from computer errors occurring during transition in 2006 from an older computer student database to our current student database. For instance, during the conversion from the Termlite student database to the Diamond D Student database, the RES(D1) course (11/29/2004) was missing the number, 100. Also during this transition, the Registrar at the time (2005) entered the courses taken by one student into Diamond D as 'Transfer' courses rather than entering the date of the module in which the courses were actually taken. In any event, again, all students completed and passed all the correct courses in full."		
MAN	Enrolled: 1/10/05 Graduate: 11/1/06					
DAV	Enrolled: 6/14/04 Graduate: 4/17/06					
CAM	Enrolled: 11/27/06 Graduate: 9/26/08					
<p>RESPONSE: TEA graduated on 6/20/2006 after completing all course requirements for the Associate of Science in Respiratory Therapy program.</p> <p>RESPONSE: SIL graduated on 9/26/2008 after completing all course requirements for the Associate of Science in Respiratory Therapy program.</p> <p>RESPONSE: MAN graduated on 11/01/2006 after completing all course requirements for the Associate of Science in Respiratory Therapy program.</p> <p>RESPONSE: DAV graduated on 4/17/2006 after completing all course requirements for the Associate of Science in Respiratory Therapy program.</p> <p>RESPONSE: CAM graduated on 9/26/2008 after completing all course requirements for the Associate of Science in Respiratory Therapy program.</p>						
<p>RCB Note: This may account for "three" of these individuals. However, CCSD failed to identify any of the students. Further explanation is needed by CCSD.</p>						
<p>RESPONSE: TEA, MAN and DAV took RES(D1). This course and the RES100 course both have the title "Intro To Respiratory Therapy/Infection Control." The "100" was lost in the transfer from Termlite to Diamond D . Their transcripts have been corrected to state RES100 rather than RES(D1).</p> <p>RESPONSE: SIL and CAM were registered for RES255B. At one time this course was being taught over an 8 week period instead of a 4 week period. The B designation was put in to denote the second half of that course. It was not necessary and was removed.</p>						

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
AQU (Licensee 1)	CCSD Letter Dated 12/5/08	Indicates graduation date as 12/5/08				12/5/2008
Enrolled/First Term: 11/27/09 Graduate: Undetermined Licensed: 1/23/09	Transcript Date: 12/6/2008	10/15/2007	RES225 (E-10)	Respiratory Care As A Profession/RC Protocols	IP	
		11/12/2007	RES225(E-1)	Respiratory Care As A Profession/RC Protocols	F	12/5/2008
	Transcript Date: 7/31/2009	10/15/2007	RES225 (E-10)	Respiratory Care As A Profession/RC Protocols	IP	
		11/12/2007	RES225(E-1)	Respiratory Care As A Profession/RC Protocols	A	10/24/2008
CCSD Explanation (8/3/09):	The CCSD instructor entered the grade into the system incorrectly.					
Transcript Date: 11/20/09	10/15/2007	RES225 (E-10)	Respiratory Care As A Profession/RC Protocols	IP		10/24/2008
	11/12/2007	RES225(E-1)	Respiratory Care As A Profession/RC Protocols	A		
RESPONSE: AQU graduated on 10/24/2008 after completing all course requirements for the Associate of Science in Respiratory Therapy program.						
RCB Note:	<p>Issue #1: How did the instructor enter the grade incorrectly for the RES225 course, yet it was not discovered until this audit? What evidence was used to change the grade?</p> <p>RESPONSE: The instructor originally submitted a failing grade. This was corrected via a Grade Correction Form submitted by the Instructor to the Registrar's office to correct the student database. When the issue was discovered in the April 2009 audit, the Registrar researched the course and found the grade correction form in the student's academic file (Exhibit 1-3). The grade was corrected in the database in May 2009. A response letter was sent to the RCB on August 3, 2009 verifying that the course had been completed and that her grade had been corrected on her transcript.</p> <p>Issue #2: How could the registrar issue "official" transcript indicating completion of the program with a grade "F?" What was or will change to ensure that the instructor's input as well as the registrar's review is accurate?</p> <p>RESPONSE: Issuing official transcripts is not indicative of completion of the program. Official transcripts can be released at any time during or after the program regardless of status--graduated or incomplete. See the College's Transcript and Graduation Verification Form Exhibit 6-4 and Records Improvement Initiatives Exhibit 6-1.</p> <p>Issue #3: Why are the graduation dates different? What is the correct date? How does this error occur - these are all transcripts printed and courses taken after Nov 2007, well after the computer transitions. How will this be prevented in the future?</p> <p>RESPONSE: 12/5/2008 reflects the date of evaluation, not the graduation date. The graduation date was corrected to 10/24/2008 following the April 2009 audit. See the College's Transcript and Graduation Verification Form (Exhibit 6-4) and Graduation Procedure (exhibit 6-2).</p> <p>Issue #4: The Transcript Audit and Graduation Verification Form completed on 8/3/09 differs with the transcript dated 11/20/09 as follows:</p> <p><u>Verification Form</u></p> <p>MAN224 Grade: A <u>Completed:</u> Yes [transcript does not show MAN224, but does show MAN320]</p>					

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
				MED 106	Grade: B	Completed: Yes [transcript does not show this course]
				RES 275	Grade: [blank]	Completed [blank] [transcript shows completed on 2/18/09]
	<p>The second page of the Verification Form indicates that other courses were substituted for the first two listed here - but to indicate these courses were completed is confusing. Further, RES275 had no information on the Verification Form, yet the transcript shows it was completed. If this area can be left blank, how does the Verification Form serve its purpose -even signed by three executives?</p>					
	<p>RESPONSE: The verification form includes the current course numbers in the Respiratory Therapy program. MAN224 is the new course number for MAN320, and MED106 is the new course number for MED306. Upon discovering the mistake in the audit review process, a fourth level will be added to the Transcript Audit and Grduation Verification form to include the Dean. This was implemented in order to verify that all audits are complete. See the College's Transcript and Graduation Verification Form (Exhibit 6-4) and Graduation Procedure (exhibit 6-2).</p>					

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
LAN (Licensee 2) Enrolled/First Term: 7/10/06 Graduate: Undetermined Licensed: 10/24/08	Transcript Date: 10/1/08	5/15/2006	RES125	Medical Gas Therapy	W	8/29/2008
		11/12/2007	RES245(E-10)	Pulmonary Rehabilitation/Alternate Site Care	F	
		6/9/2008	RES245(H-2)	Pulmonary Rehabilitation/Alternate Site Care	F	
		4/14/2008	PSY101(O-15)	Psychology of Motivation	W	
		1/5/2009	PSY101(O-15)	Psychology of Motivation	W	
April 2009: NBRC rescinded CRT credential. The student has since retaken and passed the CRT exam.	CCSD Letter Date: 3/18/09	Acknowledged student needed to take additional courses. CCSD suggests the Board suspend his license until course completion.				
	Transcript Date: 5/4/09	5/15/2006	RES125	Medical Gas Therapy	W	4/24/2009
		3/30/2009	RES125(H-1)	Medical Gas Therapy	C+	
		11/12/2007	RES245(E-10)	Pulmonary Rehabilitation/Alternate Site Care	F	
		6/9/2008	RES245(H-2)	Pulmonary Rehabilitation/Alternate Site Care	F	
		3/30/2009	RES245(H-3)	Pulmonary Rehabilitation/Alternate Site Care	B	
		4/14/2008	PSY101(O-15)	Psychology of Motivation	W	
		9/1/2008	PSY101(O-15)	Psychology of Motivation	F	
		1/5/2009	PSY101(O-15)	Psychology of Motivation	W	
		2/2/2009	PSY101(O-15)	Psychology of Motivation	F	
		3/30/2009	PSY101(O-15)	Psychology of Motivation	C	
	Transcript Date: 11/20/09	Same as transcript dated 5/4/09, EXCEPT graduation date is different.				8/29/2008
RESPONSE: LAN graduated on 4/24/2009 after completing all course requirements for the Association of Science in Respiratory Therapy program.						

RCB Note:

Issue #1: How were "official" transcripts issued when the student failed to complete 3 courses required for program completion? Please provide affidavits, under penalty of perjury, from each course instructor that the 3 courses taken in March were in fact completed.

Official transcripts are issued at any time, regardless of grades, not necessarily upon completion of the program. As explained previously, this student's education was interrupted by military duty. This error was the trigger for the self-initiated April 2009 audit and subsequent procedures that were developed to ensure this does not happen again. Signed grade sheets provided by the instructor indicate that the student was present and successfully completed the course (Exhibit 1-4).

Issue #2: Why do "official" transcripts indicate different graduation dates? The 5/4/09 transcripts reflects a more likely graduation date because of the courses that were required to be taken as a result of the audit. However, even after this audit, the new transcript printed on 11/20/09 indicates the old graduation date. How do these errors occur using a database - once it is updated shouldn't the data be secured? What caused the graduation date to change back? How are these errors going to be prevented?

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
						<p>RESPONSE: Diamond D is an open system. There is not a locking mechanism on certain cells to prevent changes from being made. Access has been limited to the graduation date entry to Registrars. The College is not satisfied with this system and is exploring possible replacement options at this time. The College is searching for a system that will track changes made to the information and that will make changing information more accurate and secure. The College will utilize a self check for changing dates. When a graduation date is entered, the Registrar will print a transcript. The transcript shows the graduation date near the top as well as the date printed in the lower left hand corner. If a change is made to the graduation date, the Registrar must print a new copy and include a letter explaining why the change was made. Both the original and new copy must be kept in the student file.</p> <p>Issue #3: A <u>Transcript Audit and Graduation Verification form</u> was completed for this student on May 4, 2009 that showed this student's graduation date as April 24, 2009. However, the transcript you provided with your December 8, 2009 letter (transcript dated 11/20/09) states the graduation date as 8/29/08. How does the new audit form prevent these types of errors from occurring?</p> <p>RESPONSE: A fourth level will be added to the Transcript Audit and Graduation Verification form to include the Dean. This will be implemented in order to verify that all audits are complete. See the College's Transcript and Graduation Verification Form (Exhibit 6-4) and Graduation Procedure (exhibit 6-2).</p>

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
POW (Licensee 3) Enrolled/First Term: 9/29/03 Graduate: Undetermined Licensed: 7/13/05	Application for Licensure Dated: 4/17/2005	Portion completed by CCSD provides that student would complete program on 4/22/05 and that the student would meet all the requirements for the awarding of an Association degree on 5/2/05 (signed 4/14/05 - signature not legible)				
	Transcript Received: 5/9/05	Does NOT reflect completion of RES145 OR RES210				4/22/2005
	Unofficial Transcript Date: 10/14/2008	Does NOT reflect completion of RES145 OR RES210				2/17/2006
	CCSD Letter Date: 5/18/09 Letter to student/cc: RCB	Notified us that student did not complete Pulmonary Function Testing (RES145) [formerly RES210] as required for completion of the RT Associate Degree. "If you have proof that you have successfully completed this course, we need the documentation to correct our records.... If you do not have proof of passing this course, please contact our office immediately to enroll in RES145...."				
	Letter from Student to RCB dated 7/28/09	Student states he had an excellent attendance record and believes he completed the course. He states, "The only options they [CCSD] have presented are to repeat the class or get a letter, that was supposed to be provided by them, signed by my former classmates as witnesses to my class attendance."				
	CCSD letter to RCB dated: 10/14/2009	Letter provides that it supplements their "March 19, 2009" letter in which they advised the RCB that this student did NOT complete the required coursework. NOTE: The RCB has no letter dated 3/19/09, however it did receive a copy of a letter to the student dated 5/18/09. The 10/14/09 letter provides no explanation for the change, but states, "I am pleased to report that [student name] has successfully completed RES210 Advanced Pulmonary Function. His Associate's of Science Degree is now complete. Attached to this letter is an official transcript and transcript audit verification paperwork verifying that all requirements have been met for his degree."				
	Transcript Date: 10/14/09	4/19/2004	RES210(D-1)	Advanced Pulmonary Function Testing	P	4/29/2005
	Telephone Conversation between RCB staff and student after issuance of 10/14/09 letter	Student contacted RCB and advised that the course was not required to be retaken as CCSD utilized affidavits from other students to verify that the licensee had in fact completed the course. During the conversation, the licensee played a telephone message from CCSD where he [the student] was advised that during the college's relocation from national City to its current location, paperwork had been misplaced, insinuating that perhaps this is where the confusion with his course work occurred. The licensee always contended that he had taken and completed the required course, and even provided a copy of his "graduation requirements check off sheet." He was adamant that he should not be required to retake the course.				
Transcript Date: 11/20/09	4/19/2004	RES210(D-1)	Advanced Pulmonary Function Testing	P	4/29/2005	
RESPONSE: POW graduated on 4/29/2005 after completing all course requirements for the Associate of Science in Respiratory Therapy program.						

RCB Note:

Issue #1: What documentation led to and/or supports the addition of the RES210 course on the 10/14/09 transcript? Why was an official transcript issued showing "Graduated" without the required courses?

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
	<p>RESPONSE: Affidavits from classmates stating that POW attended the course with them are attached as Exhibit 1-5. One of these affidavits is signed by Leah Delaney, who is a current Instructor in the RT program. The Registrar in 2005 mistakenly entered the Graduate status with missing coursework on the transcript. The audit process was not in place at this time.</p> <p>Issue #2: What is the correct graduation date and how come there are several different dates reported? Does the CCSD's database store this information - why does it change? How will CCSD ensure this does not occur in the future?</p> <p>RESPONSE: The corrected graduation date of 4/29/2005 was inputted into the database after the April 2009 audit. Diamond D is an open system. There is not a locking mechanism on certain cells to prevent changes from being made. Access has been limited to the graduation date entry to Registrars. The College is not satisfied with this system and is exploring possible replacement options at this time. The College is searching for a system that will track changes made to the information and that will make changing information more accurate and secure. The College will utilize a self check for changing dates. When a graduation date is entered, the Registrar will print a transcript. The transcript shows the graduation date near the top as well as the date printed in the lower left hand corner. If a change is made to the graduation date, the Registrar must print a new copy and include a letter explaining why the change was made. Both the original and new copy must be kept in the student file.</p>					

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date	
BRA (Licensee 4) Enrolled/First Term: 8/9/04 Graduate: 9/25/06 Licensed: 1/5/09	Transcript Dated: 9/3/08	3/7/2005	RES(D-1)	Intro to Respiratory Therapy/Infection Control	A-		
	Transcript Dated: 9/18/08			NO completion of SOC220R, Ethical & Legal Issues in Healthcare			
		10/17/2005	MAN320	Business Law	W		
		12/12/2005	MAN320	Business Law	F		
		5/15/2006	MAN320	Business Law	W		
		6/12/2006	MAN320	Business Law	W		
		7/10/2006	MAN320	Business Law	B	9/25/2006	
Transcript Dated: 11/20/09		Same as above, except RES(D-1) was corrected to reflect RES100(D-1)					9/25/2006
CCSD Letter Dated 12/8/09		Provides spreadsheet that indicates that MAN320, Business Law MAY have replaced SOC220R.					
RESPONSE: BRA graduated on 9/25/2006 after completing all course requirements for the Associate of Science in Respiratory Therapy program.							
RCB Note:		Need evidence that MAN320 was approved by accreditor to be substituted for SOC220R and any notice of numbering changes. Also need complete catalogs and information on catalog rights.					
RESPONSE: In the 2005-2006 course catalog the general education courses were changed from SOC220 and BUS220 to MAN103 and MAN320. MAN320 is an acceptable replacement. This is listed on the ASRT Course Change Spreadsheet (Exhibit 1-6). Catalogs have been attached (Exhibit 3).							

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
PAN (Licensee 5) Enrolled/First Term: 1/26/04 Graduate: 10/14/05 Licensed: 8/4/08	Transcript Dated: 9/11/07	10/17/2005	MAN103(D-1)	Management Principles	D	
	Transcript Dated: 11/20/09			Did NOT complete BUS220, Healthcare Management		10/14/2005
	CCSD Letter Dated 12/8/09	Provides spreadsheet that indicates MAN103 MAY have replaced BUS220 (w/the 05/06 catalog)				
	05-06 CCSD RT Program	Indicates MAN103 is a core course. Student received a "D" grade in this course.				
		RESPONSE: PAN graduated on 10/14/2005 after completing all course requirements for the Associate of Science in Respiratory Therapy program.				
	RCB Note:	Why was student allowed to graduate with a "D" in a core course? The one catalog the board has provides that all respiratory core courses must have a "C" or better. Also need evidence that MAN103 was approved by accreditor to be substituted for BUS220 and any notice of numbering changes. Also need complete catalogs and information on catalog rights.				
		RESPONSE: The Program Director at that time determined that the MAN103 course was not a core Respiratory Therapy course but rather a general education course which has a standard minimum course passing grade of D- (60%). He believed that only RES courses were considered "core" courses. The College has since made a clear designation to reflect that this is no longer a "core" course, as evidenced in the next catalog version 11 to be published in the first quarter of 2010. Catalogs have been attached (Exhibit 3).				

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
RIC (Licensee 6)	Transcript Dated: 3/3/08 Transcript Date: 11/20/09	2/20/2006	MAN103(D-1)	Management Principles Did NOT complete BUS220, Healthcare Management	A	9/21/2006
Enrolled/First Term: 3/7/05 Graduate: 9/21/06	CCSD Letter Dated 12/8/09	Provides spreadsheet that indicates MAN103 MAY have replaced BUS220 in the 05/06 catalog				
		RESPONSE: RIC graduated on 9/21/2006 after completing all course requirements for the Associate of Science in Respiratory Therapy program.				
Licensed: 1/23/09	RCB Note:	Need evidence that MAN103 was approved by accreditor to be substituted for BUS220 and any notice of numbering changes. Also need complete catalogs and information on catalog rights.				
		RESPONSE: In the 2005-2006 course catalog the general education courses were changed from SOC220 and BUS220 to MAN103 and MAN320. MAN103 is an acceptable replacement. This is listed on the ASRT Semester to Quarter Equivalents (Course Change) spreadsheet (Exhibit 1-6). Catalogs are attached (Exhibit 3).				

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date	
SOU (Licensee 7) Enrolled/First Term: 3/7/05 Graduate: 11/9/07 Licensed: 8/11/08	Transcript Dated: 3/31/08	Transfer	RES225	Respiratory Care As A Profession/RC Protocols	B-	1 unit	
		9/4/2006	RES200	Respiratory Care Sciences	F		
		10/30/2006	RES200	Respiratory Care Sciences	F		
		10/2/2006	SCI101	Math-Chemistry-Physical Science	F		
		Transfer	SCI101	Math-Chemistry-Physical Science	C	4 units	
		RES 100 and BIO143 are NOT listed					
	Letter Dated: 6/1/09 for JV	A letter issued by CCSD for another student in a similar situation provides that, RES200 replaced BIO143 and SCI101.					
	RCB/CCSD Esq. (LB) Telephone:	CCSD attorney advised that this student completed RES200 in place of BIO143 to which staff replied that the student failed this course.					
	Transcript Dated: 11/20/09	6/27/2005	RES100	Intro to Respiratory Therapy/Infection Control	B-	3 units	
		9/4/2006	RES200	Respiratory Care Sciences	F		
10/30/2006		RES200	Respiratory Care Sciences	C	3 units		
10/2/2006		SCI101	Math-Chemistry-Physical Science	F			
Transfer courses RES225 and SCI101 are no longer on transcript and BIO143 is still NOT listed as a course attempted.							
CCSD Letter Dated: 12/8/09	Provides spreadsheet that indicates BIO143, Microbiology and Decontamination (3 units) AND RES225 (1 unit) replaced RES100. Also provides BIO143 and SCI101 replaced RES200. A general footnote states, "...Also during this transition, the Registrar at the time (2005) entered the courses taken by one student into Diamond D as "Transfer" courses rather than entering the date of the module in which the courses were actually taken. In any event, again, all students completed and passed all the correct courses in full."						
04/05 RT Program Requirements	Indicates RES100 AND RES200 were required for program completion. However, no subsequent catalog references these classes, assuming these courses are no longer provided after this date.						
05/06 RT Program Requirements	Indicates BIO143, SCI101 AND RES225 required for completion						
06/08 RT Program Requirements	Student met all program requirements EXCEPT student did not complete BIO143. SCI101, BIO143 and RES225 were all required for program completion.						
RCB Notes:	CONTINUED						
	RESPONSE: SOU graduated on 11/9/2007 after completing all course requirements for the Associate of Science in Respiratory Therapy program.						

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
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Issue #6 The 11/20/09 transcript reflects **16 NEW COURSES** that were not provided for on the 3/31/08 transcript. Some, not all, of the "transfer" courses may correlate, but what documentation supports the input of the 3/31/08 transcript and what documentation supports the DRASTIC changes?

RESPONSE: See responses to Issues #1 and #3 above.

Issue #7 In addition, **on the 11/20/09 transcript itself**, there are two courses that were both taken two separate times all with passing grades as follows:

- 2/20/06 RES260 Pediatric/Perenatal... Grade: A [on the 3/31/08 transcript this grade is an "F"]
- 8/7/06 RES260 Pediatric /Perenatal...Grade: A
- 2/20/06 RES270 Advance CPR...Grade B+
- 6/12/06 RES270 Advance CPR...Grade B-

How did these errors occur? Does your new database accept duplicate courses? Which are correct?

RESPONSE: These are not errors. Students are able to re-take courses after completion to improve grades, review material, and gain a better understanding of the course objectives. The student successfully completed the courses and met the requirements for graduation.

All: Each and every instance above should be explained in detail, not an overview of a single problem that occurred. What documentation supports the entries for each the 3/31 and 11/20 transcripts? What changes will be in place to ensure these gross reporting errors will not occur again? What are the correct courses and grades taken? Even after the audit, the 11/20/09 transcript still indicates reporting errors in and of itself. What additional measures will be taken to ensure these errors do not occur at any level?

RESPONSE: Please see the Records Improvement Initiatives (Exhibit 6-1 through 6-5) for the College's plan on preventing errors. The College is committed to its current enhanced registrar training program that includes a new Registrar manual, weekly conference calls, reviews by senior Registrars at affiliated campuses, etc.

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date	
STI (Licensee 8) First Term: 2/7/05 Graduate: 7/20/07 Licensed: 1/10/08	Transcript Dated: 7/30/07	3/7/2005	SOC220R	Soc220R [class name not listed]	B-	3 units	
		5/2/2005	BUS220	Health Care Management	B	3 units	
	Transcript Dated: 8/14/07	9/4/2006	RES280	Application of Cardiopulmonary Diagnostics & Mon	F	0 units	
		10/2/2006	RES190	Clinical Experience I	CLI	12 units	
		1/8/2007	RES295A	Clinical Experience II- 4th Rotation	CLI	5 units	
		2/5/2007	RES295B	Clinical Experience II-5th Rotation	CLI	5 units	
		4/30/2007	RES295C	Clinical Experience II - 6th Rotation	CLI	5 units	
		5/28/2007	RES295C	Clinical Experience II - 6th Rotation	IP	0 units	
		6/25/2007	RES265	Intro to Polysom/Advanced Cardio Pulmonary Mon	B-	3 units	
		Transcript Dated: 11/20/09	3/7/2005	SOC220R	Ethical and Legal Issues in Health Care	B-	4 units
			5/2/2005	BUS220	Health Care Management	B	4 units
			9/4/2006	RES280	Application of Cardiopulmonary Diagnostics & Mon	F	0 units
	10/2/2006		RES190	Clinical Experience I	P	12 units	
	1/8/2007		RES295A	Clinical Experience II- 4th Rotation	P	4 units	
	2/5/2007		RES295B	Clinical Experience II-5th Rotation	P	4 units	
	4/30/2007		RES295C	Clinical Experience II - 6th Rotation	P	4 units	
	5/28/2007	RES295C	Clinical Experience II - 6th Rotation	IP	0 units		
	6/25/2007	RES265	Intro to Polysom/Advanced Cardio Pulmonary Mon	B-	3 units		
	Approximately 5 other classes were changed to be worth 4 units from 3 units.						
	All Transcripts	All three transcripts indicate that "Units Represent Quarter Credits."					
04/05 Catalog RT Requirements	SOC220R	Ethical and legal Issues in Health Care				3 units	
	BUS220	Health Care Management				3 units	
	RES280	Application of Cardiopulmonary Diagnostics and Monitoring				3 units	
	RES190	Clinical Experience I: Basic Competencies and Case Studies				12 units	
	RES290	Clinical Experience II: Advanced Competencies & Case Studies				12 units	
05/06 Catalog RT Requirements	MAN320	Business Law				4 units	
	MAN103	Management Principles				4 units	
	RES265	Intro to Polysom/Advance Cardiopulmonary Monitoring				3 units	
	RES195	Clinical Experience				15 units	
	RES295	Clinical Experience				15 units	
06/08 Catalog RT Requirements	MAN320	Business Law				4 units	
	MAN103	Management Principles				4 units	
	RES265	Intro to Polysom/Advance Cardiopulmonary Monitoring				3 units	
	RES195	Clinical Experience				15 units	
	RES295	Clinical Experience				15 units	
RCB Note:	CONTINUED						

STUDENT	Documentation	Term	Course No.	Course Name	Grade	Graduation Date
STI CONTINUED	RCB Note:					
<p>RESPONSE: STI graduated on 7/20/2007 after completing all course requirements for the Associate of Science in Respiratory Therapy program.</p>						
<p>Issue #1: The number of quarter credits earned for SOC220R, BUS220, and several other classes changed from 3 units in the 2007 transcripts to 4 units in the 2009 transcript. No catalog provides that these courses are worth 4 units. Explanation?</p>						
<p>RESPONSE: This issue is related to the transfer of databases. The College is working with the Diamond D company and its corporate IT support to ensure that this technical issue is corrected.</p>						
<p>Issue #2: RES190 taken 10/2/06 was not offered according to the 05/06 and 06/08 catalogs.</p>						
<p>RESPONSE: RES190 is the exact same course as RES195ABC. This student was still part of the semester group that was being grandfathered under the old numbers. When David Parker became Executive Director in 2007 he directed courses to be numbered per the new catalog.</p>						
<p>Issue #3: The number of quarter credits earned for RES295 A, B and C were changed from 5 units in the 2007 transcripts to 4 units in the 2009 transcript. No catalog provides that these courses were worth less than 5 units. Both transcripts indicate "quarter units." Explanation?</p>						
<p>RESPONSE: See addenda exhibit 1-9 for the change in credits to the 2006-2007 catalog.</p>						
<p>Issue #4: Need evidence that the following substituted courses were approved by accreditor: RES265 for RES280; MAN103 for BUS220; MAN320 for SOC220R. Also need complete catalogs and information on catalog rights.</p>						
<p>RESPONSE: In the 2005-2006 course catalog the general education courses were changed from SOC220 and BUS220 to MAN103 and MAN320. MAN103 and MAN320 are acceptable replacements. This is listed on the ASRT Course Change Spreadsheet. RES265 replaced RES280 in the semester to quarter hour change. This is the same course with a different code.</p>						
<p>Issue #5: In reference to RES295C, why does it show that the student passed this course with the 4/30/07 term, yet it shows "IP," In progress, for the later term dated 5/28/07?</p>						
<p>RESPONSE: This was a transposition error. IP should have been the 4/30/2007 grade, and P should have been the 5/28/2007 grade. This has been corrected.</p>						

Licenses Issued w/Deficient CCSD Transcripts Decision to Pursue Recision of Licenses

The Board asked staff to contact the following licensees and request additional information as to whether they met the catalog requirements, and if not, if they were willing to rectify the matter.

All of the following individuals were contacted via letter (certified mail) on November 24, 2009, December 22, 2009 and will again be contacted on January 28, 2010.

LICENSEE	CCSD EXHIBIT NUMBER	RCB EXHIBIT NUMBER
BRA	1-H	BRA
No response to RCB letters.		
PAN	1-I	PAN
PAN called office on 11/30. Stated he was going to contact CCSD to get situation rectified.		
RIC	1-J	RIC
No response to RCB letters.		
SOU	1-K	SOU
No response to RCB letters.		
STI	1-L	STI
STI called office on 12/28. STI advised that school was going to handle and that he took all the required courses.		

November 24, 2009

xxx
xxx
xxx

REGULAR & CERTIFIED MAIL

Dear xxx

The Respiratory Care Board (Board) recently conducted an audit of student transcripts (who applied for licensure with the Board) issued by California College of San Diego (CCSD). Your transcript was identified as deficient from meeting the Board's educational requirements and needing further investigation to determine the Board's next course of action.

The Board's audit was triggered by notification that CCSD had erroneously awarded an Associate Degree to one or more students. The audit found several students who had applied for licensure as a respiratory care practitioner that had not met the Board's educational requirements. At its November 13, 2009 meeting, the Board requested staff to contact each person with a deficient transcript to ascertain whether or not the student met the catalog requirements, and to determine if the student was willing to expeditiously rectify the matter.

Our records indicate that you did not complete Healthcare Management (BUS 220). If you have, in fact, completed this course, or were approved to substitute this course with another, we are requesting that you provide evidence of this, in the form of a corrected official transcript or other authenticate documentation. If you have not completed this course, the Board would like a written corrective action plan from you with the course you intend to enroll in and the date you intend to complete the course with a grade of "C" or better.

The Board will be reviewing this issue again, at its next meeting, to determine the next course of action. It should be noted, that the Board was very clear that it expected all students to meet its education requirements, and that it is prepared to pursue other formal remedies to fulfill its obligation in ensuring such.

All documentation and/or evidence that will be presented to the Board to make a decision must be received by January 15, 2010. We are requesting that you submit your information **no later than December 18, 2009**, to allow time for Board staff to assist you in making sure your submission is as complete as possible.

I realize this will be of great concern to you, and want you to know I am available to provide you guidance and answer any questions you may have. Please give me a call at 916.323.9983.

Sincerely,

Christine Molina
Staff Services Manager

December 22, 2009

xxx
xxx
xxx

2ND NOTICE
CERTIFIED MAIL

Dear xxx

In a letter dated November 24, 2009, you were advised that the Respiratory Care Board (Board) conducted an audit of student transcripts (who applied for licensure with the Board) issued by California College of San Diego (CCSD). Your transcript was identified as deficient from meeting the Board's educational requirements and needing further investigation to determine the Board's next course of action.

The Board's audit was triggered by notification that CCSD had erroneously awarded an Associate Degree to one or more students. The audit found several students who had applied for licensure as a respiratory care practitioner that had not met the Board's educational requirements. At its November 13, 2009 meeting, the Board requested staff to contact each person with a deficient transcript to ascertain whether or not the student met the catalog requirements, and to determine if the student was willing to expeditiously rectify the matter.

Our records indicate that you did not complete Healthcare Management (BUS 220). If you have, in fact, completed this course, or were approved to substitute this course with another, we are requesting that you provide evidence of this, in the form of a corrected official transcript or other authenticate documentation. If you have not completed this course, the Board would like a written corrective action plan from you with the course you intend to enroll in and the date you intend to complete the course with a grade of "C" or better.

As you were previously advised, the Board will be reviewing this issue again, at its meeting on February 5, 2010, to determine its next course of action. It should be noted, that the Board was very clear that it expected all students to meet its education requirements, and that it is prepared to pursue other formal remedies to fulfill its obligation in ensuring such.

You were originally requested to provide information by December 18, 2009. However, to date, the Board has not received any documentation from you. You are again being afforded the opportunity to provide the above referenced information no later than **January 11, 2010.**

Please be advised that the Board will pursue action to rescind your license if it does not have evidence to determine that you have satisfied the minimum education requirements.

Again, I realize this will be of great concern to you, and want you to know I am available to provide you guidance and answer any questions you may have. Please give me a call at 916.323.9983.

Sincerely,

Christine Molina
Staff Services Manager