



Arnold Schwarzenegger, Governor
State of California

Bill Leonard, Secretary
State and Consumer Services Agency

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



2BeARespiratoryTherapist.ca.gov

Telephone: (916) 323-9983

Toll Free: (866) 375-0386

Fax: (916) 323-9999

Website: www.rcb.ca.gov

E-mail: rcbinfo@dca.ca.gov

Respiratory Care Board of California

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

Board Meeting Agenda

Tuesday, May 11, 2010

Dolce Hayes Mansion
Monterey Room
200 Edenvale Avenue
San Jose, CA 95136
(408) 226-3200

9:00 AM Call to Order

1. Administration of Oath of Office

2. Approval of February 5, 2010 Public Session Minutes *(Larry Renner)*

3. Executive Officer's Report *(Stephanie Nunez)*

- Job-Creation & Licensing Backlog Reduction Project
- California College, San Diego Transcript Review Update
- Uniform Standard #4 Subcommittee (SB 1441)
- Unlicensed/Unauthorized Practice, Recent ALJ Decision

4. Publication of Program Pass/Fail Rates *(Stephanie Nunez)*

5. Proposed Regulatory Language *(Stephanie Nunez)*

New and Amended Language Related to: Disciplinary Guidelines, Uniform Standards, Citations and Fines, Education Waiver, Application Processing Time and Clean Up

6. Legislation of Interest *(Larry Renner)*

Assembly Bills: 583, 978, 1310, 1659, 2130, 2174, and 2699
Senate Bills 294, 638, 1111, 1171, and 1172,
and any other newly discovered bills relevant to the Board's activities

7. Discussion: Discipline Imposed on Cases Involving Marijuana Use/Possession *(Larry Renner)*

10:00 AM 8. DCA Director's Report *(Department of Consumer Affairs Representative)*

- Consumer Protection Enforcement Initiative (CPEI)
- Continuing Competency
- Regulatory Next Practices: A Working Conference Meeting
July 27, 2010, Sacramento
- Meeting Sites/Webcasting
- Other Items of Interest

10:30 AM 9. Twenty Five Years of RCP Licensure Recognition

[Presentation will be made at 10:45 a.m. by Director Stiger in the Edenvale Room on the lower level of the main bldg.]

The Respiratory Care Board of California's mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, increasing public awareness of respiratory care as a profession and supporting the development and education of all respiratory care practitioners.

11:10 AM 10. **Petition to Terminate Probation Hearing: Kieran Cox, RCP**

- Closed Session -

The Board will convene into Closed Session, as authorized by Government Code Section 11126(c), subdivision (3), for approximately 15 minutes to deliberate:

- I. Petition for Termination of Probation: Kieran Cox
- II. Deliberation of Any Other Disciplinary Matters

11. Public Comment on Items Not on the Agenda

12. Future Agenda Items

12:00 p.m. **13. Adjournment**

- Save The Dates -

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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PUBLIC SESSION MINUTES

Friday, February 5, 2010

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

Members Present: Larry L. Renner, BS, RCP, RRT, RPFT, President
Barbara M. Stenson, RCP, RRT
Lupe V. Aguilera
Murray Olson, RCP
Sandra Magaña
Richard L. Sheldon, M.D.
Charles B. Spearman, MEd, RCP, RRT

Staff Present: Dianne Dobbs, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager
Liane Freels, Staff Services Manager
Paula Velasquez, Staff Services Analyst

CALL TO ORDER

The Public Session was called to order at 9:58 a.m. by President Renner. A quorum was present.

APPROVAL OF NOVEMBER 13, 2009 PUBLIC SESSION MINUTES

Dr. Sheldon moved to approve the November 13, 2009, Public Session minutes as written.

M/ Sheldon /S/Magaña

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

MOTION PASSED

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DIRECTOR'S REPORT

(Kim Kirchmeyer, Deputy Director for Board and Bureau Relations)

Scott Reid, Cabinet Secretary, honored Ms. Nunez, on behalf of the Governor, for her commitment to the Board, Department of Consumer Affairs and the Administration. Mr. Reid thanked Ms. Nunez for her assistance to the Director and for coordinating and leading the other boards in putting together an Enforcement Program the Department can be proud of.

Brian Stiger, Director of the Department of Consumer Affairs, stated the Consumer Protection Enforcement Initiative (CPEI) is possibly the most important work the Department has done in 30 years. He thanked Ms. Nunez for doing an outstanding job on this project and presented her with a plaque.

Kim Kirchmeyer, DCA's Deputy Director, also thanked Ms. Nunez for her energy and excitement for the CPEI project. Ms. Kirchmeyer, speaking on behalf of the Director, reviewed the CPEI stating the length of time it takes to investigate and prosecute a violation of law has come under scrutiny lately. The issues at the Board of Registered Nursing pointed out systemic problems in the Enforcement process for most of the Healing Arts Boards. The Department developed the Consumer Protection Enforcement Initiative (CPEI) to address the problems in an effort to improve enforcement processing and reduce the time it takes to prosecute violations from 3 years (for some boards) down to 12-18 months. The initiative focuses on three main areas:

- 1) Administrative Improvements
 - Develop best practices for the boards.
 - Hire a Deputy Director for enforcement and compliance to review and monitor all board enforcement programs.
 - Establish performance measures with other state agencies.
- 2) Staffing and IT Resources
 - Increase staffing for most of the boards which is expected to move some of the workload from a sworn investigator and put it on a desk investigator.
 - Replace the CAS system, an archaic system that has been in use for more than 20 years and doesn't provide the data that the boards need. The new system would apply to enforcement and licensing and is expected to be implemented by December 2012.
- 3) Legislative Changes
 - Look to where improvements can be made to help the boards get the resources that they need.

SB 1441: UNIFORM STANDARDS

(Kim Kirchmeyer, Deputy Director for Board and Bureau Relations)

Ms. Kirchmeyer reviewed Senate Bill 1441, the substance abuse guidelines, from the Department's stance. SB 1441 contains 16 standards that are intended to protect the public against substance abusing health care practitioners. The current status of the proposal is that it has been adopted by the board's executive officers who were all part of the Substance Abuse Coordination Committee. The Legal Office is in the process of reviewing the standards as some

1 of them require legislation, some require regulatory changes and others can be implemented
2 immediately.

3
4 DCA is asking the Board for the following:

- 5
6 1) Support new legislation that may be required for implementation of these new
7 guidelines.
8 2) Have regulations put into place. Ms Kirchmeyer stated that at the next meeting, the
9 Department would like to have a proposal before the Board to begin the process to
10 implement regulations, as needed, to support the guidelines.
11 3) Place an item on future agendas that follows up with the guidelines each meeting to
12 make sure they are being implemented to the best of the ability of the Board.
13 4) Authorize the Executive Officer to implement what she can now without regulatory
14 and/or legislative changes.
15
16

17 **SB 139: HEALTHCARE WORKFORCE DATA**

18 *(Kim Kirchmeyer, Deputy Director for Board and Bureau Relations)*
19

20 SB 139, effective January 1, 2008, charged the Office of Statewide Health Planning and
21 Development (OSHPD) with establishing a healthcare workforce clearinghouse. The data
22 gathered will be used to identify education and employment trends in the health care
23 professions and determine supply and demand for health care workers. The specifics regarding
24 gathering data from the licensees is currently in development. One possible idea is to include a
25 form that has the data that OSHPD needs with all licensing renewal applications. The Director's
26 office has asked the Board for support to work with the Department and OSHPD to obtain the
27 information needed for this project.
28

29 Ms. Kirchmeyer addressed questions from the Board.
30

31 Ms. Magaña moved to authorize the Executive Officer to implement any enforcement issues
32 that can be addressed immediately as it relates to the Enforcement Initiative and SB 1441
33

34 M/ Magana /S/Sheldon

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

36 MOTION PASSED
37

38 Ms. Magaña moved to allow the Executive Officer to work in cooperation with the Department
39 and OSHPD to obtain the data necessary to build a healthcare clearinghouse.
40

41 M/ Magana /S/Stenson

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

43 MOTION PASSED
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46

47 **EXECUTIVE OFFICER'S REPORT**

48 **RCP/RRT/CRT STATISTICS**

49 *(Stephanie Nunez, Executive Officer)*
50
51

1 Ms. Nunez outlined the data showing the number of California licensed RCPs who possess
2 RRT credentials increased from 30% to nearly 34% in the past year.

3
4 Dr. Sheldon suggested suspending the collection of this data due to the amount of time required
5 to track and report against the usefulness of the data to the Board. President Renner agreed.
6

7
8 **ETHICS COURSE UPDATE**
9 *(Stephanie Nunez, Executive Officer)*

10
11 As a follow up to the last meeting, Ms. Nunez stated both the AARC and the CSRC courses
12 were reviewed by Vice President Stenson and Ms. Freels, and that the courses were up and
13 running by January 4, 2010.
14

15
16 **OUTREACH / 25-YEAR RECOGNITION UPDATE**
17 *(Stephanie Nunez, Executive Officer)*

18
19 Ms. Nunez highlighted the following outreach efforts:

- 20
21 - Established Facebook and MySpace sites.
22 - YouTube clip featuring Dr. Sheldon on respiratory failure.
23 - Outreach website has been launched.
24 - Career posters available to print.
25 - Mailing respiratory care career DVDs (at a rate of about 3 per week).
26 - Watching any new legislation that may create any healthcare committees or task force to
27 request inclusion of a respiratory care practitioner.
28 - Scheduled DCA's Director to give presentation at CSRC conference.
29 - Ordering Lapel Pins – to be mailed out to every active licensee along with career
30 brochure.
31

32 Ms. Nunez explained that bringing awareness to the California Legislature and the grassroots
33 outreach efforts will be delayed to focus on the Performance Improvement Plan. Instead of
34 visiting high schools, staff will be mailing outreach items and will try to have more telephone
35 conversations with the schools.
36

37
38 **SB 1441 IMPLEMENTATION PLAN**
39 *(Stephanie Nunez, Executive Officer)*

40
41 Ms. Nunez explained the purpose of SB 1441 is to gain consistency among the healing arts
42 boards and how they monitor probationers and handle their diversion programs. She stated the
43 most significant standard is the increase in the number of drug tests for probationers per year.
44

45 Mr. Spearman expressed concern with the additional costs related to the increased number of
46 drug tests. He suggested the Board provide notification of this increase to the respiratory care
47 program directors to share with students who are in the process of entering a program and may
48 be impacted by the increase.
49

50 Discussion ensued.
51

1 Ms. Nunez stated that in the future staff would revise the brochure currently mailed out to the
2 programs to include this information. In the meantime, a letter will be sent to all program
3 directors notifying them of the increased testing requirements.
4

5 Ms. Stenson expressed her approval for uniform standard #8 which states when a licensee tests
6 positive for a banned substance the Board shall immediately place them on “inactive” status,
7 instruct the licensee to leave work, and notify the licensee’s employer. Ms. Nunez stated this
8 standard would require a legislative change, but the idea is not to allow someone testing “dirty”
9 to work while the Board tries to discipline them.
10

11 Director Stiger commented on how refreshing it is to hear a Board understand that their primary
12 focus is consumer protection. It is the Board’s responsibility to implement these uniform
13 standards. Some will require legislative and some regulatory changes but there are some the
14 Board can work on right now. Director Stiger expressed his appreciation for the work the Board
15 is doing.
16

17
18 **ENFORCEMENT PERFORMANCE IMPROVEMENT PLAN**
19 *(Stephanie Nunez, Executive Officer)*
20

21 Ms. Nunez explained, at the Deputy Director’s request, all boards were asked to submit an
22 Enforcement Improvement Plan to address improvements that will be made in enforcement
23 programs over the next twelve months.
24

25 Ms. Nunez explained the RCB’s backlog situation, stating in the past nine years the RCB has
26 reduced its staff positions while increasing its workload. At the same time, furloughs have
27 essentially cut the workforce by an additional 15%. She further explained a new Executive
28 Order requiring state agencies to cut an additional 5% from its salaries and wages budget has
29 forced the RCB to keep vacant more positions that would have been used to address the
30 enforcement backlog.
31

32 Ms. Nunez stated the RCB improvement plan would include the following:
33

- 34 - Address the backlog of higher priority enforcement cases.
- 35 - Have all enforcement staff complete the New Enforcement Academy
- 36 - Re-class existing vacancy to Non-Sworn Special Investigator and fill as soon as possible
- 37 - RCB trained and received subpoena authority authorization from DCA which will be used
38 to expedite high priority cases
- 39 - SB1441 (uniform standards). RCB work with DCA and Legal to determine legislative and
40 regulatory amendments needed.
- 41 - Explore the authority and resources needed to access a national database to determine
42 if disciplinary action has been taken in another state, for new and existing licensees.
43 (currently in legislation.)
- 44 - Automate applicant criminal background checks – electronic report coming straight from
45 the Department of Justice.
- 46 - Develop policies for complaint level/priority and anonymous complaints and complaint
47 intake.
- 48 - Expert witness guidelines and recruitment.
- 49 - Reevaluate enforcement program/ resources.
- 50 - Continue to provide support in the development and execution of the CPEI.

- 1 - RCB Meetings – Make agenda items available on the RCBs website and include a
2 “Director’s Report” on each of its agendas.
3
4

5 President Renner and Ms. Magaña asked some clarifying questions
6

7 President Renner moved that the Board accept the Enforcement Improvement Plan as
8 submitted with a caveat as to any impact this may have on the previously established Strategic
9 Plan.
10

11 Ms. Nunez stated the impact would be to the Outreach Program. While the career website is
12 up, part of the plan was to attend career fairs and visit high schools. The staff person
13 designated to do outreach is now needed to meet the Board’s enforcement objectives.
14

15 M/ Renner /S/Sheldon

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

17 MOTION PASSED
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19

20 **ENFORCEMENT STATISTICS**

21 *(Charles Spearman, Member)*
22

23 Mr. Spearman reviewed enforcement data through December 31, 2009 questioning the increase
24 in the “Fines Imposed” category. Ms. Nunez explained an unlicensed practice case carried a
25 large fine of around \$75,000. Mr. Spearman explained most statistics appear to be on track.
26
27

28 **LEGISLATIVE COMMITTEE REPORT**

29 **LEGISLATION OF INTEREST**

30 *(Larry Renner, President)*
31
32

33 Mr. Renner outlined the following legislation of interest:
34

35 AB 583 – Requires health care practitioners, with the exception of nurses, to display the type of
36 license and the highest level of academic degree he or she holds.

37 Position: Oppose unless amended to exempt respiratory care practitioners in the same manner
38 as nurses
39

40 AB 877 – Would require the Director of Consumer Affairs to appoint a scope of practice
41 committee of five members, as specified, to perform occupational analyses and prepare written
42 reports, as specified, on any bills seeking to substantively expand the scope of a healing arts
43 practice. The bill would require that the reasonable cost of an analysis and report be paid by
44 the affected licensing board, as specified.

45 Position: Watch
46

47 AB 978 – Require the State Chief Information Officer to develop an online master application for
48 businesses to file for state permits and licenses, and work in collaboration with other state
49 agencies to accomplish this duty
50

1 Ms. Kirchmeyer stated that AB 978 has been changed dramatically and now basically states the
2 Office of the Chief Information Officer shall work with the Department of Consumer Affairs to
3 develop a licensing and enforcement database. She explained it then goes on to describe the
4 project. Ms. Kirchmeyer indicated DCA's database will be used as a prototype for other state
5 offices and the Department is asking for a support position from the boards.
6

7 Ms. Magaña moved to take a position of support on AB 978.
8

9 M/ Magaña /S/Stenson

10 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
11 MOTION PASSED
12

13 Mr. Olson moved to allow the Executive Committee to change positions on legislation, as
14 needed, with regards to the DCA sponsored legislation of the CPEI.
15

16 M/ Olson /S/Aguilera

17 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
18 MOTION PASSED
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21 **DCA SPONSORED LEGISLATION - CPEI**

22 *(Larry Renner, President)*
23

24 President Renner expressed his concern about the proposed enforcement change "Information
25 Provided on the Internet" which would make information about licensees (such as mailing
26 address) public record. He stated unlike other practitioners that have an office of practice,
27 RCPs may need to give their personal address as their address of record.
28

29 Discussion ensued.
30

31 Dr. Sheldon moved to support the Consumer Health Care Enforcement Reform Act Proposed
32 language as a whole but requested that Ms. Nunez work with DCA and Senator Negrete-
33 McLeod to revise the following sections:
34

- 35 1 Information Provided on the Internet
- 36 21 Enforcement Timeframes for the Office of the Attorney General
- 37 24 Require Boards to Check Information Maintained by the National Practitioner Databank
- 38 37 Adopt Vertical Enforcement and Prosecution Model for All Health Boards
39

40 M/ Sheldon /S/Olson

41 Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
42 MOTION PASSED
43

44 Ms. Nunez reviewed possible future amendments brought up by the Senate Business and
45 Profession Committee requesting feedback from the boards. Discussion ensued on the topic of
46 eliminating the Board's authority to adopt or non-adopt ALJ decisions.
47
48

49 **RESPIRATORY CARE PROGRAM HEARING: APPROVAL/DISAPPROVAL CALIFORNIA** 50 **COLLEGE SAN DIEGO (CCSD)** 51

1 Ms. Stenson indicated she knows one of the CCSD staff members present (“Bob”) but does not
2 believe it will influence any of her decisions.

3
4 The CCSD staff present introduced themselves: Carolyn Hunter, Attorney, David Parker,
5 Executive Director, Bob Goodrow, Program Director, and Barbara Thompson, Chief Operating
6 Officer.

7
8 Ms. Nunez opened with background stating it was brought to the Board’s attention last Spring
9 that at least one CCSD student became licensed though he did not meet the minimum
10 education requirements. As a result of this, the Board and CCSD each conducted their own
11 independent audits and found discrepancies. Issues and responses in the following areas were
12 outlined and discussed:

- 13
- 14 1. Database
- 15 2. Official Transcripts
- 16 3. Course Repetitions
- 17 4. Transcript Audit Verification Form
- 18 5. Courses/Units Crossing Catalogs
- 19

20 Following the discussion, the CCSD representatives stepped out of the meeting room to review
21 the document entitled, “CCSD Hearing Possible Board Actions” provided to them.

22
23 CCSD representatives returned to the meeting after consideration of the document. Items of
24 concern that were discussed included:

- 25
- 26 1- The 20 month period the Board would be reviewing progress, statistical data and other
27 information related to CCSD.
- 28 2- Clinical experience be stricken (III.B-4th paragraph).
- 29 3- Catalog used and provided for each transcript.
- 30

31 Ms. Nunez stated more time needs to be spent reviewing the conditions to continue program
32 approval as there are many items that have not been discussed. Primarily, each transcript must
33 include a correct graduation date and a copy of the course catalog that was used to determine
34 graduate status.

35
36 Discussion ensued.

37
38 President Renner suggested moving item III.B paragraph 4 from the “Conditions” section to the
39 “Encourage” section.

40
41 Further discussion ensued.

42
43 President Renner moved to accept the corrective action plan submitted to the Board by CCSD
44 with the following exception: add that CCSD is in the process of completing the validation of all
45 records. The Board continue program approval with the conditions listed in item III of the
46 document “CCSD Hearing Possible Board Actions” and that the Board move item III.B
47 paragraph 4 from the “Conditions” section to the “Encourage” section. The rest of the conditions
48 would continue as noted in the “Possible Board Actions” including the 20 month period.

49
50 M/ Renner /S/Sheldon

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

1 MOTION PASSED

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4 **LICENSES ISSUED w/ DEFICIENT CCSD TRANSCRIPTS**
5 **DECISION TO PURSUE RECISSION OF LICENSES**
6

7 Ms. Nunez and Mr. Renner agreed that if the Board was to pursue rescission of the licenses in
8 question, staff resources would be invested and a transcript with the correct graduation date
9 and course work would likely become available prior to the completion of the adjudication
10 process, making a poor use of already scarce resources.

11
12 Mr. Olson moved to use the new process to review the licensees in question under the Licenses
13 Issued w/ Deficient CCSD Transcripts.

14
15 M/ Olson /S/Spearman

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

17 MOTION PASSED

18
19 Ms. Nunez agreed to e-mail Mr. Parker the names of the licensees in question.
20

21
22 **PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**
23

24 Mr. Roth stated it takes about 6 months to prepare newly graduated students to work as the
25 clinical knowledge required to graduate is minimal. He inquired if there was a way for the Board
26 to establish a minimum number of clinical hours required for graduation or licensure.

27
28 Discussion ensued.

29
30 Dr. Sheldon suggested Mr. Roth get signatures from other directors and send them to him so he
31 can request that the matter be considered at an upcoming Board of Medical Advisors Meeting.
32

33
34 *****CLOSED SESSION*****
35

36 The Board convened into Closed Session, as authorized by Government Code Section 11126c,
37 subdivision (3) at 2:52 p.m. and reconvened into Public Session at 3:00 p.m.
38

39
40 **ADJOURNMENT**
41

42 The Public Session Meeting was adjourned by President Renner at 3:04 p.m.
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49 _____
50 LARRY L. RENNER
51 President

52 _____
53 STEPHANIE NUNEZ
54 Executive Officer

**CALIFORNIA COLLEGE SAN DIEGO
TRANSCRIPT REVIEW UPDATE**

TRANSCRIPTS PREVIOUSLY REVIEWED/DISCUSSED

(The following data does not include submissions made prior to the 2/5/10 Board Meeting)

Number of Transcripts Approved			
	1st Re-Submission	2nd Re-Submission	3rd Re-Submission
19	18	N/A	1

VEL	<p>1st submission rejected: Units and courses did not match catalog. 2nd submission rejected: MED201 (4 quarter units) taken in place of BIO110 (3 semester units). MED201 supporting documentation states BIO110 was discontinued, when in fact it was still offered in 03/04 and 04/05. 3rd submission approved: Received verification that MED201 was taken as part of a different program the student was previously enrolled in and was therefore substituted for BIO110 when the student entered the respiratory program.</p>		
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NEW TRANSCRIPTS SUBMITTED FOR REVIEW

Number of Transcripts Approved			
	1st Submission	2nd Submission	3rd Submission
33	29	4	N/A

DAV	<p>1st submission rejected: Graduation date reported was prior to completion of program. 2nd submission approved: Corrected graduation date reported.</p>		
GAR	<p>1st submission rejected: Received a "D" grade in BIO135 identified as a core course. 2nd submission approved: Received back-up documentation confirming BIO135 is not a core course.</p>		
HAM	<p>1st submission rejected: No graduation date reported, and student received a "C-" in MED306 identified as a core course. 2nd submission approved: Graduation date reported and received back-up documentation confirming MED306 is not core course.</p>		
NAV	<p>1st submission rejected: Received a "D" grade in MAN320 (substituted for MAN 224) identified as a core course. 2nd submission approved: Received back-up documentation confirming MAN 320 is not a core course.</p>		

BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Citation Against:

A GRACE SUB ACUTE & SKILLED
CARE,

Respondent.

Case No. C-09-0070

OAH No. 2009100582

PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on March 1, 2, and 3, 2010.

Deputy Attorney General David Carr and Senior Legal Analyst Catherine Santillan represented complainant Stephanie Nunez, Executive Officer, Respiratory Care Board of California.

Kim O. Dincel and Julie C. Grebel, Attorneys at Law, Hines Smith Carder Leasur Dincel, represented respondent A Grace Sub Acute & Skilled Care.

The matter was submitted on March 3, 2010.

RULING ON ADMISSIBILITY OF EVIDENCE

Complainant's objection to Exhibit F (January 13, 2009 survey by Department of Health and Human Services) was taken under consideration. Complainant's objection to Exhibit F is sustained; Exhibit F is not received in evidence.

FACTUAL FINDINGS

1. On September 14, 2009, Stephanie Nunez, Executive Officer of the Respiratory Care Board of California, issued Citation No. C-09-0070 to respondent A Sub Acute & Skilled Care, 1250 South Winchester Boulevard, San Jose. The citation alleged that on March 12 and 13, 2009, respondent permitted ten employees not licensed to practice respiratory care to practice respiratory care in violation of Business and Professions Code section 3760, subdivision (a). The citation imposed a total civil penalty of \$74,925, and issued an ordered of abatement.

2. Respondent timely requested a hearing to contest the citation.
3. Respondent is a 166-bed skilled nursing and sub acute care center in Santa Clara County.¹ Respondent is licensed through the Department of Public Health.
4. The citation alleges that on March 12 and 13, 2009, respondent permitted ten employees, licensed as vocational nurses, to act in the capacity of a respiratory care therapist in connection with the care and treatment of facility patients. Specifically, each LVN is alleged to have performed a "ventilator assessment" on between two and six patients during their shift.
5. The citation was issued following an investigation conducted by Michael David Werner, RCT. Werner also served as the board's expert in respiratory care at hearing. Werner made a site visit to the facility on the evening of March 12, 2009, following the boards' receipt of an anonymous telephone call regarding the facility's use of LVN's. Werner arrived at the facility at about 6:15 p.m.; there were no licensed respiratory care therapists on duty. The facility had 24 patients on mechanical ventilators; 11 of the patients were in various stages of weaning from the ventilator. There was no respiratory care therapist on duty during Werner's inspection the following day.
6. None of the LVN's named in the citation received training on the use of ventilators in their schooling to become a LVN.
7. Each of the LVN's named in the citation had been given training by a respiratory care therapist at the facility as part of their initial orientation. The testimony regarding the length of the training varied from eight hours to 40 hours.² Each LVN was given a certificate of the training, which was placed in their employee file. The LVN's were also given in-service trainings on ventilator care every few months.
8. The evidence established that each LVN was assigned a number of patients on a mechanical ventilator during their shift. The LVN's were instructed to perform a "ventilator check" every four hours and to document it on a "Ventilator Flow Sheet."³ The

¹ Respondent was previously known by the names of Winchester Convalescent Hospital and San Jose Subacute.

² The training covered the various aspects of the ventilator, including how to read the ventilator displays. The LVN's were required to demonstrate proper ventilator use; proper patient assessment; proper changing of ventilator tubing; proper use of an "ambu bag;" and proper Trach Suction" procedure.

³ The flow sheet required the LVN to chart the following: the date and time of the assessment; their initials; the ventilator mode (synchronized intermittent mandatory ventilation (SIMV), continued positive airway pressure (CPAC), or assist control (AC)); the set rate and the actual rate of the VTE; the set volume and actual volume of the VE; the minute volume of the VE; the Pressure Support/Positive End Expiratory Pressure (PS/PEET); the oxygen percentage (liters per minute); the spontaneous volume

“ventilator check” consisted of confirming that the ventilator settings were consistent with the physician’s order; checking the power cord for proper connection; checking the tubing to make sure there are no kinks; assessing the patient’s overall health, including checking the patient’s oxygen saturation and heart rate, assessing the patient’s lungs through a stethoscope; and performing suctioning, and performing breathing treatments.

The LVN’s did not set or change any of the settings on the ventilator. The LVN’s did not set or change any of the alarms on the ventilator. If a setting needed to be changed, the LVN would advise the respiratory care therapist or registered nurse on duty. The same procedure would be followed if a ventilator alarm went off.

9. It was not established whether the entries made by LVN’s on the Flow Sheets were reviewed by a respiratory care therapist.

Scope of Practice

10. Not one of the LVN’s who testified at hearing stated that the scope of their licensure authorized them to conduct a “ventilator check.” They were taught how to do them by a respiratory care therapist at respondent facility during their orientation.

11. It was established by competent evidence that the LVN’s named in the citation were performing ventilator assessments on March 12 and 13, 2009, and that their conduct constituted the practice of respiratory care therapy. As such, the facility permitted the LVN’s to engage in the unlicensed practice of respiratory care.

a. Werner was a credible and persuasive expert witness. In his opinion, the LVN’s named in the citation were performing more than a ventilator check; they were performing a ventilator assessment. The assessment of a patient on a mechanical ventilator in a subacute setting constitutes the practice of respiratory care, and is outside the scope of practice authorized for a licensed vocational nurse.

b. Jerry Espejo has been a respiratory care therapist in California for over 30 years. He is currently as respiratory care therapist at John Muir Medical Center in Walnut Creek. Espejo was hired by respondent to be a consultant to the facility at the time of the board’s inspection. He now is under contract with respondent to staff respiratory care therapists for the facility.

Espejo testified that it is a common and acceptable practice in a sub acute facility to use LVN’s to conduct ventilator assessments and to make chart entries regarding the assessments. He personally knows of two subacute facilities which authorize LVN’s to perform such functions, and has “heard of” eight others who engage in such practice. He knows of no acute care hospitals, however, that allow the practice. Espejo’s testimony

(VTE); the PIP (peak inspiration pressure)/Inspiration Time set; oxygen saturation/heart rate; the humidifier temperature; and the amount and color of patient secretions.

regarding a common or acceptable practice is not found to be persuasive evidence of the authorized scope of practice of LVN's in California.

Other Matters

12. Having LVN's perform ventilator assessments placed the patients on mechanical ventilators at risk of serious harm.
13. LVN's are no longer authorized to perform ventilator assessments at respondent facility.
14. Respondent now contracts with Espejo to staff its respiratory care therapists. Currently there are six respiratory care therapists on staff at the facility.
15. At the time of the inspection, the current owners of respondent facility had been in place for only a few months.
16. In setting a total administrative fine of \$74,925, the executive officer considered each employee to be a separate violation, and imposed individual fines of \$8,325 for nine violations. (The record does not explain why a fine was not imposed for the tenth violation.) In setting the amount of the individual fines, the executive officer considered the following factors: the gravity of the violation; the good or bad faith exhibited by the employer; the history of previous violations; and the extent to which the employer cooperated with the board's investigation.

LEGAL CONCLUSIONS

1. As the law does not provide otherwise, the standard of proof to be applied in this proceeding is the preponderance of evidence. (Evid. Code, § 115.)
2. Business and Professions Code section 3766, subdivision (b), authorizes the board to issue a citation against a employer who employs a person who acts in the capacity of, or engages in the business of , respiratory care practitioner without having a license issued by the board. The citation may assess a civil penalty and impose an order of abatement.
3. Business and Professions Code section 3760, subdivision (a), proscribes the practice of respiratory care, respiratory therapy or inhalation therapy except as authorized by the Respiratory Care Practice Act (Bus. & Prof. Code, § 3700 et seq.). Business and Professions Code section 3761, subdivision (a), proscribes the practice of respiratory care without a valid respiratory care license.

4. Business and Professions Code section 3702 defines the practice of respiratory care as follows:

Respiratory care as a practice means a health care profession employed under the supervision of a medical director in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities which affect the pulmonary system and associated aspects of cardiopulmonary and other systems functions, and includes all of the following:

(a) Direct and indirect pulmonary care services that are safe, aseptic, preventative, and restorative to the patient.

(b) Direct and indirect respiratory care services, including but not limited to, the administration of pharmacological and diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician and surgeon.

(c) Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing and (1) determination of whether such signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; (2) implementation based on observed abnormalities of appropriate reporting or referral or respiratory care protocols, or changes in treatment regimen, pursuant to a prescription by a physician or surgeon or the initiation of emergency procedures.

(d) The diagnostic and therapeutic use of any of the following, in accordance with the prescription of a physician and surgeon: administration of medical gases, exclusive of general anaesthesia; aerosols; humidification; environmental control systems and baromedical therapy; pharmacologic agents related to respiratory care procedures; mechanical or physiological ventilatory support; bronchopulmonary hygiene; cardiopulmonary resuscitation; maintenance of the natural airways; insertion without cutting tissues and maintenance of artificial airways; diagnostic and testing techniques required for implementation of respiratory care protocols; collection of specimens of blood; collection of specimens from the

respiratory tract; analysis of blood gases and respiratory secretions.

(e) The transcription and implementation of the written and verbal orders of a physician and surgeon pertaining to the practice of respiratory care.

“Respiratory care protocols” as used in this section means policies and procedures developed by a licensed health facility through collaboration, when appropriate, with administrators, physicians, and surgeons, registered nurses, physical therapists, respiratory care therapist, and other licensed health care professionals.

5. By reason of the matters set forth in Factual Finding 10, it was established that respondent permitted ten LVN employees to engage in the unlicensed practice of respiratory care at its facility on March 12 and 13, 2009. Cause for citation exists under Business and Professions Code section 3760, subdivision (a).

6. Business and Professions Code section 3763 provides that the Respiratory Care Act does not “limit, preclude or otherwise interfere with the practices of licensed personnel in carrying out authorized and customary duties and functions.” As a result, consideration has been given to the scope of authorized practice of a licensed vocational nurse under the Vocational Nursing Practice Act (Bus. & Prof. Code, § 2840 et seq.).

The Vocational Nursing Act authorizes a LVN to administer medications by hypodermic injection, withdraw blood, start and superimpose intravenous fluids, perform skin tests and immunizations, (see Bus. & Prof. Code, §§ 2860.5 & 2860.7) and perform other basic nursing services as set forth in California Code of Regulations, title 17, section 2518.5. Nothing in the statutes or the regulations governing the scope of practice of vocational nursing suggests that it includes performing assessment of patients on mechanical ventilators. There was no evidence presented through expert testimony which would support a conclusion that the scope of practice authorized by the Vocational Nursing Practice Act includes performing assessment of patients on mechanical ventilators.

7. Consideration has also been given to respondent’s argument that it was following California Code of Regulations, title 22, section 70615⁴, when it permitted its LVN’s to perform ventilator assessments.

⁴ California Code of Regulations, title 22, section 70165 provides in relevant part: “(a) A physician shall have overall responsibility for this service. . . . [¶] (b) The day-to-day operation of the service shall be under the immediate supervision of a technical director who shall be a respiratory therapist, respiratory therapy technician, cardiopulmonary or pulmonary technologist or a registered nurse with specialized training and/or advanced experience in respiratory care, who shall be responsible for: [¶] (1) Supervising the clinical application of respiratory care. [¶] (2) Supervising the technical procedures

Section 70165 is a regulation promulgated by the California Department of Public Health (formerly know as the California Department of Health Services) relating to the licensing and certification of health care facilities. The section falls within Article 6 of Chapter 1, which pertains to Authorized Supplement Services in Acute Care Hospitals. Section 70165, which is entitled Respiratory Care Service Staff. This section recognizes that licensed personal other than physicians, respiratory care therapists, and registered nurses may provide care in connection with respiratory care services. It does not purport to define the scope of practice of LVN's in California.

8. The factors to be considered in setting an administrative fine are set forth in California Code of Regulations, title 16, section 1399.391. The factors to be considered are: (1) the gravity of the violation; (2) the good or bad faith exhibited by the cited person or employer; (3) the history of previous citations; and (4) the extent of cooperation with the board's investigation. The schedule of fines for a citation alleging unlicensed practice is set by the legislature in Business and Professions Code section 3767, subdivision (a). The range of fines is between \$200 and \$15,000.

The executive officer gave due consideration to each of the four factors in setting the fine. The violation is very serious, and goes to the heart of the board's mission, which is to protect the public from the unlicensed practice of respiratory care. In mitigation, this was a practice set in place by the prior owners of the facility, and current owners had just taken over the facility. There is no evidence that the facility or these owners have had prior citations by the board. On balance, setting the fine at \$8,750 per violation does not appear to be unreasonable or excessive.

ORDER

Citation No. C-09-0070 issued to respondent A Grace Sub Acute & Skilled Care is affirmed.

DATED: April 1, 2010



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

used in pulmonary function testing and blood gas analysis. [¶] (3) Supervising the maintenance of equipment. [¶] (4) Assuring the national and local safety standards are met. [¶] (c) Other personnel may include registered nurses, licensed vocational nurses, and physical therapists trained in respiratory care, respiratory therapists, respiratory therapy technicians, cardiopulmonary or pulmonary technologists and students.

Publication of Program Pass/Fail Rates

Issue

Board staff recently received the following e-mail from a program director who expressed concerns with the existing Program Pass/Fail Information posted on the Board's Web site:

"Again, thank you for the conversation yesterday. Your responses were articulate and succinct.

Per our discussion, I want to take this opportunity to go on record regarding concerns with the posted NBRC passing scores on the CA State RCB's website. I hope that the RCB will revisit this issue at the May 11th meeting. My immediate concerns are:

- The RCB document of NBRC data. The document is clear and easy to read, however the reader (e.g. students, potential students, graduate students, hospital personnel, hospital administrators and respiratory care department heads, respiratory care practitioners both in this State and out-of-state, adjunct faculty for respiratory care programs) **cannot evaluate the instrument with clarity, interpretation, or obtain an accurate portrayal of any programs pass rate.** For the reader/viewer, the document does not discuss how to extrapolate the data and make it meaningful. Discussion: **Use simple statements on the document to guide the reader so the individual may develop an understanding of what the document is attempting to convey.** On February 26, 2010, the Dean of my Division, the President of the College and I received an email from CoARC, and I quote " your program has met or exceeded all currently set "thresholds" for success on each of the required outcome measures." No program can meet and exceed CoARC standards with a pass rate of 48%. The letter is CoARC's response to the annual report for the graduating class of 2008. The data that you have collected is from the graduating class of 2008, May/June scores from the class of 2009, and I believe all previous graduates from the last 9 years who continued to attempt the CRT in that window of data gathering. By combining two graduating classes and including graduates from years past, our data has been extraordinarily distorted, it has become inaccurate data and does not portray an essence of who we are or what our passing test scores are. Again, we have exceeded all CoARC/NBRC thresholds.
- Posting out of date information from mid 2008 is potentially harmful to every institution and opens a door for the negative contribution of language throughout the State. Discussion: **Consider updating information biannually** and utilizing data scored by CoARC from the preceding annual report only. **The dates that the RCB chose to use captured data from too many areas [data pulled from NBRC is by date and is not tied to specific graduating classes].**
- Obtaining access of the NBRC's document that must be included with every annual report to CoARC. There are three (3) separate documents that comprise an annual report. The document that you need is the document that Directors nationwide access that establishes each institutions passing scores. **The RCB is not using the same document that RCP Programs nationwide are utilizing when generating an annual CoARC report.**

- Poverty, education, and health in the [REDACTED] Valley. Discussion: We are a marginalized community/body with extreme poverty, with first generation immigrant issues. Over 200 dialogues are spoken in the [REDACTED] Unified School System. We are a community college and we are teaching the parents of these children. Our social issues are well documented and great concern continues in meeting the overall health, education and welfare of the people of this Valley. In spite of these challenges, [REDACTED] College's RCP program exceeds the NBRC/CoARC thresholds.

I became the Program Director for this College in the fall of 2008. The numbers that you have posted somehow captured a snapshot in a motion picture, utilizing data that we do not use when writing an annual report. It is also data that was compiled when I was not Program Director. If you would like me to send you copies of the documents that I have mentioned above that contradict your percentages, I would be happy to do this for you. As Program Director, it is my good name that is sitting right next to that 48% value. Any distortion or change in perception that might be perceived by a viewer in judging me and our Program is potentially harmful to a graduate in an already declining job pool/market.

My wish is that the RCB continue to look at this issue. Professionally, I would like to see the document pulled off of your website with the consideration that it be placed back on when the CoARC/ NBRC annual reports are submitted. That way the information is reflective of one annual report and not data that goes back 10 years. Statistical analysis and evaluation of raw data is rarely absorbed by a viewer who remains untrained in the process of accumulating data and analyzing/discussing in writing the raw scores for submission of an annual report.

Thank you.”

Recommendations

In response to the e-mail, staff reviewed the existing format of the Pass/Fail Information report to determine what revisions, if any, could be made to address the issues raised:

- Remove “All Candidate Summary” and report only “New Candidate Summary” and “Repeat Candidate Summary” percentages. Also add a brief description of each summary.
- Update the Program Pass/Fail Information more frequently (i.e. biannually). The current report is updated once per year, and covers the period of July 1 - June 30.
- Staff contacted the National Board for Respiratory Care and confirmed that pass/fail data by graduation date (and by candidate) is only provided to the program(s) directly (this is the information the program utilizes to provide their annual report to CoARC).

PROGRAM PASS/FAIL INFORMATION

July 1, 2008 - June 30, 2009

National Pass % - All Candidates -	59.60%
National Pass % - New Candidates -	79.33%
National Pass % - Repeat Candidates -	28.59%

Program	Total	Pass	Fail	Program Pass %
AMERICAN CAREER COLLEGE				
All Candidate Summary	---NO DATA---			
New Candidate Summary	New Program			
Repeat Candidate Summary	No candidates tested during this reporting period			
AMERICAN RIVER COLLEGE				
All Candidate Summary	41	35	6	85.37%
New Candidate Summary	32	32	0	100.00%
Repeat Candidate Summary	9	3	6	33.33%
ANTELOPE VALLEY COLLEGE				
All Candidate Summary	28	14	14	50.00%
New Candidate Summary	14	7	7	50.00%
Repeat Candidate Summary	14	7	7	50.00%
BUTTE-GLENN COMMUNITY COLLEGE				
All Candidate Summary	31	24	7	77.42%
New Candidate Summary	25	20	5	80.00%
Repeat Candidate Summary	6	4	2	66.67%
CALIFORNIA COLLEGE SAN DIEGO				
All Candidate Summary	222	47	175	21.17%
New Candidate Summary	35	22	13	62.86%
Repeat Candidate Summary	187	25	162	13.37%
CONCORDE CAREER COLLEGE - GARDEN GROVE				
All Candidate Summary	145	91	54	62.76%
New Candidate Summary	89	72	17	80.90%
Repeat Candidate Summary	56	19	37	33.93%
CONCORDE CAREER COLLEGE - NORTH HOLLYWOOD				
All Candidate Summary	131	84	47	64.12%
New Candidate Summary	82	64	18	78.05%
Repeat Candidate Summary	49	20	29	40.82%
CONCORDE CAREER INSTITUTE SAN BERNARDINO				
All Candidate Summary	132	87	45	65.91%
New Candidate Summary	84	70	14	83.33%
Repeat Candidate Summary	48	17	31	35.42%
CONCORDE CAREER COLLEGE - SAN DIEGO				
All Candidate Summary	68	34	34	50.00%
New Candidate Summary	37	28	9	75.68%
Repeat Candidate Summary	31	6	25	19.35%

PROGRAM PASS/FAIL INFORMATION

July 1, 2008 - June 30, 2009

National Pass % - All Candidates -	59.60%
National Pass % - New Candidates -	79.33%
National Pass % - Repeat Candidates -	28.59%

Program	Total	Pass	Fail	Program Pass %
CRAFTON HILLS COLLEGE				
All Candidate Summary	2	2	0	100.00%
New Candidate Summary	2	2	0	100.00%
Repeat Candidate Summary	0	0	0	0.00%
EAST LOS ANGELES COLLEGE				
All Candidate Summary	73	66	7	90.41%
New Candidate Summary	65	62	3	95.38%
Repeat Candidate Summary	8	4	4	50.00%
EL CAMINO COMMUNITY COLLEGE				
All Candidate Summary	24	16	8	66.67%
New Candidate Summary	16	10	6	62.50%
Repeat Candidate Summary	8	6	2	75.00%
FOOTHILL COMMUNITY COLLEGE				
All Candidate Summary	23	19	4	82.61%
New Candidate Summary	19	18	1	94.74%
Repeat Candidate Summary	4	1	3	25.00%
FRESNO CITY COLLEGE				
All Candidate Summary	33	16	17	48.48%
New Candidate Summary	20	14	6	70.00%
Repeat Candidate Summary	13	2	11	15.38%
GROSSMONT COLLEGE				
All Candidate Summary	87	48	39	55.17%
New Candidate Summary	54	40	14	74.07%
Repeat Candidate Summary	33	8	25	24.24%
KAPLAN COLLEGE				
All Candidate Summary	151	68	83	45.03%
New Candidate Summary	80	51	29	63.75%
Repeat Candidate Summary	71	17	54	23.94%
LOMA LINDA UNIVERSITY				
All Candidate Summary	14	10	4	71.43%
New Candidate Summary	11	9	2	81.82%
Repeat Candidate Summary	3	1	2	33.33%
LOS ANGELES VALLEY COLLEGE				
All Candidate Summary	34	30	4	88.24%
New Candidate Summary	33	29	4	87.88%
Repeat Candidate Summary	1	1	0	100.00%

PROGRAM PASS/FAIL INFORMATION

July 1, 2008 - June 30, 2009

National Pass % - All Candidates -	59.60%
National Pass % - New Candidates -	79.33%
National Pass % - Repeat Candidates -	28.59%

Program	Total	Pass	Fail	Program Pass %
MODESTO JUNIOR COLLEGE				
All Candidate Summary	24	18	6	75.00%
New Candidate Summary	19	17	2	89.47%
Repeat Candidate Summary	5	1	4	20.00%
MOUNT SAN ANTONIO COLLEGE				
All Candidate Summary	26	24	2	92.31%
New Candidate Summary	21	21	0	100.00%
Repeat Candidate Summary	5	3	2	60.00%
NAPA VALLEY COLLEGE				
All Candidate Summary	31	30	1	96.77%
New Candidate Summary	30	29	1	96.67%
Repeat Candidate Summary	1	1	0	100.00%
OHLONE COLLEGE				
All Candidate Summary	24	24	0	100.00%
New Candidate Summary	24	24	0	100.00%
Repeat Candidate Summary	0	0	0	0.00%
ORANGE COAST COLLEGE				
All Candidate Summary	---NO DATA---			
New Candidate Summary	No candidates tested during this reporting period			
Repeat Candidate Summary	No candidates tested during this reporting period			
PIMA MEDICAL INSTITUTE				
All Candidate Summary	76	38	38	50.00%
New Candidate Summary	40	27	13	67.50%
Repeat Candidate Summary	36	11	25	30.56%
SAN JOAQUIN VALLEY COLLEGE - BAKERSFIELD				
All Candidate Summary	79	65	14	82.28%
New Candidate Summary	68	60	8	88.24%
Repeat Candidate Summary	11	5	6	45.45%
SAN JOAQUIN VALLEY COLLEGE - RANCHO CORDOVA				
All Candidate Summary	43	38	5	88.37%
New Candidate Summary	39	35	4	89.74%
Repeat Candidate Summary	4	3	1	75.00%
SAN JOAQUIN VALLEY COLLEGE - RANCHO CUCAMONGA				
All Candidate Summary	84	72	12	85.71%
New Candidate Summary	69	63	6	91.30%
Repeat Candidate Summary	15	9	6	60.00%

PROGRAM PASS/FAIL INFORMATION

July 1, 2008 - June 30, 2009

National Pass % - All Candidates -	59.60%
National Pass % - New Candidates -	79.33%
National Pass % - Repeat Candidates -	28.59%

Program	Total	Pass	Fail	Program Pass %
SAN JOAQUIN VALLEY COLLEGE - VISALIA				
All Candidate Summary	72	37	35	51.39%
New Candidate Summary	29	24	5	82.76%
Repeat Candidate Summary	43	13	30	30.23%
SIMI VALLEY ADULT SCHOOL				
All Candidate Summary	37	21	16	56.76%
New Candidate Summary	22	16	6	72.73%
Repeat Candidate Summary	15	5	10	33.33%
SKYLINE COLLEGE				
All Candidate Summary	30	20	10	66.67%
New Candidate Summary	21	19	2	90.48%
Repeat Candidate Summary	9	1	8	11.11%
VICTOR VALLEY COMMUNITY COLLEGE				
All Candidate Summary	33	24	9	72.73%
New Candidate Summary	25	22	3	88.00%
Repeat Candidate Summary	8	2	6	25.00%
WESTERN CAREER COLLEGE				
All Candidate Summary	---NO DATA---			
New Candidate Summary	New Program			
Repeat Candidate Summary	New Program			

DRAFT

Complete Regulation Review Proposal ACTUAL LANGUAGE

California Code of Regulations Title 16. Professional and Vocational Regulations Division 13.6. Respiratory Care Board of California

ARTICLE 1. GENERAL PROVISIONS

§ 1399.301. Location of Office.

The principal office of the Respiratory Care Board of California is located at 444 North 3rd Street, Suite 270, Sacramento, CA 95844~~11~~.

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Section 3722, Business and Professions Code.

§ 1399.302. Definitions.

Unless the context otherwise requires, the following definitions shall apply:

- (a) "Board" means the Respiratory Care Board of California.
- (b) "B&P~~C~~" means the Business and Professions Code.
- (c) "Act" means the Respiratory Care Practice Act.
- (d) "Direct Supervision" means assigned to a currently licensed respiratory care practitioner who is on duty and immediately available in the assigned patient area.
- (e) "Employer" means any company, corporation, partnership, health maintenance organization, registry, staffing agent or agency, or any other entity or person that employs or contracts with, one or more respiratory care practitioners, ~~or unlicensed personnel, or any person,~~ to provide respiratory care services as provided in the Act.
- (f) "Licensed Home Care Employer" means a Home Medical Device Retail Facility, Home Health Agency, or any home care provider licensed by the Department of Health Services or its successor.
- (g) "Regulations" means Division 13.6 of Title 16 of the California Code of Regulations.
- (h) "Unlicensed Personnel" means any individual who is not otherwise exempt, or who does not hold a valid and current license issued by the board. ~~not otherwise authorized or exempt to provide respiratory care services except as provided for in Article 6.~~

Note: Authority cited: Sections 3704, ~~and~~ 3722, 3739, 3742, 3760, and 3761 Business and Professions Code. Reference: Sections 3704, ~~and~~ 3717, 3722, 3739, 3742, 3758, 3758.6, 3760, 3761, 3767, 3773, and 3777 Business and Professions Code.

§ 1399.303. Delegation of Authority.

- (a) Except for those powers reserved exclusively for the "agency itself" under the Administrative Procedure Act (Section 11500 et seq. of the Government Code), the board delegates and confers upon the executive officer of the board, or in his or her absence, the president of the board, the power and discretion to prepare, receive and file accusations, statements of issue and stipulated settlements; issue notices of hearings; and statements to respondents and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; calendar cases for hearing; prepare and file, proposed default decisions; adopt stipulated settlements where an action to revoke the license has been filed, and the respondent agrees to surrender his or her license, and perform other functions necessary to the businesslike dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; and the certification and delivery or mailing of copies of decisions under Section 11518 of said code.
- (b) The executive officer is further authorized, ~~subject to the approval of the board,~~ to investigate and evaluate each applicant for licensure under the Act, and to issue or deny a license in conformance with the provisions of the B&P~~C~~, the Act, this chapter, and disciplinary guidelines.

Note: Authority cited: Sections 720.2 [SB 1111, statutes of 2010] and 3722, Business and Professions Code. Reference: Sections 720.2 [SB 1111, statutes of 2010], 3716 and 3753, Business and Professions Code.

ARTICLE 2. APPLICATIONS

§ 1399.320. Applications.

(a) Documentation related to the initial application process shall not be submitted more than ~~30~~ 90 days prior to the receipt of an initial application. If an application is not received within ~~30~~ 90 days, the submitted material will be destroyed.

Note: Authority cited: Section 3730, Business and Professions Code. Reference: Sections 3732, 3733, 3735, 3735.3, 3735.5 and 3740, Business and Professions Code.

ARTICLE 3. EDUCATION AND EXPERIENCE

§ 1399.330. Education Waiver Criteria.

(a) The board may waive the education requirements in ~~s~~Section 3740 of the B&PC if an applicant for licensure

(1) Either successfully completed a minimum of a one-year respiratory care program supported by the Committee on Accreditation for Respiratory Care or its predecessor, prior to July 1, 2004 or previously held a license in good standing issued by the board and

(A) Holds a current valid license in good standing in another state, United States territory or Canadian province and has practiced respiratory care in that jurisdiction for a minimum of two years full time within the three years immediately preceding filing an application for licensure in this state; or

(B) Has practiced respiratory care in another state or United States territory, for a minimum of three years full time within the four years immediately preceding filing an application for licensure in this state, and that state or territory does not regulate the practice of respiratory care at the time the application for licensure is filed.

(2) Has not completed a respiratory care program described in subdivision (1) above but either
(A) Holds a current valid license in good standing in another state, United States territory or Canadian province and has competently practiced respiratory care in that state, United States territory or Canadian province for a minimum of four years full time within the five years immediately preceding filing an application for licensure in this state; or

(B) Has practiced respiratory care in another state or United States territory, for a minimum of five years full time within the six years immediately preceding filing an application for licensure in this state, and that state or territory does not license the practice of respiratory care at the time the application for licensure is filed.

(3) Does not meet the criteria described in subdivisions (1) or (2) above, but

(A) Has completed a minimum of a one-year respiratory care program supported by the Committee on Accreditation for Respiratory Care or its predecessor, and

(B) Has practiced respiratory care while serving in the U.S. military for a minimum of two years, full time, within the four years immediately preceding filing an application for licensure in this state, and

(C) The U.S. military verifies the applicant is in "good standing" as it pertains to his or her past or current employment.

- (b) As used in this section, "good standing" means the applicant
- (1) is not currently under investigation;
 - (2) has not been charged with an offense for any act substantially related to the practice of respiratory care by any public agency;
 - (3) has not entered into any consent agreement or been subject to an administrative disciplinary decision including any voluntary surrender of license; and
 - (4) has not been the subject of an adverse judgment or arbitration award resulting from a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in the practice of respiratory care.

(c) An applicant must provide sufficient documentary evidence to establish to the satisfaction of the board, that the applicant meets each requirement in the pathway under which the applicant is attempting to qualify. An applicant shall sign a release authorizing the board to obtain copies of personnel records or any other documentation that establishes the applicant's qualifications for a waiver of the educational requirements.

(d) This section shall not be construed to require the board to waive education requirements for any reason including, but not limited to, poor work performance, habits or communication, insufficient documentation to ascertain waiver criteria has been met, or employment with staffing agencies or registries where the applicant's experience is based on working at three or more sites.

Note: Authority cited: Sections 3722 and 3740, Business and Professions Code. Reference: Section 3740, Business and Professions Code.

§ 1399.335. Notice to Disapprove Respiratory Therapy School

(a) The board may disapprove any respiratory therapy school or program upon providing 30 days notice that the matter will be heard by the board, and the basis for the disapproval. The school or program shall be afforded the opportunity to present written testimony in advance of or at the scheduled hearing, and/or oral testimony at the hearing.

(b) In lieu of disapproving a school or program as provided for in subsection (a), the board may stay the disapproval, and impose terms and conditions upon the approval of the school or program for a specified period of time. The board may lift or extend the terms and conditions, or disapprove the school or program at any time, thereafter.

Note: Authority cited: Sections 3722 and 3740, Business and Professions Code. Reference: Section 3740, Business and Professions Code.

ARTICLE 4. EXAMINATIONS

~~§ 1399.340. Failure on Examinations:~~

~~For purposes of B&PC section 3739, the "next available examination" shall mean the board's state licensing examination, or the National Board for Respiratory Care, Inc. entry level certification examination for respiratory therapy. Failure of either examination, or failure to take either examination as scheduled except for due cause, shall result in termination of the privilege to work as a "respiratory care practitioner applicant".~~

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Section 3739, Business and Professions Code.

ARTICLE 5. CONTINUING EDUCATION

§ 1399.352.7. Law and Professional Ethics Course Criteria.

An acceptable course in law and professional ethics shall meet the following criteria and be approved by the board:

(a) The course shall be provided by the American Association for Respiratory Care or the California Society for Respiratory Care.

(b) The course shall be three hours in length. One hour of instruction shall consist of not less than 50 minutes of actual classroom time or actual time spent by the licensee completing the coursework on the internet.

(c) The content of the course shall consist of the following subject areas:

- (1) Obligations of licensed respiratory care practitioners to patients under their care;
- (2) Responsibilities of respiratory care practitioners to report illegal activities occurring in the work place; and
- (3) Acts that jeopardize licensure and licensure status.

~~(d) One hour of instruction shall consist of not less than 50 minutes of actual classroom time or actual time spent by the licensee completing the coursework on the internet.~~

(d) The course shall meet all of the following requirements:

(1) The course shall consist of two (2) hours dedicated to professional ethics and one (1) hour toward California law. The board may opt to prepare or edit in full or part, any portion of the course.

(2) The course title shall be "Law and Professional Ethics."

(3) Delivery and format of the course shall be user-friendly and captivating with visual capabilities as determined by the board.

(4) The course will be at least thirty (30) pages of written material with at least twenty (20) test questions related to professional ethics and ten (10) related to California law.

(5) Course content must include course description, course objectives, references, scenarios, questions, certificate of completion and legal disclosures, as applicable.

(6) The course shall provide several segments. Each segment must include a narrative or discussion, a scenario, and at least one question. For each question there must be between three and six possible responses with only one correct answer. Each response must include an explanation as to why the response is incorrect or correct. The number of questions tied to each segment may vary, as each component will differ in length and content.

(7) The course will include at least thirty (30) scenario-based questions that require critical thinking skills.

(8) The provider shall submit course test scores, names and other course related information to the board, as requested by the board.

(9) The provider shall not charge more than thirty dollars (\$30) for board applicants and sixty dollars (\$60) for board licensees or petitioners.

(10) The provider shall ensure that procedures are in place to address Americans with Disabilities Act (ADA) requests.

(11) The participant shall be allowed one (1) year to complete the course/exam after enrollment.

(12) The participant shall not be able to exit the post examination once commenced.

(13) The participant shall not have a time limit to take the post examination.

(14) The minimum post examination passing score shall be 70%. The post examination shall be scored on all cumulative components, not by each section.

(15) As applicable, the provider shall offer and allow participants who failed the initial post examination to retake the post examination free of charge. There shall be no wait time to retake the post examination if previously failed.

(16) The course will include a survey, optional to participants, to gather feedback for the board.

(e) The course is solely the product of the provider and the provider assumes full responsibility for the course.

(f) The course must be revised once every four years. Each revision must be approved by the board. The board's Education Committee may rescind the approval of a course at any time if it believes it has been altered or finds that the course does not meet the requirements as provided for in this Article.

(g) The provider may advertise and or reference that an approved course is "approved" by the board.

Note: Authority cited: Sections 3719.5 and 3722, Business and Professions Code. Reference: Sections 35 and 3719.5, Business and Professions Code.

§ 1399.353. Audit and Sanctions for Noncompliance.

(a) The board shall audit a random sample of RCPs for compliance with the CE requirements.

(b) If documentation of the CE requirement is improper or inadequate, or the licensee fails to provide the requested documentation within 30 days, the license becomes inactive. The practice of respiratory care, or representation that one is an RCP, is prohibited while the license is inactive. Practice on an inactive license shall constitute grounds for appropriate disciplinary action pursuant to the B&PG.

(c) Notwithstanding subdivision (b), if the Board determines that through no fault of the licensee the CE completed does not meet the criteria set forth in this Article, the Board may grant an extension, not to exceed six months, for the licensee to complete approved CE.

(d) Misrepresentation of compliance shall constitute grounds for disciplinary action.

(e) Documentation supporting compliance with CE requirements shall be available to the board upon request during the four year period following relicensure.

Note: Authority cited: Sections 3719 and 3722, Business and Professions Code. Reference: Sections 3719 and 3750, Business and Professions Code.

ARTICLE 6. SCOPE OF PRACTICE

§ 1399.360. Unlicensed Personnel Services; Home Care.

(a) Unlicensed personnel (UP) may perform limited and basic respiratory care or respiratory care related services identified in subdivisions (b) and (c) in the home setting, ~~or~~ for the purposes of patient transfer to the home setting, or at the facility of a Licensed Home Care Employer, provided the following conditions are met:

(1) The UP is providing services through his or her employment with a Licensed Home Care Employer (LHCE);

(2) The UP has been provided initial training, ongoing in-service education, and periodic competency testing specific to each service and equipment-type by either a California licensed respiratory care practitioner (RCP) or other qualified licensed personnel, in accordance with his or her scope of practice, and documentation of such training, education and testing is maintained by the LHCE for a period of four years, and

(3) The LHCE ensures that the patient, the patient's family, or the patient's caregiver(s) are advised prior to or at the time equipment or supplies are delivered, that a RCP or other qualified licensed personnel, in accordance with his or her scope of practice, shall provide follow up checks, by telephone or in-person as appropriate, at the request of the patient or the patient's family, caregiver, or physician, or any person who has had contact with the patient, or as otherwise directed by a plan of care, and such services are provided accordingly.

(b) In accordance with this section and as it relates to:

- positive airway pressure (with or without a back-up rate) devices and supplies;
- intermittent positive pressure breathing devices and supplies;
- ventilatory devices and supplies;
- nasotracheal or tracheal suctioning devices and supplies;
- apnea monitors and alarms and supplies;
- tracheostomy care devices and supplies;
- respiratory diagnostic testing devices and supplies, including but not limited to pulse oximetry,

CO2 monitoring, and spirometry devices and supplies;

● pulse-dose type or demand conserving oxygen delivery devices or high flow oxygen systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen, and

- any other respiratory care equipment and supplies not identified in subdivisions (b) and (c),

(1) UP may:

(A) Deliver equipment and supplies;

(B) Instruct the patient, the patient's family or the patient's caregiver(s) on how to order equipment and supplies and the telephone number to call 24 hours a day, 7 days a week, in case of emergency in which a live person will be available to respond;

(C) Set up equipment to the extent that the set-up is not dependent upon or influenced by any written or oral communication with the patient or the patient's family, caregiver(s) or physician (with the exception of identifying a physical location in the home for set-up), and

(D) Provide instruction to the patient, the patient's family or the patient's caregiver(s) limited to the mechanical operation of the equipment (e.g. switch, knob, and dial locations) or the general use of equipment or supplies.

(2) UP are prohibited from:

(A) Setting up equipment to an extent that it constitutes patient care such as applying or fitting any device to the patient or making any adjustment or taking any action that requires or is dependent upon or influenced by any written or oral communication with the patient or the patient's family, caregiver(s) or physician;

(B) Providing any instruction to an extent that it constitutes patient care, such as instruction in the operation or use of the equipment for the purpose of deriving an intended medical benefit or instruction in the clinical application of equipment and/or supplies;

(C) Performing any level of clinical assessment of the patient;

(D) Directly engaging in any discussion of clinical care plans, therapy, prescriptions, or clinical application;

(E) Touching the patient for the purposes of making an assessment or placing any device upon the patient, and

(F) Providing any service that is not expressly authorized by this section.

(c) In accordance with this section and as it relates to oxygen delivery systems and prefilled cylinders, with the exception of pulse-dose or demand conserving oxygen systems and high flow oxygen systems beyond the capabilities of a simple mask or cannula or requiring particulate or molecular therapy in conjunction with oxygen,

(1) UP may:

(A) Deliver equipment and supplies;

(B) Instruct the patient, the patient's family or the patient's caregiver(s) on how to order oxygen equipment and supplies and the telephone number to call 24 hours a day, 7 days a week, in case of emergency in which a live person will be available to respond;

(C) Instruct the patient, the patient's family or the patient's caregiver(s) in the proper and safe operation of oxygen equipment including:

(i) equipment set-up for the purpose of making the equipment patient-ready;

(ii) connecting disposable tubing, cannulas, and masks;

(iii) verification of oxygen flow;

- (iv) demonstration to the patient of prescribed flow rate(s);
- (v) connection and cleaning of oxygen humidifying equipment and devices;
- (vi) use of portable back-up oxygen cylinders and equipment, and
- (vii) removal and disposition of disposable tubing, cannulas, and masks, and
- (D) Use a mock, self-demonstration as a method of instruction for subdivision (c)(1)(C).
- (E) Conduct regular in-home evaluations and gather information from the patient and home setting pertaining to the set-up, instruction, and provision of information as described in this subdivision for the use of the prescribing physician.

(2) UP are prohibited from:

- (A) Direct administration of ~~home~~ oxygen;
- (B) Handling or adjusting ~~home~~ oxygen equipment while it is in use by the patient or on the patient;
- (C) Touching the patient or placing any device upon the patient while engaged in the set-up and instruction of equipment, including, but not limited to, applying a cannula or performing an oximetry evaluation or oxygen saturation test, and
- (D) Directly engaging in any discussion of clinical care plans, oxygen therapy or any modifications of physician prescribe equipment, dosages, or instructions or clinical applications.

Note: Authority cited: Sections 3722 and 3765, Business and Professions Code. Reference: Sections 3701, 3702, 3703, 3704, 3717 and 3760, Business and Professions Code; and Sections 109948.1 and 111656.3, Health and Safety Code.

ARTICLE 7. MISCELLANEOUS

§ 1399.370. Substantial Relationship Criteria.

For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include but are not limited to those involving the following:

- (a) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the ~~Act~~B&P.
- (b) Commission of an act or ~~E~~conviction of a crime involving fraud, fiscal dishonesty theft, or larceny.
- (c) Commission of an act or ~~E~~conviction of a crime involving driving under the influence or reckless driving while under the influence.
- (d) Commission of an act or ~~E~~conviction of a crime involving harassment or stalking as defined by the Penal Code.
- (e) Commission of an act or ~~E~~conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal Code.
- (f) Commission of an act or conviction of a crime involving human trafficking, as defined by the Penal Code.
- (g) Commission of an act or conviction of a crime involving gross negligence in the care of an animal or any form of animal cruelty as defined by the B&P or Penal Code.
- (h) Failure to comply with a court order.
- (i) Commission of an act or conviction of a crime, involving verbally abusive conduct or unlawful possession of a firearm or weapon.

Note: Authority cited: Section 481; and 3722 Business and Professions Code. Reference: Sections 481, 3750, 3750.5, 3752, 3752.5, 3752.6, ~~and 3752.7~~, 3754.5, and 3755, Business and Professions Code; and Sections 266, 288, 314, 646.9, 647, 1203.097, 11414, 13519.6 and 13519.7, Penal Code.

§ 1399.374. Disciplinary Guidelines.

In reaching a decision on the disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), determining terms and conditions of probation, or consequences for non compliance of ordered probation, the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [~~3/02~~ 2010 Edition] which are hereby incorporated by reference. Deviation from these standards, guidelines and orders, including the standard terms of probation, is appropriate where the board in its sole discretion determines that the facts of the particular case warrant such a deviation -for example: the presence of mitigating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 315, 3718, 3722 and 3750, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Section 315, Business and Professions Code and Sections 11400.20 and 11425.50(e), Government Code.

§ 1399.377. Records from Employer

Records requested by the board, or on behalf of the board, as provided for in Section 720.16 or 3717 of the B&P, shall be provided by the employer, within 10 business days from a written, electronic or oral request or be made available for review at the time of an inspection.

Note: Authority cited: Sections 720.16 [SB 1111, statutes of 2010] and 3717, Business and Professions Code. Reference: Sections 720.16 [SB 1111, statutes of 2010] and 3717, Business and Professions Code.

§ ~~1399.384~~-1399.378. Licensee Reporting.

Information required to be disclosed by any person issued a license to practice respiratory care, whether that license is valid or invalid, as provided in Section 802.1 or 3758.5 of the B&P shall be disclosed to the board within ~~40~~ 30 calendar days from the date the person knows or should have reasonably known of a violation or probable violation has occurred.

Note: Authority cited: Sections 802.1 [SB 1111, statutes of 2010], 3722 and 3758, Business and Professions Code. Reference: Sections 802.1 [SB 1111, statutes of 2010], and 3758, Business and Professions Code.

§ ~~1399.385~~-1399.379. Employer Reporting.

Information required to be disclosed by any employer of a respiratory care practitioner as provided in Sections 720.24, 3758, or and 3758.6 of the B&P shall be disclosed to the board within ~~40~~ 15 calendar days from the date of suspension or termination, whichever occurs first.

Note: Authority cited: Sections 720.24 [SB 1111, statutes of 2010], 3722 and 3758, Business and Professions Code. Reference: Sections 720.24 [SB 1111, statutes of 2010], and 3758, Business and Professions Code.

ARTICLE 8. CITATIONS AND FINES

§ 1399.380. Citations.

(a) The executive officer of the board or his or her designee is authorized to issue a citation to any person or employer who holds a permit, certificate or license from the board for a violation of any provision of Division 1.5 and Chapter 1 of Division 2 of the B&P, as permitted, the Act or any regulation adopted by the board.

(b) ~~Each~~ A citation shall be in writing and shall describe with particularity the nature ~~and facts of each the~~ violation ~~specified in the citation~~, including a specific reference to the statute or regulation alleged to have been violated.

(c) ~~Each~~ A citation may contain an ~~assessment of an administrative fine, payable within a time period designated by the board, not to exceed 365 days, an order of abatement fixing a reasonable time for abatement of the violation, or both, for each alleged violation.~~

(d) A citation may also contain an assessment of an administrative fine as provided for in Section 1399.381, payable within 30 days.

~~(de)~~ Each A citation shall inform the cited person or employer of his or her right to a citation review, as provided in Section 1399.382, and/or a hearing to appeal the citation, as provided in Section 1399.383, and that such a request ~~for a hearing~~ be made in writing within 30 calendar days from the issuance date of the citation.

~~(ef)~~ Each A citation shall be served upon the individual or employer by certified mail at the last address of record.

~~(fg)~~ In assessing an administrative fine or issuing an order of correction or abatement, due consideration shall be given to the following factors:

- (1) the gravity of the violation
- (2) the good or bad faith exhibited by the cited person or employer
- (3) the history of previous violations
- (4) the extent to which the cited person or employer has cooperated with the board's investigation

~~(gh)~~ The sanctions authorized under this section shall be separate from and in addition to any other administrative discipline, civil remedies, or criminal penalties.

~~(hi)~~ Every citation ~~that is~~ issued pursuant to this article is a public record.

~~(ij)~~ Once a fine is paid to satisfy an assessment based on the finding of a violation, the payment of the fine becomes public record.

Note: Authority cited: Sections 125.9, ~~and 3722, 3766, and 3767~~, Business and Professions Code. Reference: Sections 125.9, 3766, and 3767 Business and Professions Code.

§ 1399.381. Fines:

(a) Fines shall be assessed in accordance with the following schedule, provided, however, in no case shall the total exceed \$2,500 for each violation.

B&PC	Description	Range of Fines
480	Grounds for denial of an application for licensure/certificate	\$100 to \$2,500
3731	Title Used by Licensee	\$25 to \$2,500
3739	Practice During License Process	\$100 to \$2,500
3750(a)	Advertising	\$250 to \$2,500
3750(b)	Fraud in the procurement of any license	\$1,000 to \$2,500
3750(c)	Knowingly employing unlicensed persons	\$100 to \$2,500
3750(d)	Conviction of Crime	\$100 to \$500
3750(e)	Impersonating an applicant in any examination	\$1,500 to \$2,500
3750(f)	Negligence	\$100 to \$2,500
3750(g)	Conviction of a violation of any provision of Division 2	\$100 to \$2,500
3750(h)	Aiding/Abetting person to violate this chapter	\$1000 to \$2,500
3750(i)	Aiding/abetting person to engage in unlawful practice	\$1000 to \$2,500
3750(j)	Commission of any fraudulent, dishonest or corrupt act	\$100 to \$2,500
3750(k)	Falsifying/ incorrect/ inconsistent entries in record	\$500 to \$2,500
3750(l)	Changing prescription/falsifying orders for treatment	\$1000 to \$2,500
3750(m)	Discipline taken by another agency	\$100 to \$2,500
3750(n)	Knowing failure to protect patients -infection control	\$1000 to \$2,500
3750(o)	Incompetence	\$500 to \$2,500
3750(p)	Pattern of substandard care	\$1000 to \$2,500
3750.5	Obtained/Possessed/Use of Drugs	\$100 to \$2,500
3750.6	Production of Work Permit or Pocket License for Inspection	\$25 to \$100
3753.1	Probation Monitoring Costs	Actual +\$25 to \$500
3753.5	Cost Recovery	Actual +\$25 to \$500
3754.5	Licensee who obtains license by fraud or misrepresentation	\$1000 to \$2,500
3755	Unprofessional Conduct	\$250 to \$2,500
3758.5	RCP to report any known violation made by other RCP	\$250 to \$2,500
3760(a)	Practice without a License	\$50 to \$2,500
3761(a)	Misrepresentation in claim of license to practice	\$100 to \$1,000
3761(b)	Knowingly employ unlicensed personnel	\$100 to \$2,500
3773(a)	License renewal - notice of conviction	\$100 to \$2,500
3773(b)	License renewal - identification of current employer(s)	\$100 to \$2,500
Regulations	Description	Range of Fines
1399.304	Current address	\$25 to \$250
1399.350	CE requirements	\$50 to \$1,500

(b) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.

§ 1399.381. Fines.

(a) Fines shall be assessed in accordance with the following schedule as provided for by law:

BUSINESS AND PROFESSIONS CODES

<u>720.6 Practice while subject to cease order</u>	<u>\$25,000</u>
<u>720.16 Employer/Licensee produce records/inspection</u>	<u>\$10,000</u>
<u>720.24 Employer report on suspension/termination</u>	<u>\$100,000</u>
<u>802.1 Licensee report of crime/discipline</u>	<u>\$5,000</u>
<u>3717 Records from employer</u>	<u>\$10,000</u>
<u>3731 Title Used by licensee</u>	<u>\$5,000</u>
<u>3739 Practice during license process</u>	<u>\$5,000</u>
<u>3750(a) Advertising</u>	<u>\$5,000</u>
<u>3750(b) Fraud in the procurement of any license</u>	<u>\$5,000</u>
<u>3750(c) Knowingly employing unlicensed persons</u>	<u>\$15,000</u>
<u>3750(d) Conviction of crime</u>	<u>\$5,000</u>
<u>3750(e) Impersonating an applicant in any examination</u>	<u>\$5,000</u>
<u>3750(f) Negligence</u>	<u>\$5,000</u>
<u>3750(g) Conviction of any violation of Division 2</u>	<u>\$5,000</u>
<u>3750(h) Aiding/Abetting person to violate this chapter</u>	<u>\$5,000</u>
<u>3750(i) Aiding/abetting person to engage in unlawful practice</u>	<u>\$5,000</u>
<u>3750(j) Commission of fraudulent, dishonest or corrupt act</u>	<u>\$5,000</u>
<u>3750(k) Falsifying/ incorrect/ inconsistent entries in record</u>	<u>\$5,000</u>
<u>3750(l) Changing prescription/falsifying orders for treatment</u>	<u>\$5,000</u>
<u>3750(m) Discipline taken by another agency</u>	<u>\$5,000</u>
<u>3750(n) Knowing failure to protect patients -infection control</u>	<u>\$5,000</u>
<u>3750(o) Incompetence</u>	<u>\$5,000</u>
<u>3750(p) Pattern of substandard care</u>	<u>\$5,000</u>
<u>3750.5 Obtained/possessed/use of drugs</u>	<u>\$5,000</u>
<u>3750.6 Production of work permit/pocket license</u>	<u>\$5,000</u>
<u>3753.1 Probation monitoring costs</u>	<u>\$5,000</u>
<u>3753.5 Cost recovery</u>	<u>\$5,000</u>
<u>3754.5 Obtains license by fraud or misrepresentation</u>	<u>\$5,000</u>
<u>3755 Unprofessional conduct</u>	<u>\$5,000</u>
<u>3758 Employer report on suspension/termination</u>	<u>\$10,000</u>
<u>3758.5 RCP report on violation made by other RCP</u>	<u>\$5,000</u>
<u>3758.6 Employer report on supervisor</u>	<u>\$10,000</u>
<u>3760 Practice without a license/Misrepresentation</u>	<u>\$15,000</u>
<u>3761(a) Misrepresentation in claim of license to practice</u>	<u>\$15,000</u>
<u>3761(b) Knowingly employing an unlicensed person</u>	<u>\$15,000</u>
<u>3773(a)(1) License renewal - notice of conviction</u>	<u>\$5,000</u>
<u>3773(a)(2) License renewal - identify employer</u>	<u>\$5,000</u>
<u>3773(b) License renewal - additional information</u>	<u>\$5,000</u>

REGULATIONS

<u>1399.304 Current address</u>	<u>\$5,000</u>
<u>1399.350 CE requirements</u>	<u>\$5,000</u>
<u>1399.350.5 Completion of ethics/professional law course</u>	<u>\$5,000</u>
<u>1399.360 Unlicensed personnel/home care</u>	<u>\$15,000</u>
<u>1399.377 Records from employer</u>	<u>\$10,000</u>
<u>1399.378 Licensee reporting</u>	<u>\$5,000</u>
<u>1399.379 Employer reporting</u>	<u>\$10,000</u>

(b) The methodology for assessing fine amounts shall be for each inspection or investigation made with respect to the violation, except as provided below:

(1) The assessment of fine amounts for a violation involving fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare, shall be based on each violation or count.

(2) The assessment of fine amounts for a violation of Section 720.16 or 3717 of the B&P or Section 1399.377 of the regulations, shall be based upon each incident in which the employer fails to respond to a request to inspect or produce records as provided for in Section 720.16 or 3717 of the B&P or Section 1399.377 of the regulations.

(3) The assessment of fine amounts for a violation of Section 720.24, 802.1, 3758, 3758.5 or 3758.6 of the B&P, or Section 1399.378 or 1399.379 of the regulations, shall be based upon each person and/or each incident required to be reported to the board.

(4) The assessment of fine amounts for a violation of Section 720.6, 3750(c), 3760, 3761(a), or 3761(b) of the B&P or Section 1399.360 of the regulations, shall be based upon each person who acts in the capacity of, or engages in the business of, or represents themselves as, a respiratory care practitioner, at each facility or location.

(c) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.

Note: Authority cited: Sections 125.9, 720.6 [SB 1111, statutes of 2010], 720.16 [SB 1111, statutes of 2010], 720.24 [SB 1111, statutes of 2010], 802.1 [SB 1111, statutes of 2010], 3717 ~~and~~ 3722, 3758, 3766, and 3767, Business and Professions Code. Reference: Sections 125.9, ~~436, 480,~~ 720.6 [SB 1111, statutes of 2010], 720.16 [SB 1111, statutes of 2010], 720.24 [SB 1111, statutes of 2010], 802.1 [SB 1111, statutes of 2010], 3717, 3731, 3739, 3750, 3750.5, 3750.6, 3753.1, 3753.5, 3754.5, 3755, ~~3758,~~ 3758.5, 3758.6, 3760, ~~3761,~~ 3766, 3767, and 3773, Business and Professions Code; and Sections 1399.304, ~~and~~ 1399.350, ~~1399.350.5,~~ 1399.360, ~~1399.377,~~ 1399.378, and 1399.379 Title 16, California Code of Regulations.

§ ~~1399.376.~~ 1399.382. Citation Review.

(a) ~~If the person cited is afforded the opportunity for a citation review, he or she may, within 30 calendar days after the date of service of the citation, notify the Executive Officer, in writing, of his or her request for a citation review by the executive officer, or a designated committee of the Board regarding the acts charged in the citation. Notification shall be through the United States Postal Service by certified or registered mail.~~

(b) ~~The executive officer ~~or committee~~ shall hold, within ~~240~~ 60 calendar days from the receipt of the request, a citation review with the person cited or his or her legal counsel or other authorized representative in person or by telephone. At the conclusion of the citation review, the executive officer ~~committee~~ may affirm, modify or dismiss the citation, including any fine levied. The executive officer ~~or committee~~ shall state in writing the reasons for the action and serve a copy of its findings and decision on the person cited within 30 calendar days of the date of the citation review. ~~This decision shall be deemed to be a final order of the Board with regard to the citation issued, including the fine levied. The decision shall inform the cited person of his or her right to a hearing as provided in Section 1399.383 of this Article, and that such a request be made in writing within 30 calendar days from the issuance date of the decision resulting from the citation review.~~~~

Note: Authority cited: Section 3722, Business and Professions Code. Reference: Sections ~~3764~~ 125.9, 3766, and 3767, Business and Professions Code.

§ 1399.382- 1399.383. Appeals.

~~(a) Any person or employer served with a citation or a decision resulting from a citation review, as provided in Section 1399.382 of this Article, may contest the citation by appealing to the board in writing, within 30 calendar days of the issuance of the citation or decision.~~

~~(b) If the cited person fails to notify the board of his or her intent to contest the citation, the citation shall be deemed a final order of the board.~~

~~(c) If a cited person or employer requests a hearing to appeal the citation, notifies the board that he or she intends to contest a citation, the board shall afford an opportunity for a citation review in accordance with section 1399.376 of the board's regulations or a hearing in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(d) The failure of a cited person who has appealed to the board to appear at the time and place of the citation review or hearing shall be deemed a withdrawal of his or her appeal, and the citation shall constitute a final order of the board.~~

Note: Authority cited: Sections 125.9, ~~and~~ 3722, ~~and~~ 3767, Business and Professions Code. Reference: Section 125.9, ~~and~~ 3767, Business and Professions Code; Sections ~~1399.376, 1399.380, and 1399.382,~~ Title 16, California Code of Regulations; and Sections 11500, et seq., Government Code.

1399.384. Failure to Respond or Appear

~~(a) If the cited person or employer fails to request a citation review or a hearing as provided in subdivision (e) of Section 1399.380, or fails to request a hearing as provided in subdivision (a) of Section 1399.383, the citation shall be deemed a final order of the board and shall not be subject to administrative review.~~

~~(b) The failure of a cited person or employer who has requested a citation review, if applicable, or hearing, to appear at the time and place of the citation review or hearing shall be deemed a withdrawal of his or her request, and the citation shall be deemed a final order of the board and shall not be subject to administrative review.~~

Note: Authority cited: Sections 125.9, 3722, and 3767, Business and Professions Code. Reference: Section 125.9, and 3767, Business and Professions Code; Sections 1399.380, 1399.382, and 1399.383, Title 16, California Code of Regulations; and Sections 11500, et seq., Government Code.

§ ~~1399.383- 1399.385. Failure to Comply with Citation.~~

The failure to comply with a citation containing an assessment of an administrative fine or an order of abatement or both, after the citation is final and has been properly served, shall result in one or more of the following:

(a) the non renewal of a license.

(b) referral to collection entities to collect the fine.

(c) the pursuit of further legal action by the board to collect the fine.

Note: Authority cited: Sections 125.9, ~~and~~ 3722, ~~3768, and 3778,~~ Business and Professions Code. Reference: Sections ~~125.9, 3767, and 3768,~~ Business and Professions Code.

§ ~~1399.387. Citations -Employer.~~

~~(a) The executive officer of the board or his or her designee is authorized to issue a citation to any employer for a violation of sections 3717, 3758 and 3758.6 of the B&PC or Section 1399.385 of the regulations:~~

~~(b) Each citation shall be in writing and shall describe with particularity the nature and facts of each violation specified in the citation, including a reference to the statute or regulation alleged to have been violated.~~

~~(c) Each citation may contain an assessment of an administrative fine, payable within a time period designated by the board, not to exceed 365 days, an order of abatement fixing a reasonable time for abatement of the violation, or both, for each alleged violation.~~

~~(d) Each citation shall inform the cited employer of its right to a hearing and that such a request for a hearing be made in writing within 30 days from the issuance date of the citation.~~

~~(e) Each citation shall be served upon the employer by certified mail at the last address of record.~~

~~(f) In assessing an administrative fine or issuing an order of correction or abatement, due consideration shall be given to the following factors:~~

~~(1) the gravity of the violation~~

~~(2) the good or bad faith exhibited by the employer~~

~~(3) the history of previous violations~~

~~(4) the extent to which the employer has cooperated with the board's investigation~~

~~(g) The sanctions authorized under this section shall be separate from and in addition to any other administrative discipline, civil remedies, or criminal penalties.~~

~~(h) Every citation that is issued pursuant to this article is a public record.~~

~~(i) Once a fine is paid to satisfy an assessment based on the finding of a violation, the payment of the fine becomes a public record.~~

~~Note: Authority cited: Sections 125.9, 3722, 3758 and 3758.6, Business and Professions Code. Reference: Sections 125.9, 3717, 3758 and 3758.6, Business and Professions Code.~~

~~§ 1399.388. Fines –Employer.~~

~~(a) Failure of an employer to provide reports or records or allow inspections as required by Section 3717 of the B&PC shall be punishable by an administrative fine ranging from \$250 to \$2,500.~~

~~(b) Failure of an employer to make a report required by Section 3758 of the B&PC shall be punishable by an administrative fine ranging from \$2,500 to \$10,000.~~

~~(c) Failure of an employer to make a report as required by Section 3758.6 of the B&PC shall be punishable by an administrative fine ranging from \$500 to \$2,500.~~

~~(d) Administrative fines collected pursuant to this section shall be deposited into the board's special fund.~~

~~Note: Authority cited: Sections 3722 and 3758, Business and Professions Code. Reference: Sections 3717, 3758 and 3758.6, Business and Professions Code.~~

~~§ 1399.389. Appeals –Employer.~~

~~(a) Any employer served with a citation, may contest the citation by appealing to the board in writing, within 30 calendar days of the issuance of the citation.~~

~~(b) If the cited employer fails to notify the board of his or her intent to contest the citation, the citation shall be deemed a final order of the board and shall not be subject to administrative review.~~

~~(c) If a cited employer notifies the board that it intends to contest a citation, the board shall afford an opportunity for a hearing. The board shall thereafter issue a decision based on findings of fact, affirming, modifying or vacating the citation or penalty or both, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

(d) The failure of a cited employer that has appealed to the board to appear at the time and place of the hearing shall be deemed a withdrawal of its appeal, and the citation shall constitute a final order of the board and shall not be subject to administrative review.

Note: Authority cited: Sections 125.9 and 3722, Business and Professions Code. Reference: Section 125.9, Business and Professions Code; and Section 11500, et seq., Government Code.

§ 1399.390. Failure to Comply with Citation – Employer.

The failure to comply with a citation containing an assessment of an administrative fine or an order of abatement or both after the citation is final and has been properly served shall result in the pursuit of further action by the board to collect the fine.

Note: Authority cited: Sections 3722 and 3758, Business and Professions Code. Reference: Section 3758, Business and Professions Code.

§ 1399.391. Citation and Fine – Unlicensed Personnel.

(a) The executive officer or his or her designee is authorized to determine when and against whom a citation will be issued and to issue a citation to any person, or employer of a person, who acts in the capacity of or engages in the business of a respiratory care practitioner in this state without having a license in good standing pursuant to the Act and who is not otherwise exempted from the provisions of the Act. Each citation for unlicensed activity shall contain an order of abatement, and shall be in writing and state with particularity the basis of the citation. "Employer," as used in this section, means any entity or person that employs or contracts with one or more persons who are acting in the capacity of, or engaged in the business of, a respiratory care practitioner, including but not limited to, any person, facility, company, corporation, partnership, organization or health maintenance organization.

(b) An administrative fine shall be paid within the time period designated in the citation, not to exceed 365 days. The amount of an administrative fine shall be separate from section 1399.381 and in accordance with section 3767(b)(2) of the B&PC.

(c) A citation shall inform the cited person or employer of his or her right to a hearing and that such a request for a hearing be made in writing within 15 calendar days after service of the citation. A citation shall be served upon the individual or employer by certified mail.

(d) In assessing an administrative fine and issuing an order of abatement, due consideration shall be given to the following factors for each violation:

- (1) the gravity of the violation;
- (2) the good or bad faith exhibited by the cited person or employer;
- (3) the history of previous violations;
- (4) the extent to which the cited person or employer has cooperated with the board's investigation.

(e) A cited person or employer who wishes to contest the citation may serve a written appeal on the board, within 15 calendar days after service of the citation, through the United States Postal Service by certified or registered mail.

(f) If the cited person or employer notifies the board that he/she/it intends to contest a citation, the board shall afford an opportunity for a hearing. The board shall thereafter issue a decision based on findings of fact, affirming, modifying or vacating the citation with its fine or order of abatement, or directing other appropriate relief. The proceedings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) The failure of a cited person or employer to appear at the time and place of the hearing shall be deemed a withdrawal of the appeal, and the citation shall constitute a final order of the board and shall not be subject to further administrative review.

ARTICLE 9. FEES

§ 1399.395. Fee Schedule.

The following schedule of fees is hereby adopted pursuant to Sections 3775 and 3775.5 of the B&PC:

(a) Application fee	\$200 <u>300</u>
(b) Application fee [pursuant to Section 3740(c)]	\$250
(b)e) Examination fee	\$190
(c)d) Re-examination fee	\$150
(e) Initial license fee	\$200
(This fee is prorated based on the length of the initial license period)	
(d)f) Renewal fee for licenses expiring on or after January 1, 2002	\$230
(e)g) Delinquency fee (not more than 2 years after expiration)	\$230
(f)h) Delinquency fee (after 2 years but not more than 3 years after expiration)	\$460
(g)i) Inactive license fee	\$230
(h)j) Duplicate license fee	\$25
(i)k) Endorsement fee	\$75 <u>25</u>

Note: Authority cited: Sections 3722, 3775 and 3775.5, Business and Professions Code. Reference: Sections 3775 and 3775.5, Business and Professions Code.

REPEAL DISCIPLINARY GUIDELINES 3/02 EDITION AND ADOPT DISCIPLINARY GUIDELINES 2010 EDITION AS FOLLOWS:

~~Disciplinary Guidelines~~

~~3/02 Edition~~



Issued by
Respiratory Care Board of California
444 North 3rd Street, Suite 270
Sacramento, CA 95814
Telephone (916) 323-9983
Fax (916) 323-9999

INTRODUCTION

The Respiratory Care Board of California (Board) licenses the practice of respiratory care in the State of California. The Board is mandated to protect the public from unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. The Board has the authority to issue or deny, suspend, and revoke licenses to practice respiratory care as provided in the Respiratory Care Practice Act and respiratory care regulations (Business and Profession Code, sections 475, 490, 3718, 3733, 3750, 3750.5, 3754, 3754.5, 3755, and California Code of Regulations, sections 1399.303, 1399.370, 1399.374).

The Board's mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, and promoting the profession by increasing public awareness of respiratory care as a profession and supporting the development and education of all respiratory care practitioners.

The Board strives to ensure that only eligible, qualified, capable and competent individuals are licensed, and to expeditiously respond to all consumer complaints by efficiently and effectively investigating every complaint and pursuing disciplinary action in all appropriate cases. Finally, the Board strives to ensure that appropriate post-disciplinary monitoring occurs.

The Board's disciplinary guidelines were designed for use by Administrative Law Judges, attorneys, licensees and others involved in the Board's disciplinary process and are to be followed in all disciplinary actions involving the Board. The Board has the final authority over the disposition of its cases, and to complete its work, it utilizes the Office of the Attorney General and the Office of Administrative Hearings.

This manual includes factors to be considered in aggravation or mitigation, guidelines to be used by Administrative Law Judges for a violation(s) of specific statutes, and standard and speciality probationary terms and conditions.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviation from these guidelines in particular cases.

PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued, legal pleadings filed and final decisions will be published as a matter of public record.

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including but not limited to expert consultant opinions and services. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct had required investigation and prosecution, not upon the profession as a whole.

PROBATION MONITORING

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. The purpose is NOT for the Board to rehabilitate the probationer. Probation is a privilege afforded by the Board:

- 1) to allow for the probationer's rehabilitation if that is his/her choice;
- 2) to allow the probationer an opportunity to practice in a professional manner with restrictions and guidance from a community support system and designated probation monitor to prevent future occurrences, and
- 3) to allow for education of the individual as to the responsibilities, requirements and professionalism mandated of a respiratory care practitioner.

It is the policy of the Board that if a probationer is found to be in violation of any term of probation at any time during the probation period, the Board shall immediately be notified of the violation so that disciplinary action may be considered.

CITATIONS

The Board has the authority to issue citations and fines for violations of several sections of the Respiratory Care Practice Act and its regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. [Reference: California Code of Regulations section 1399.380(g)]. However, an applicant who stipulates to the issuance of a citation and fine in lieu of the Board filing a formal statement of issues is not subject to additional discipline for the same offense. Any prior citation may be used in future actions as aggravating evidence.

STIPULATED SETTLEMENTS

The Board will consider stipulated settlements to promote cost effectiveness and to expedite disciplinary decisions if such agreements are consistent with the Board's mission.

~~The following is incorporated by reference in Section 1399.374 of Division 13.6 of Title 16 of the California Code of Regulations~~

~~DISCIPLINARY GUIDELINES~~

~~3/02 Edition~~

~~The following are examples of aggravating and mitigating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:~~

~~EVIDENCE IN~~

~~AGGRAVATION OF PENALTY~~

- ~~1. Patient's trust, health, safety or well-being was jeopardized.~~
- ~~2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc...).~~
- ~~3. Violations involved or were in the presence of children.~~
- ~~4. History of prior discipline.~~
- ~~5. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).~~
- ~~6. Perjury on official Board forms.~~
- ~~7. Violent nature of crime or act.~~
- ~~8. Violation of Board Probation.~~
- ~~9. Failure to provide a specimen for testing in violation of terms and conditions of probation.~~

~~EVIDENCE IN~~

~~MITIGATION OF PENALTY~~

- ~~1. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.~~
- ~~2. Respondent was forthcoming and reported violation or conviction to the Board.~~
- ~~3. A substantial amount of time since the violation or conviction (generally 4 or more years) occurred.~~
- ~~4. No prior criminal or disciplinary history.~~

~~DISCIPLINARY GUIDELINES SUMMARY~~

~~for use by Administrative Law Judges~~

~~These guidelines were developed for use by Administrative Law Judges. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 3753.5.~~

~~The following page includes a brief description and suggestion for the use of each specialty condition of probation:~~

- ~~Maximum Penalty: Revocation~~
- ~~Medium Penalty: Revocation stayed, 3-5 years probation~~
- ~~Minimum Penalty: Revocation stayed, 2 years probation~~

~~Standard Conditions of Probation for All Disciplinary Actions Resulting in Probation~~

- ~~Obey All Laws~~
- ~~Quarterly Reports~~
- ~~Probation Monitoring Program~~
- ~~Probation Monitoring Costs~~
- ~~Employment Requirement~~
- ~~Notice to Employer~~
- ~~Changes of Employment or Residence~~
- ~~Cost Recovery~~
- ~~Tolling for Out-of-State Residence or Practice~~
- ~~Valid License Status~~
- ~~Violation of Probation~~
- ~~Completion of Probation~~

~~Standard Conditions of Probation for All Disciplinary Actions That Involve Alcohol and/or Drugs in Any Manner~~

- ~~Standard Conditions Listed Above and~~
- ~~Work Schedules~~
- ~~Biological Fluid Testing~~
- ~~Abstention from Use of Mood Altering Substances~~

~~Specialty Conditions of Probation~~

- ~~Supervisor Quarterly Reports~~
- ~~Restriction of Practice~~
- ~~Direct Supervision~~
- ~~Additional Continuing Education~~
- ~~Education Course Work~~
- ~~Statute and Regulation Examination~~
- ~~Suspension~~
- ~~Alcohol and Drug Treatment~~
- ~~Competency Examination~~
- ~~Psychological Evaluation~~
- ~~Physical Examination~~

SPECIALTY CONDITIONS OF PROBATION DESCRIPTIONS AND RECOMMENDATIONS FOR USE

(Actual language for each term and condition is located at the end of this manual)

Supervisor Quarterly Reports

Recommended for use when evidence presents a possible alcohol or drug addiction or in cases directly related to the functions and responsibilities of a respiratory care practitioner. The Respondent's employer is required to complete a one-page form every three months, updating the Board on any irregularities.

Restriction of Practice

Recommended for use in any case that involves dishonesty or negligence, incompetence or unprofessional conduct in his or her duties as a respiratory care practitioner or any other circumstances that may directly affect the patient safety or the Board's ability to monitor the probationer. This condition is three-fold. Respondent will be restricted from working in the capacity of a supervisor or manager and may include three additional restrictions:

Direct Supervision

Recommended for use in cases where evidence of drug or alcohol addiction exists or in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists. This condition requires direct supervision, defined as a supervisor within immediate distance (same hospital floor), at all times during practice by Respondent.

Additional Continuing Education

Recommended for use in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists. This condition requires Respondent to gain additional continuing education than what is required as part of the renewal of his/her respiratory care practitioner license.

Education Course Work

Recommended for use in any case where negligence, incompetence, or unprofessional conduct in his or her duties as a respiratory care practitioner exists or in any case where the Respondent would benefit from additional course work (i.e. possible cocaine addiction - class on the effects of cocaine or drugs).

Statute and Regulation Examination

Recommended for use in any case where it is believed that Respondent is not aware that he or she has jeopardized his/her license or is unclear on the Board's legislative intent and authority.

Suspension

Recommended for use as an additional penalty. Respondent would be required to temporarily cease practicing as a respiratory care practitioner for a period of time as ordered.

Alcohol and Drug Treatment

Recommended for use in cases where evidence of drug or alcohol addiction exists. This condition requires Respondent to enter into a formal rehabilitation program.

Competency Examination

Recommended for use if it is suspected that Respondent may not be competent to perform as a respiratory care practitioner, weighted on the gravity of negligence or incompetence.

Psychological Evaluation

Recommended for use when circumstances indicate Respondent may have a mental instability which in turn, may affect his or her ability to practice safely. Respondent would be required to have a full evaluation performed by a licensed psychiatrist or psychologist to determine if he or she can practice safely.

Physical Examination

This specialty term and condition is rarely ordered. Recommended for use in cases where patient safety is at risk.

DISCIPLINARY GUIDELINES BY CODE

for use by Administrative Law Judges
and in order of sections of the Business and Professions Code

All decisions shall include cost recovery in accordance with Business and Professions Code section 3753.5.

SECTION 3750(a): FALSE / MISLEADING ADVERTISING

Maximum Penalty: Revocation stayed, 5 years probation

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]

Additional Continuing Education [19]

Suspension [22]

SECTION 3750(b): FRAUD IN THE PROCUREMENT OF ANY LICENSE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Quarterly Reports [12]

Statute and Regulation Examination [21]

If Warranted: Additional Continuing Education [19]

Suspension [22]

Note: "Good" practice while unauthorized or unlicensed shall NOT mitigate such practice

SECTION 3750(c): KNOWINGLY EMPLOYING UNLICENSED PERSONS

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]

Suspension [22]

SECTION 3750(d): CONVICTION OF A CRIME

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]

If Warranted: Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

Note: Nature of crime should be cross referenced if applicable, i.e., Bodily Injury Conviction - also see 3752.5

SECTION 3750(e): IMPERSONATING OR ACTING AS A PROXY FOR AN APPLICANT

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 5 years probation

Conditions of Probation

Required: Revocation stayed, 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Suspension [22]

SECTION 3750(f): NEGLIGENCE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(g): Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Statute and Regulation Examination [21]

If Warranted: Work Schedules [13]

Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Education /Course Work [20]

Suspension [22]

Alcohol and Drug Treatment [23]

Competency Examination [24]

Psychological Evaluation [25]

Physical Examination [26]

Note: Nature of crime should be cross referenced if applicable, i.e., Bodily Injury Conviction - also see 3752.5

SECTION 3750(h): AIDING OR ABETTING A VIOLATION

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Suspension [22]

SECTION 3750(i): AIDING OR ABETTING UNLAWFUL PRACTICE

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]

If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]
Direct Supervision [18]
Education /Course Work [20]
Suspension [22]

SECTION 3750(j): COMMISSION OF ANY FRAUDULENT, DISHONEST OR CORRUPT ACT

Maximum Penalty: Revocation or Denial of License-

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Restriction of Practice [17]
Statute and Regulation Examination [21]

If Warranted: Direct Supervision [18]
Suspension [22]
Psychological Evaluation [25]

SECTION 3750(k): PATIENT, HOSPITAL OR OTHER RECORDS - ENTRIES

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(l): CHANGING PRESCRIPTION / FALSIFYING VERBAL OR WRITTEN ORDERS

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Suspension [22]

Alcohol and Drug Treatment [23]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(m): DISCIPLINE TAKEN BY ANOTHER AGENCY

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Note: Terms are dependent upon actual grounds or offense

SECTION 3750(n): FAILURE TO FOLLOW INFECTION CONTROL GUIDELINES

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(o): INCOMPETENCE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750(p): PATTERN OF SUBSTANDARD CARE

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 5 years probation

Conditions of Probation

Required: Revocation stayed, 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Suspension [22]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3750.5(a): OBTAINED / POSSESSED / ADMINISTERED / FURNISHED ANY CONTROLLED SUBSTANCE OR DANGEROUS DRUG

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

- Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
- If Warranted: Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750.5(b): USED CONTROLLED SUBSTANCE, DANGEROUS DRUG OR ALCOHOLIC BEVERAGE, IN DANGEROUS MANNER

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

- Required: Revocation stayed, 2 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Work Schedules [13]
Biological Fluid Testing [14]
Abstention from Use of Mood Altering Substances [15]
- If Warranted: Supervisor Quarterly Reports [16]
Restriction of Practice [17]
Direct Supervision [18]
Additional Continuing Education [19]
Education /Course Work [20]
Statute and Regulation Examination [21]
Suspension [22]
Alcohol and Drug Treatment [23]
Competency Examination [24]
Psychological Evaluation [25]
Physical Examination [26]

SECTION 3750.5(c): ~~CONVICTION OF A CRIMINAL OFFENSE INVOLVING SUBDIVISIONS (a) OR (b), FALSIFICATION OF A RECORD PERTAINING TO THE SUBSTANCES DESCRIBED IN SUBDIVISION (a)~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation stayed, 2 years probation~~

Conditions of Probation

~~Required: Revocation stayed, 2 to 5 years probationary period~~

~~Standard Terms and Conditions of Probation [1-12]~~

~~Work Schedules [13]~~

~~Biological Fluid Testing [14]~~

~~Abstention from Use of Mood Altering Substances [15]~~

~~If Warranted: Supervisor Quarterly Reports [16]~~

~~Restriction of Practice [17]~~

~~Direct Supervision [18]~~

~~Additional Continuing Education [19]~~

~~Education /Course Work [20]~~

~~Statute and Regulation Examination [21]~~

~~Suspension [22]~~

~~Alcohol and Drug Treatment [23]~~

~~Competency Examination [24]~~

~~Psychological Evaluation [25]~~

~~Physical Examination [26]~~

SECTION 3750.5(d): ~~COMMITTED OR CONFINED BY COURT FOR INTEMPERATE USE OF OR RELATING TO ADDICTION TO ANY SUBSTANCES DESCRIBED IN SUBDIVISIONS (a) OR (b)~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation stayed, 5 years probation~~

Conditions of Probation

~~Required: Revocation stayed, 5 years probationary period~~

~~Standard Terms and Conditions of Probation [1-12]~~

~~Work Schedules [13]~~

~~Biological Fluid Testing [14]~~

~~Abstention from Use of Mood Altering Substances [15]~~

~~Supervisor Quarterly Reports [16]~~

~~Restriction of Practice [17]~~

~~Direct Supervision [18]~~

~~If Warranted: Additional Continuing Education [19]~~

~~Education /Course Work [20]~~

~~Statute and Regulation Examination [21]~~

~~Suspension [22]~~

~~Alcohol and Drug Treatment [23]~~

~~Competency Examination [24]~~

~~Psychological Evaluation [25]~~

~~Physical Examination [26]~~

SECTION 3750.5(e): PATIENT, HOSPITAL OR OTHER RECORDS - ENTRIES PERTAINING TO THE SUBSTANCES DESCRIBED IN SUBDIVISION (a)

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Statute and Regulation Examination [21]

Competency Examination [24]

If Warranted: Work Schedules [13]

Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Suspension [22]

Alcohol and Drug Treatment [23]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3752.5: A CRIME INVOLVING BODILY INJURY OR ATTEMPTED BODILY INJURY

Maximum Penalty: Revocation or Denial of License

Minimum Penalty: Revocation stayed, 2 years probation

Conditions of Probation

Required: Revocation stayed, 2 to 5 years probationary period

Standard Terms and Conditions of Probation [1-12]

If Warranted: Work Schedules [13]

Biological Fluid Testing [14]

Abstention from Use of Mood Altering Substances [15]

Supervisor Quarterly Reports [16]

Restriction of Practice [17]

Direct Supervision [18]

Additional Continuing Education [19]

Education /Course Work [20]

Statute and Regulation Examination [21]

Suspension [22]

Alcohol and Drug Treatment [23]

Competency Examination [24]

Psychological Evaluation [25]

Physical Examination [26]

SECTION 3752.6: ~~A CRIME INVOLVING SEXUAL MISCONDUCT IS SUBSTANTIALLY RELATED TO THE QUALIFICATIONS, FUNCTIONS OR DUTIES OF RESPIRATORY CARE~~

~~See 3752.7~~

SECTION 3752.7: ~~SEXUAL CONTACT W/PATIENT / SEX OFFENSES CONVICTION~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation or Denial of License~~

~~See statute.~~

SECTION 3754.5 ~~OBTAIN LICENSE BY FRAUD OR MISREPRESENTATION~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation stayed, 3 years probation~~

Conditions of Probation

~~Required: Revocation stayed, 3 to 5 years probationary period~~

~~Standard Terms and Conditions of Probation [1-12]~~

~~Statute and Regulation Examination [21]~~

~~If Warranted: Additional Continuing Education [19]~~

~~Suspension [22]~~

SECTION 3755: ~~UNPROFESSIONAL CONDUCT~~

~~Maximum Penalty: Revocation or Denial of License~~

~~Minimum Penalty: Revocation stayed, 3 years probation~~

Conditions of Probation

~~Required: Revocation stayed, 3 to 5 years probationary period~~

~~Standard Terms and Conditions of Probation [1-12]~~

~~Supervisor Quarterly Reports [16]~~

~~Restriction of Practice [17]~~

~~Direct Supervision [18]~~

~~Additional Continuing Education [19]~~

~~Statute and Regulation Examination [21]~~

~~Competency Examination [24]~~

~~If Warranted: Suspension [22]~~

~~Psychological Evaluation [25]~~

~~Physical Examination [26]~~

SECTION 3760: UNLAWFUL PRACTICE

Authority 3750(g) Maximum Penalty: Revocation or Denial of License
Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]
Suspension [22]
If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]

SECTION 3761: MISREPRESENTATION (FOR LICENSEES)

Authority 3750(g) Maximum Penalty: Revocation or Denial of License
Minimum Penalty: Revocation stayed, 3 years probation

Conditions of Probation

Required: Revocation stayed, 3 to 5 years probationary period
Standard Terms and Conditions of Probation [1-12]
Statute and Regulation Examination [21]
Suspension [22]
If Warranted: Restriction of Practice [17]
Additional Continuing Education [19]

~~PROBATIONARY TERMS AND CONDITIONS~~

~~A probationary or conditional license is generally issued for a period between 2 and 5 years, dependant upon whether any aggravating or mitigating factors exist.~~

~~STANDARD CONDITIONS~~

~~The standard conditions are conditions which are imposed on each and every probationer regardless of cause for discipline:~~

- ~~1. **OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.~~

~~— Respondent shall notify the Board in writing within 14 days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.~~

- ~~2. **QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license:~~

~~— Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:~~

~~— For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.~~

~~— For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.~~

~~— For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.~~

~~— For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.~~

~~— Failure to submit complete and timely reports shall constitute a violation of probation.~~

- ~~3. **PROBATION MONITORING PROGRAM** Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.~~

~~— Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.~~

- ~~— Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.~~
- ~~— Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~
- 4. **PROBATION MONITORING COSTS** All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.
- ~~— All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)~~
- ~~— If Respondent is unable to submit costs for any month, he/she shall be required, instead to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.~~
- ~~— Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.~~
- ~~— In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.~~
- ~~— The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.~~
- 5. **EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.
- ~~— Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required. Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.~~
- 6. **NOTICE TO EMPLOYER** Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

~~— If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.~~

~~— The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.~~

~~— Respondent shall execute a release authorizing the Board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of Respondent's supervisors or directors.~~

~~7. **CHANGES OF EMPLOYMENT OR RESIDENCE** Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.~~

~~— Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his/her physical residence address as well.~~

~~8. **COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ _____ and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.~~

~~— If Respondent is unable to submit costs timely, he/she shall be required, instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.~~

~~— Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.~~

~~— Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.~~

~~— The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for these costs.~~

9. ~~**TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE**~~ Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.
10. ~~**VALID LICENSE STATUS**~~ Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.
11. ~~**VIOLATION OF PROBATION**~~ If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.
12. ~~**COMPLETION OF PROBATION**~~ Upon successful completion of probation, Respondent's license shall be fully restored.
-

~~STANDARD ALCOHOL/ DRUG CONDITIONS~~

~~13. **WORK SCHEDULES** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.~~

~~Failure to submit current work schedules on a continuous basis, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

~~14. **BIOLOGICAL FLUID TESTING** Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the Board.~~

~~At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances.~~

~~If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.~~

~~Failure to submit to testing or appear as requested by any Board representative for testing, as directed shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

~~15. **ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.~~

~~Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.~~

~~Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s).~~

~~Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

~~Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.~~

~~SPECIALTY CONDITIONS~~

The conditions imposed are dependent upon the violation(s) committed.

~~16. **SUPERVISOR QUARTERLY REPORTS** Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:~~

~~— For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.~~

~~— For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.~~

~~— For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.~~

~~— For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.~~

~~— Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.~~

~~17. **RESTRICTION OF PRACTICE** Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions:~~

~~— [] Respondent is prohibited from working in home care unless it is under direct supervision and personal observation.~~

~~— [] Respondent is prohibited from working for a registry.~~

~~— [] Respondent is prohibited from working with _____
(i.e. neonates, elderly, comatose patients, children)~~

~~18. **DIRECT SUPERVISION** During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he/she is functioning as a licensed respiratory care practitioner. The appropriate level of supervision must be approved by the Board prior to commencement of work.~~

~~19. **ADDITIONAL CONTINUING EDUCATION** Respondent shall be required to complete additional Continuing Education beyond that which is required for license renewal. A minimum of fifteen (15) additional hours is required for each year of probation. Respondent shall submit proof to the Board of successful completion of all continuing education requirements.~~

~~20. **EDUCATION/COURSE WORK** Respondent shall be required to successfully complete _____ semester (or its equivalent) units of education courses in California at an institution approved by the Board in addition to the continuing education required for the renewal of licensure. The course selection shall be submitted to and approved by the Board in advance. The Board, at its discretion, may require the education to be in a specific area of study. Successful completion is a grade of "C" or "70%" or better for any completed course.~~

~~_____ Respondent shall be required to submit proof of successful completion in the form of official transcripts no later than six (6) months prior to the date probation is scheduled to end.~~

~~_____ Failure to timely and successfully complete approved courses at an approved institution(s), or provide documentation thereof shall constitute a violation of probation.~~

~~_____ Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.~~

~~21. **STATUTE AND REGULATION EXAMINATION** Within six months of the effective date of this decision, Respondent shall be required to take and pass an examination on the Respiratory Care Practice Act, the Respiratory Care Practitioner Regulations, and other provisions that affect the practice of respiratory care. This examination shall be taken on a date specified by the Board.~~

~~_____ Respondent shall be responsible for paying all costs for any scheduled examination(s) prior to taking any examination [\$50 per each scheduled exam].~~

~~_____ Failure to appear for any scheduled examination, or to pass the examination after two attempts shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

~~_____ Failure to submit timely fees for one or more examinations shall constitute a violation of probation.~~

~~22. **SUSPENSION** As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of _____, beginning the effective date of this decision. If not employed as a respiratory care practitioner or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.~~

~~23. **ALCOHOL AND DRUG TREATMENT** Respondent, at his/her expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board.~~

~~_____ Respondent shall inform the program director, psychiatrist or psychologist, of his/her probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing. Positive results shall be reported immediately to the Board and shall be used in administrative discipline.~~

~~24. **COMPETENCY EXAMINATION** Within 6 months of the effective date of this decision and/or as designated by the Board, Respondent shall be required to take and pass a written competency examination as designated by the Board. This examination shall be taken on a date specified by the Board and Respondent shall pay all examination fees.~~

~~— Respondent's failure to appear for or pass any scheduled examination will be noted as failure to pass or failure to successfully complete the examination. Respondent's failure to successfully complete the examination after one scheduled examination, shall constitute incompetence and a violation of probation for the purposes of disciplinary proceedings and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.~~

~~— Failure to pay costs for the examination, will constitute a violation of probation.~~

~~25. **PSYCHOLOGICAL EVALUATION** Within _____ days of the effective~~

~~— date of this decision, and on a periodic basis thereafter as may be required or directed by the Board, Respondent, at his/her own expense, shall have a mental health examination, including psychological assessment and testing as appropriate, to determine his/her capacity to perform all professional duties with safety to self and to the public. The examination will be performed by a licensed psychiatrist or psychologist appointed by the Board. Respondent shall provide this evaluator with a copy of the Board's disciplinary order prior to the evaluation. The examiner must submit a written report of that assessment and recommendations to the Board. Recommendations for cessation of practice for safety of patients, treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the Respondent. All costs incurred for evaluation and treatment are the responsibility of the Respondent.~~

~~— Any examination required of a Respondent whose violation(s) involves substance abuse must be performed by a licensed psychiatrist or psychologist who has established expertise in the field of alcohol and drug assessment, treatment, and recovery.~~

~~— Respondent shall execute a release authorizing the evaluator to divulge the aforementioned information to the Board.~~

~~26. **PHYSICAL EXAMINATION** Within 45 days of the effective date of this decision, Respondent, at his/her expense, shall undergo an assessment of his/her physical condition by a physician appointed by the Board. Respondent shall provide the examining physician with a copy of the Board's disciplinary order prior to the examination. The examining physician must submit a written report of his/her findings to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board on forms provided by the Board.~~

~~— If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board within three (3) working days. The Board shall notify Respondent in writing of the examining physician's determination of unfitness to practice and shall order the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Board.~~

~~— Respondent shall execute a release authorizing the physician to divulge the aforementioned information to the Board.~~

Adopt this package of the 2010 Edition of "Disciplinary Guidelines"
which are incorporated by reference in Section 1399.374.

Respiratory Care Board

Disciplinary Guidelines

"Protection of the Public Shall be the Highest Priority"

Business and Professions Code, Section 3710.1



2010 Edition

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

T: 916.323.9983 • F: 916.323.9999 • E: rcbinfo@dca.ca.gov

Table of Contents

Introduction	1
Public Record	2
Cost Recovery	2
Probation Monitoring Purpose	3
Citations	3
Stipulated Settlements.....	3
DISCIPLINARY GUIDELINES	5
Evidence in Aggravation/Mitigaton of Penalty	5
Disciplinary Guidelines Summary for Use By ALJs	5
PROBATIONARY TERMS AND CONDITIONS	10
Standard Terms and Conditions.....	11
Standard Alcohol/Drug Conditions	14
Specialty Conditions	15
STANDARDS FOR VIOLATIONS & CONSEQUENCES	18

INTRODUCTION

Licensed Respiratory Care Practitioners (RCPs) regularly perform critical lifesaving and life support procedures prescribed by physicians that directly affect major organs of the body. Respiratory care provides relief to millions of Americans, from newborns to the elderly, who have difficulty breathing or cannot breathe on their own due to impaired or nonfunctioning lungs. Typical patients of RCPs suffer from asthma, chronic obstructive pulmonary disease (COPD), bronchitis, lung cancer, stroke, drowning accidents, heart attacks, birth defects, emphysema, cystic fibrosis, or sleep apnea. Trauma victims and surgery patients are also treated by respiratory therapists. In addition to treatment, respiratory care also includes education and rehabilitation services, plus diagnostic testing.

Typical respiratory care duties include, but are not limited to:

- Employing life support mechanical ventilation including assessment, analysis, application and monitoring.
- Administration of medications in aerosol form.
- Monitoring equipment and patients' responses to therapy.
- Obtaining blood specimens and analyze them to determine levels of oxygen, carbon dioxide, and other gases.
- Maintaining artificial airways (tracheostomy or intubation).
- Measure the capacity of patients' lungs to determine if there is impairment.
- Obtain and analyze sputum specimens and chest X-rays.
- Interpret data from tests.
- Assess vital signs and other indicators of respiratory dysfunction.
- Perform stress tests and other studies of the cardiopulmonary system.
- Assess and treat people with disruptive sleep patterns.
- Conduct rehabilitation activities.
- Lead asthma education and smoking cessation programs.

Most respiratory care therapists work in hospitals (emergency, intensive care, neonatal/pediatric units, cardiac care, etc.), but there is a growing number being employed in other settings, including:

- Medical flight transports
- Hyperbaric oxygen units
- Private homes
- Skilled nursing facilities
- Various laboratories (e.g., Rehabilitation, Cardiopulmonary, Blood gas, Sleep testing)

The minimum education requirements for licensure as an RCP include an associate degree with completion of an approved respiratory care program. However, over 1/3 of licensed RCPs hold a baccalaureate, masters or doctorate degree. There are approximately 33 schools throughout California that offer respiratory care programs. Areas of study include human anatomy and physiology, chemistry, physics, microbiology, and mathematics. Programs also include clinical practice at local hospitals. Respiratory care students receive on average, 300 hours of intense education and training specific to ventilator assessments and care. Programs take two years of full-time+ dedication to complete.

The Respiratory Care Board (Board) has issued over 30,000 RCP licenses since its inception in 1985. Applicants for licensure complete a criminal background check (DOJ/FBI/DMV), are competency tested, and must provide official transcripts and other documentation to verify they have met educational and other requirements.

The Board's mandate is "...to protect the public from the **unauthorized and unqualified practice** of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care..." [reference, §3701, *Business and Professions Code*]. In addition, "**Protection of the public shall be the highest priority for the [Board]** in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount" [reference §3710.1, *Business and Professions Code*].

The Respiratory Care Board of California's mission is to protect and serve the consumer by enforcing the Respiratory Care Practice Act and its regulations, expanding the delivery and availability of services, increasing public awareness of respiratory care as a profession, and supporting the development and education of all respiratory care practitioners.

The Board has the authority to issue or deny, suspend, and revoke licenses to practice respiratory care as provided in the Respiratory Care Practice Act and respiratory care regulations (Business and Profession Code, sections 475, 480, 490, 3718, 3732, 3750, 3750.5, 3752.7, 3754, 3754.5, 3755, 3757 and California Code of Regulations, title 16, Division 13.6, sections 1399.303, 1399.370, 1399.374).

The Board strives to ensure that only eligible, qualified, capable and competent individuals are licensed, and to expeditiously respond to all consumer complaints by efficiently and effectively investigating every complaint and pursuing disciplinary action in all appropriate cases. Finally, the Board strives to ensure that appropriate and aggressive post-disciplinary monitoring occurs.

The Board's disciplinary guidelines were designed for use by Administrative Law Judges, attorneys, licensees and others involved in the Board's disciplinary process and are to be followed in all disciplinary actions involving the Board. The Board has the final authority over the disposition of its cases, and to complete its work, it utilizes the Office of the Attorney General and the Office of Administrative Hearings.

This manual includes factors to be considered in aggravation or mitigation, guidelines to be used by Administrative Law Judges for a violation(s) of specific statutes, and standard and speciality probationary terms and conditions.

The Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that aggravating or mitigating circumstances and other factors may necessitate deviation from these guidelines in particular cases.

PUBLIC RECORD

It is the Board's policy that all letters of license denial, citations issued, legal pleadings filed and final decisions will be published as a matter of public record.

COST RECOVERY

The Board seeks recovery of all investigative and prosecution costs in all disciplinary cases. The costs include all charges incurred from the Office of the Attorney General, the Division of Investigation, and Board services, including but not limited to expert consultant opinions and services. The Board seeks recovery of these costs because the burden for payment of the costs of investigation and prosecution of disciplinary cases should fall upon those whose proven conduct had required investigation and prosecution, not upon the profession as a whole.

References

§ 3753.5. Payment of costs of investigation and prosecution of disciplinary action

(a) In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law or any term and condition of board probation to pay to the board a sum not to exceed the costs of the investigation and

prosecution of the case. A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the official custodian of the record or his or her designated representative shall be prima facie evidence of the actual costs of the investigation and prosecution of the case.

(b) The costs shall be assessed by the administrative law judge and shall not be increased by the board; however, the costs may be imposed or increased by the board if it does not adopt the proposed decision of the case. Where an order for recovery of costs is made 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 practitioner directed to pay costs...

§ 3753.7. Items included in costs of prosecution

For purposes of this chapter, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.

PROBATION MONITORING PURPOSE

The purpose of the probation monitoring program is to maintain public protection by proactively monitoring probationers to ensure terms and conditions are met. **The purpose is NOT for the Board to rehabilitate the probationer.** Probation is a privilege afforded by the Board to:

- 1) Allow for the probationer's rehabilitation if that is his/her choice;
- 2) Allow the probationer an opportunity to practice in a professional manner with restrictions and guidance from a community support system and designated probation monitor to prevent future occurrences, and
- 3) Allow for education of the individual as to the responsibilities, requirements and professionalism mandated of a respiratory care practitioner.

It is the policy of the Board that if a probationer is found to be in violation of any term of probation at any time during the probation period, the Board shall immediately be notified of the violation so that disciplinary action may be considered.

CITATIONS

The Board has the authority to issue citations and fines for violations of several sections of the Respiratory Care Practice Act and its regulations. Citations issued may include an order for abatement, a fine, or both. Citations are issued at the discretion of the Board. The issuance of a citation is separate from and may be in addition to any other administrative discipline, civil remedies, or criminal penalties. [Reference: California Code of Regulations section 1399.380(h)]. Any prior citation may be used in future actions as aggravating evidence.

STIPULATED SETTLEMENTS

The Board will consider stipulated settlements to promote cost effectiveness and to expedite disciplinary decisions if such agreements are consistent with the Board's mandate.

DISCIPLINARY GUIDELINES

2010 Edition

EVIDENCE IN AGGRAVATION/MITIGATION OF PENALTY

The following are examples of aggravating and mitigating circumstances which may be considered by Administrative Law Judges in providing for discipline in their proposed decisions:

EVIDENCE IN AGGRAVATION OF PENALTY

1. Patient's trust, health, safety or well-being was jeopardized.
2. Patient's or employer's trust violated (i.e. theft, embezzlement, fraud, etc...).
3. Violations involved or were in the presence of children.
4. History of prior discipline.
5. Patterned behavior: Respondent has a history of one or more violations or convictions related to the current violation(s).
6. Perjury on official Board forms.
7. Violent nature of crime or act.
8. Violation of Board Probation.
9. Failure to provide a specimen for testing in violation of terms and conditions of probation.
10. Commission of any crime against a minor, or while knowingly in the presence of, or while caring for, a minor.

EVIDENCE IN MITIGATION OF PENALTY

1. Recognition by Respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.
2. Respondent was forthcoming and reported violation or conviction to the Board.
3. A substantial amount of time since the violation or conviction (generally 4 or more years) occurred.
4. No prior criminal or disciplinary history.

DISCIPLINARY GUIDELINES SUMMARY FOR USE BY ADMINISTRATIVE LAW JUDGES

These guidelines were developed for use by Administrative Law Judges. In determining the appropriate discipline, consideration should be given to any mitigating or aggravating circumstances. All decisions shall include cost recovery in accordance with Business and Professions Code section 3753.5.

		TERMS AND CONDITIONS OF PROBATION													
Code	KEY "R" - Required Term and Condition "W" - Include Term and Condition if Warranted	1-12. Standard Terms & Conditions	13. Work Schedules	14. Biological Fluid Testing	15. Abstinence from Mood Altering Sub.	16. Supervisor Quarterly Reports	17. Restriction of Practice	18. Direct Supervision	19. Additional Continuing Ed.	20. Ed./Course Work	21. Suspension	22. Competency Exam	23. Alcohol/Drug Treatment	24. Psychological Evaluation	25. Physical Examination
3750 (a) False/Misleading Advertising Maximum: Revocation stayed, 5 years probation Minimum: Revocation stayed, 2 years probation		R					W	W	W		W				
3750 (b) Fraud in Procurement of License Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R						W	W		W				
3750 (c) Knowingly Employing Unlicensed Persons Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R					W	W			W				
3750 (d) Conviction of a Crime Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R	W	W	W	W	W	W	W	W	W	W	W	W	W
3750 (e) Impersonating/Acting as a Proxy for Applicant Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation		R					W	W	W	W	W				
3750 (f) Negligence Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation		R				R	R	R	R	W	W		W	W	W
3750 (g) Violation of Any Provision Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation		R	W	W	W	W	W	W	W	W	W				

KEY

“R” - Required Term and Condition
 “W” - Include Term and Condition if Warranted

Code	1-12. Standard Terms & Conditions	TERMS AND CONDITIONS OF PROBATION												
		13. Work Schedules	14. Biological Fluid Testing	15. Abstinence from Mood Altering Sub.	16. Supervisor Quarterly Reports	17. Restriction of Practice	18. Direct Supervision	19. Additional Continuing Ed.	20. Ed./Course Work	21. Suspension	22. Competency Exam	23. Alcohol/Drug Treatment	24. Psychological Evaluation	25. Physical Examination
3750 (h) Aiding or Abetting a Violation Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R					W	W	W		W				
3750 (i) Aiding or Abetting Unlawful Practice Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R					W	W	W		W				
3750 (j) Fraudulent, Dishonest or Corrupt Act Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R					R	W			W		W		
3750 (k) Patient, Hospital, or Other Records - Entries Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R					R	R			W		W		W
3750 (l) Falsifying Verbal or Written Order/Prescription Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R		W			R	R			W		W		W
3750 (m) Discipline Taken by Another Agency Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R	W	W			W	W			W		W		W
3750 (n) Failure to Follow Infection Control Guidelines Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R				R	R	R			W		W		W

TERMS AND CONDITIONS OF PROBATION														
Code	1-12. Standard Terms & Conditions	13. Work Schedules	14. Biological Fluid Testing	15. Abstinence from Mood Altering Sub.	16. Supervisor Quarterly Reports	17. Restriction of Practice	18. Direct Supervision	19. Additional Continuing Ed.	20. Ed./Course Work	21. Suspension	22. Competency Exam	23. Alcohol/Drug Treatment	24. Psychological Evaluation	25. Physical Examination
3750 (o) Incompetence Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R				R	R	R	R	R	W	R		W	W
3750 (p) Pattern of Substandard Care Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation	R				R	R	R	R	R	W	R		W	W
3750.5 (a) Obtained, Possessed, Used, or Administered Controlled Substance or Dangerous Drug Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R	R	R	R	W	W	W	W	W	R	W	W	W	W
3750.5 (b) Used Drugs or Alcohol in Dangerous Manner or Impaired Ability to Practice Safely Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R	R	R	R	W	W	W	W	W	R	W	W	W	W
3750.5 (c) Applied for Employment or Worked While Under the Influence of Alcohol Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R	R	R	R	R	R	R	R	R	R	W	W	W	W
3750.5 (d) Conviction of Offense Involving (a) or (b), Falsify Record Pertaining to Substances Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation	R	R	R	R	W	W	W	W	W	R	W	W	W	W
3750.5 (e) Committed or Confined for Use of or Addiction to Substances Described in 3750.5 (a) (b) & (c) Maximum: Revocation or Denial Minimum: Revocation stayed, 5 years probation	R	R	R	R	R	R	R	R	R	R	W	W	W	W

KEY

"R" - Required Term and Condition
"W" - Include Term and Condition if Warranted

		TERMS AND CONDITIONS OF PROBATION													
Code	1-12. Standard Terms & Conditions	13. Work Schedules	14. Biological Fluid Testing	15. Abstinence from Mood Altering Sub.	16. Supervisor Quarterly Reports	17. Restriction of Practice	18. Direct Supervision	19. Additional Continuing Ed.	20. Ed./Course Work	21. Suspension	22. Competency Exam	23. Alcohol/Drug Treatment	24. Psychological Evaluation	25. Physical Examination	
	<p align="center">KEY</p> <p>“R” - Required Term and Condition “W” - Include Term and Condition if Warranted</p>														
3752.5	Bodily Injury or Attempted Bodily Injury Maximum: Revocation or Denial Minimum: Revocation stayed, 2 years probation	R	W	W	W	W	W	W	W	W	W	W	W	W	W
3752.6	Sexual Misconduct Maximum: Revocation or Denial Minimum: Revocation or Denial	See Statute													
3752.7	Sexual Contact w/Patient or Conviction of Sexual Offense Maximum: Revocation or Denial Minimum: Revocation or Denial	See Statute													
3755	Unprofessional Conduct Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R			R	R	R	R	W	W	R		W	W	
3760	Unlawful Practice Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R						W		R					
3761	Misrepresentation Maximum: Revocation or Denial Minimum: Revocation stayed, 3 years probation	R						W							W

PROBATIONARY TERMS AND CONDITIONS

A probationary or conditional license is generally issued for a period between 2 and 5 years, dependent upon whether any aggravating or mitigating factors exist. Following is a summary of terms and conditions of probation:

STANDARD CONDITIONS

1. Obey All Laws
2. Quarterly Reports
3. Probation Monitoring Program
4. Probation Monitoring Costs
5. Employment Requirement
6. Notice to Employer
7. Changes of Employment or Residence
8. Cost Recovery
9. Tolling for Out-of-State Residence or Practice
10. Valid License Status
11. Violation of Probation
12. Completion of Probation

STANDARD ALCOHOL/DRUG CONDITIONS

13. Work Schedules
14. Biological Fluid Testing
15. Abstention from Use of Mood Altering Substances

SPECIALTY CONDITIONS

16. Supervisor Quarterly Reports
17. Restriction of Practice
18. Direct Supervision
19. Additional Continuing Education
20. Education/Course Work
21. Suspension
22. Competency Examination
23. Alcohol and Drug Treatment
24. Psychological Evaluation
25. Physical Examination

STANDARD CONDITIONS

Standard conditions are imposed on each and every probationer regardless of cause for discipline.

- 1. OBEY ALL LAWS** Respondent shall obey all laws, whether federal, state, or local. The Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the Board in writing within **three** days of any incident resulting in his/her arrest, or charges filed against, or a citation issued against, Respondent.

- 2. QUARTERLY REPORTS** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the Board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the Board. Respondent is responsible for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

- 3. PROBATION MONITORING PROGRAM** Respondent shall comply with requirements of the Board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the Board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the Board or its representative.

Respondent shall provide to the Board the names, physical addresses, mailing addresses, telephone numbers, and e-mail addresses of all employers, supervisors, managers, and contractors and shall give specific, written consent that the Respondent authorizes the Board and its representatives and the employers, supervisors, managers, and contractors to communicate regarding the Respondent's work status, performance, and monitoring. Monitoring includes, but is not limited to, any violation of any probationary term and condition.

Respondent is encouraged to contact the Board's Probation Program at any time he/she has a question or concern regarding his/her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

- 4. PROBATION MONITORING COSTS** All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If Respondent is unable to submit costs for any month, he/she shall be required, instead to submit an explanation of why he/she is unable to submit the costs, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the Board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for costs incurred.

- 5. EMPLOYMENT REQUIREMENT** Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of 2/3 of his/her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each 8 months of employment required.

Respondent shall submit proof to the Board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

- 6. NOTICE TO EMPLOYER** Respondent shall be required to inform his/her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing his/her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If Respondent is employed by or through a registry [and is not restricted from working for a registry], Respondent shall also make each hospital or establishment to which he/she is sent aware of the discipline imposed by this decision by providing his/her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the Statement(s) of Issues or Accusation(s) in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the Board, in writing, that he/she is aware of the discipline, on forms to be provided to the Respondent. Respondent is responsible for contacting the Board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the Board.

- 7. CHANGES OF EMPLOYMENT OR RESIDENCE** Respondent shall notify the Board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, change in supervisors, administrators or directors.

Respondent shall also notify his/her probation monitor AND the Board IN WRITING of any changes of residence or mailing address within 14 days. P.O. Boxes are accepted for mailing purposes, however the Respondent must also provide his/her physical residence address as well.

- 8. COST RECOVERY** Respondent shall pay to the Board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$ _____ and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If Respondent is unable to submit costs timely, he/she shall be required, instead to submit an explanation of why he/she is unable to submit these costs in part or in entirety, and the date(s) he/she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why the Respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

The filing of bankruptcy by the Respondent shall not relieve the Respondent of his/her responsibility to reimburse the Board for these costs.

- 9. TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE** Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the Board in writing prior to departure. Respondent shall notify the Board, in writing, within 14 days, upon his/her return to California and prior to the commencement of any employment where representation as a respiratory care practitioner is/was provided.

- 10. VALID LICENSE STATUS** Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to his/her license expiration date shall constitute a violation of probation.

- 11. VIOLATION OF PROBATION** If Respondent violates any term of the probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.

- 12. COMPLETION OF PROBATION** Upon successful completion of probation, Respondent's license shall be fully restored.

STANDARD ALCOHOL/DRUG CONDITIONS

- 13. WORK SCHEDULES** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the Board has a copy of her/his current work schedule at all times for each place of employment.

Failure to submit current work schedules on a continuous basis, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

- 14. BIOLOGICAL FLUID TESTING** Respondent, at his/her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the Board. Collection and testing costs range from \$60.00 to \$200.00 each. The length of time shall be for the entire probation period. The Respondent will be randomly drug tested at least 104 times during the first year of probation, and at least 50 times per every year if he/she is practicing, thereafter.

Respondent shall be required to make daily contact, to determine if he/she is required to submit a specimen for testing, each day, including weekends and holidays, at a lab approved by the Board. Board representatives may also appear unannounced, at any time to collect a specimen. All collections will be observed.

At all times Respondent shall fully cooperate with the Board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances. All alternative testing sites, due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

If Respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, Respondent understands that any Board representative may request from the supervisor, manager or director on duty to observe Respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time Respondent provides a specimen acceptable to the Board.

If Respondent tests positive for a prohibited substance per his/her probationary order, Respondent's license shall be automatically suspended. The Board will contact the Respondent and his/her employers, supervisors, managers, work site monitors, and contractors and notify them that Respondent's license has been suspended as a result of a positive test. Thereafter, the Board may contact the specimen collector, laboratory, Respondent, treating physician, treatment provider and support group facilitators to determine whether the positive test is in fact evidence of prohibited use. If the Board determines the positive test is not evidence of prohibited use, the Board shall immediately reactivate the license and inform the Respondent and others previously contacted, that the license is no longer suspended.

Failure to submit to testing on the day requested, or appear as requested by any Board representative for testing, as directed, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

- 15. ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES** Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the Board.

Respondent shall ensure that he/she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if Respondent is not personally ingesting the drug(s).

Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.

SPECIALTY CONDITIONS

The conditions imposed are dependent upon the violation(s) committed.

16. SUPERVISOR QUARTERLY REPORTS Supervisor Quarterly Reports of Performance are due for each year of probation and the entire length of probation from each employer, as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Respondent is ultimately responsible for ensuring his/her employer(s) submits complete and timely reports. Failure to ensure each employer submits complete and timely reports shall constitute a violation of probation.

17. RESTRICTION OF PRACTICE Respondent may not be employed or function as a member of a respiratory care management or supervisory staff during the entire length of probation. This includes lead functions.

- Respondent is prohibited from working in home care unless it is under direct supervision and personal observation.
- Respondent is prohibited from working for a registry.
- Respondent is prohibited from working with _____ (i.e. neonates, elderly, comatose patients, children)

18. DIRECT SUPERVISION During the period of probation, Respondent shall be under the direct supervision of a person holding a current and valid non-restricted Board license. "Under the direct supervision" means assigned to a respiratory care practitioner who is on duty and immediately available in the assigned patient area. The Board shall be informed in writing of and approve the level of supervision provided to the Respondent while he/she is functioning as a licensed respiratory care practitioner. The appropriate level of supervision must be approved by the Board prior to commencement of work.

19. ADDITIONAL CONTINUING EDUCATION Respondent shall be required to complete additional Continuing Education beyond that which is required for license renewal. A minimum of fifteen (15) additional hours is required for each year of probation. Respondent shall submit proof to the Board of successful completion of all continuing education requirements.

20. EDUCATION/COURSE WORK Respondent shall be required to successfully complete _____ semester (or its equivalent) units of education courses in California at an institution approved by the Board in addition to the continuing education required for the renewal of licensure. The course selection shall be submitted to and approved by the Board in advance. The Board, at its discretion, may require the education to be in a specific area of study. Successful completion is a grade of "C" or "70%" or better for any completed course.

Respondent shall be required to submit proof of successful completion in the form of official transcripts no later than six (6) months prior to the date probation is scheduled to end.

Failure to timely and successfully complete approved courses at an approved institution(s), or provide documentation thereof shall constitute a violation of probation.

Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

21. SUSPENSION As part of probation, Respondent shall be suspended from the practice of respiratory care for a period of _____, beginning the effective date of this decision. If not employed as a respiratory care practitioner or if currently on any other type of leave from employment, the suspension shall be served once employment has been established or reestablished and prior to the end of the probationary period. Respondent shall ensure that each employer informs the Board, in writing, that it is aware of the dates of suspension.

[Respondents subject to Biological Fluid Testing shall be suspended a minimum number of days, as follows:

Applicants 30 days

Licenseses 10 days]

22. COMPETENCY EXAMINATION Within 6 months of the effective date of this decision and/or as designated by the Board, Respondent shall be required to take and pass a written competency examination as designated by the Board. This examination shall be taken on a date specified by the Board and Respondent shall pay all examination fees.

Respondent's failure to appear for or pass any scheduled examination will be noted as failure to pass or failure to successfully complete the examination. Respondent's failure to successfully complete the examination after one scheduled examination, shall constitute incompetence and a violation of probation for the purposes of disciplinary proceedings and shall result in the filing of an accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner license.

Failure to pay costs for the examination, will constitute a violation of probation.

23. ALCOHOL AND DRUG TREATMENT Respondent, at his/her expense, shall successfully complete a treatment regime at a recognized and established program in California of at least six months duration approved by the Board. The treatment program shall be successfully completed within the first nine months of probation. The program director, psychiatrist or psychologist shall confirm that Respondent has complied with the requirement of this decision and shall notify the Board immediately if he/she believes the Respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the Board.

Respondent shall inform the program director, psychiatrist or psychologist, of his/her probationary status with the Board, and shall cause that individual to submit monthly reports to the Board providing information concerning Respondent's progress and prognosis. Such reports shall include results of biological fluid testing. Positive results shall be reported immediately to the Board and shall be used in administrative discipline.

24. PSYCHOLOGICAL EVALUATION Within 60 days of the effective date of this decision, and on a periodic basis thereafter as may be required or directed by the Board, Respondent, at his/her own expense, shall have a mental health examination, including psychological assessment and testing as appropriate, to determine his/her capacity to perform all professional duties with safety to self and to the public. The examination will be performed by a licensed psychiatrist or psychologist appointed by the Board. Respondent shall provide this evaluator with a copy of the Board's disciplinary order prior to the evaluation. The examiner must submit a written report of that assessment and recommendations to the Board. Recommendations for cessation of practice for safety of patients, treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the Respondent. All costs incurred for evaluation and treatment are the responsibility of the Respondent.

Respondent shall execute a release authorizing the evaluator to divulge the aforementioned information to the Board.

25. PHYSICAL EXAMINATION Within 45 days of the effective date of this decision, Respondent, at his/her expense, shall undergo an assessment of his/her physical condition by a physician appointed by the Board. Respondent shall provide the examining physician with a copy of the Board's disciplinary order prior to the examination. The examining physician must submit a written report of his/her findings to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board on forms provided by the Board.

If the examining physician finds that Respondent is not physically fit to practice or can only practice with restrictions, the examining physician shall notify the Board within three (3) working days. The Board shall notify Respondent in writing of the examining physician's determination of unfitness to practice and shall order the Respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of Respondent's fitness to practice safely and has so notified the Respondent. Respondent shall document compliance in the manner required by the Board.

Respondent shall execute a release authorizing the physician to divulge the aforementioned information to the Board.

VIOLATIONS & CONSEQUENCES STANDARDS

MAJOR VIOLATIONS

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

1. Failure to complete a board-ordered program or evaluation;
2. Committing two or more minor violations of probation;
3. Treating a patient while under the influence of drugs or alcohol;
4. Committing any drug or alcohol offense, or any other offense that may or may not be related to drugs or alcohol, that is a violation of the Business and Professions Code or state or federal law;
5. Failure to appear or provide a sample in accordance with the “biological fluid testing” term and condition;
6. Testing positive for a banned substance;
7. 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.
8. Failure to adhere to any suspension or restriction in practice.

If a Respondent commits a major violation, the Board shall automatically suspend the Respondent’s license and refer the matter for disciplinary action or other action as determined by the Board.

Respondent may file a written appeal of the suspension to dispute the finding of imminent risk of harm to the public health, safety, or welfare that will be reviewed by the Executive Officer who will make a determination in the matter within 30 days from receipt of the appeal.

MINOR VIOLATIONS

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

1. Failure to submit complete and required documentation in a timely manner;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required;
4. Failure to submit cost recovery or monthly probation monitoring costs timely.
5. Any other violation that does not present a threat to the Respondent or public.

If a Respondent commits a minor violation, the Board shall determine the appropriate action, up to and including referral of the matter for disciplinary action.

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T: 916.323.9983 • F: 916.323.9999 • E: rcbinfo@dca.ca.gov

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee



Brian J. Stiger, Director

April 2010 (Corrected Version)

November Corrections shown underlined

December Corrections shown double underlined

April Corrections shown *italics and underlined*



Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

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

Janelle Wedge
Acupuncture Board

Kim Madsen
Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Lori Hubble
Dental Hygiene Committee of CA

Richard De Cuir
Dental Board of California

Joanne Allen
Hearing Aid Dispensers

Linda Whitney
Medical Board

Heather Martin
Board of Occupational Therapy

Mona Maggio
Board of Optometry

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

Virginia Herold
Board of Pharmacy,

Steve Hartzell
Physical Therapy Board

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board

Annemarie Del Mugnaio
Speech-Language Pathology & Audiology Board

Susan Geranen
Veterinary Medical Board

Teresa Bello-Jones
Board of Vocational Nursing & Psychiatric Technicians

Staff Working Group

Susan Lancara, DCA, Legislative & Policy Review
LaVonne Powell, DCA Legal Counsel
Laura Edison Freedman, DCA Legal Counsel
Katherine Demos, DCA, Legislative & Policy Review
Kristine Brothers, Acupuncture Board
Kim Madsen, Board of Behavioral Sciences
April Alameda, Board of Chiropractic Examiners
Richard DeCuir, Dental Board of California
Kimberly Kirchmeyer, Medical Board of CA
Jeff Hanson, Board of Occupational Therapy

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Anne Sodergren, Board of Pharmacy
Glenn Mitchell, Physician Assistant Committee
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Carol Stanford, Board of Registered Nursing
Liane Freels, Respiratory Care Board
Amy Edelen, Veterinary Medical Board
Marilyn Kimble, Board of Vocational Nursing & Psychiatric Technicians

Table of Contents

Uniform Standard #1	4
Uniform Standard #2	6
Uniform Standard #3	7
Uniform Standard #4	8
Uniform Standard #5	9
Uniform Standard #6	10
Uniform Standard #7	11
Uniform Standard #8	13
Uniform Standard #9	14
Uniform Standard #10	15
Uniform Standard #11	17
Uniform Standard #12	18
Uniform Standard #13	19
Uniform Standard #14	23
Uniform Standard #15	24
Uniform Standard #16	25

#1 SENATE BILL 1441 REQUIREMENT

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

#1 Uniform Standard

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

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

~~1. The clinical diagnostic evaluation shall be paid for by the licensee;~~

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

Uniform Standards

April 2010

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

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

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

#2 SENATE BILL 1441 REQUIREMENT

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

#2 Uniform Standard

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

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

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least ~~one (1) month~~ 30 days of negative drug tests.

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

#3 SENATE BILL 1441 REQUIREMENT

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

#3 Uniform Standard

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

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, 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. ~~The licensee's license shall be automatically suspended; Place the licensee's license on inactive status~~ The board shall order the licensee to cease practice; ~~and~~
2. ~~Immediately~~ The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the ~~suspension of reactivate the license~~ cease practice order.

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

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

#9 SENATE BILL 1441 REQUIREMENT

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

#9 Uniform Standard

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

#10 SENATE BILL 1441 REQUIREMENT

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

#10 Uniform Standard

Major Violations include, but are not limited to:

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

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

1. ~~Inactivation-Automatic-Suspension~~ Licensee will be ordered to cease practice.
 - a) the licensee must undergo a new clinical diagnostic evaluation, and
 - b) the licensee must test *negative* for at least a month of continuous drug testing before being allowed to go back to work. ~~(, and)~~
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

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

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

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

#11 SENATE BILL 1441 REQUIREMENT

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

#11 Uniform Standard

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

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

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

#12 SENATE BILL 1441 REQUIREMENT

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

#12 Uniform Standard

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

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

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

#13 SENATE BILL 1441 REQUIREMENT

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

#13 Uniform Standard

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

Specimen Collectors:

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

Uniform Standards

April 2010

- 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.

Uniform Standards

April 2010

- 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.

2010 LEGISLATION OF INTEREST

Agenda Item: 6
Meeting Date: 5/11/10

Represents Active or
Significant Bill

Board Position Required

AB 583	Author:	Hayashi [D]
	Title:	Health Care Practitioners: Disclosure of Education
	Introduced:	02/25/2009
	Status:	8/17/09 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 978	Author:	Perez [D]
	Title:	State Chief Information Officer
	Introduced:	02/26/09
	Status:	2/11/10 Referred to Senate Committee on Governmental Organization
	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	SUPPORT (Letter of support mailed to the author on 2/24/10)

AB 1310	Author:	Hernandez [D]
	Title:	Healing Arts: Database
	Introduced:	02/27/2009
	Status:	8/27/09 Held in Senate Appropriations (Suspense)
	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

AB 1659	Author:	Huber [D]
	Title:	State Government: Agency Repeals
	Introduced:	01/19/2010
	Status:	4/21/10 Hearing before the Assembly Committee on Appropriations cancelled at the request of the author
	Summary:	This bill would create the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies, as defined, and to conduct a comprehensive analysis of every agency to determine if the agency is still necessary and cost effective.
	Position	STAFF RECOMMENDED POSITION: WATCH

AB 2130	Author:	Huber [D]
	Title:	Professions and Vocations: Sunset
	Introduced:	02/18/2010
	Status:	4/21/10 Re-referred to Committee on Appropriations - currently in suspense
	Summary:	This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would instead make specified boards and regulatory programs subject to review by the Joint Sunset Review Committee. The bill would provide that its provisions would not become operative unless Assembly Bill 1659 is enacted and establishes the Joint Sunset Review Committee. Does not include a reference for B&P 3716 but doesn't appear to need it.
	Position	STAFF RECOMMENDED POSITION: WATCH

AB 2174	Author:	Beall [D]
	Title:	Medi-Cal Pediatric Subacute Units: Respiratory Therapy Hours
	Introduced:	02/18/2010
	Status:	4/20/10 Hearing before the Assembly Committee on Health cancelled at the request of the author
	Summary:	This bill would require the State Department of Health Care Services to reduce its respiratory therapy hours by one hour per patient day (in the subacute setting), thereby reducing the required minimum number of hours to 2.0 hours per patient day to each ventilator dependent patients and 1.0 hour per patient day to each non-ventilator dependent patient, if certain conditions are satisfied.
	Position	STAFF RECOMMENDED POSITION: WATCH

AB 2699	Author:	Bass [D]
	Title:	Healing Arts: Licensure Exemption
	Introduced:	02/19/2010
	Status:	4/24/10 Re-referred to Assembly Committee on Appropriations
	Summary:	This bill would provide an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in another state who offers or provides health care services for which he or she is licensed or certified (1) on a short-term voluntary basis, (2) in association with a sponsoring entity that registers with, and provides specified information to the designated local agency, as defined, selected by a local government entity, as defined, and (3) without charge to the recipient or a 3 rd party on behalf of the recipient, as specified. The bill would also prohibit a contract of professional liability insurance issued, amended, or renewed after 1/1/11, from excluding coverage of these practitioners or a sponsoring entity for providing care under these provisions, and would state the intent of the Legislature that these health care services be provided primarily to uninsured and underinsured persons, as specified.
	Position	STAFF RECOMMENDED POSITION: WATCH

SB 294	Author:	Negrete McLeod [D]
	Title:	Healing Arts
	Introduced:	02/25/2009
	Status:	9/8/09 Re-referred to Assembly Business and Professions
	Summary:	This bill includes various Consumer Protection Enforcement Initiative (CPEI) provisions (this is the initial/prior version from 2009 and should remain inactive).
	Position	WATCH (May move since SB 1111 failed)

SB 638	Author:	Negrete McLeod [D]
	Title:	Regulatory Boards
	Introduced:	02/27/2009
	Status:	4/21/09 Held in Senate Business, Professions & Economic Development 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 (Provisions now included in SB 1171)

SB 1111	Author:	Negrete McLeod [D]
	Title:	Regulatory Boards
	Introduced:	02/17/2010
	Status:	4/22/10 Failed passage by the Senate Business, Professions, and Economic Development Committee - bill is DEAD
	Summary:	This is the Department sponsored bill that includes the various provisions recommended by the Consumer Protection Enforcement Initiative (CPEI).
	Position	SUPPORT IF AMENDED (Testimony in support provided 4/19/10 - Bill was amended).

SB 1171	Author:	Negrete McLeod [D]
	Title:	Regulatory Boards: Operations (Sunset Bill)
	Introduced:	02/18/2010
	Status:	4/5/10 Re-referred to Committee on Rules
	Summary:	This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief within the department on unspecified dates and would authorize successor board members and bureau chiefs to be appointed, as specified. The bill would authorize the appropriate policy committees of the Legislature to review boards, bureaus, or entities that are scheduled to have their board membership of bureau chief so terminated or reviewed, as specified, and would authorize the appropriate policy committees to investigate their operations and to hold specified public hearings. The bill would require a board, bureau, or entity, if its annual report contains certain information, to post that report on its Internet Web site.
	Position	STAFF RECOMMENDED POSITION: WATCH [If enacted, would need to delete B&P 3710 and 3716.]

SB 1172	Author:	Negrete McLeod [D]
	Title:	Regulatory Boards: Diversion Programs (Uniform Standards)
	Introduced:	02/18/2010
	Status:	Re-referred to Committee on Appropriations - set for hearing 5/3/10
	Summary:	This bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. Except as provided, the bill would prohibit a healing arts board from disclosing to the public that a licensee is participating in a board diversion program. This bill also addresses confidentiality of treatment and rehabilitation documents, and audit requirements for contracted services.
	Position	STAFF RECOMMENDED POSITION: WATCH

AMENDED IN ASSEMBLY JANUARY 26, 2010

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 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. 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~~ collaborate with the Department of Consumer Affairs to acquire a new, integrated, enterprise-wide enforcement and licensing system, as described, that will replace the current licensing and monitoring system being used by the department.

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 *per-employee* basis, it costs about two thousand four
22 hundred dollars (\$2,400), or 45 percent, more for small firms to
23 comply with federal 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 consider
26 the costs of adopting regulations on the California economy, in
27 general, and on small business, specifically.

28 (e) Given these difficult economic times for small businesses,
29 it is fair and appropriate to expend resources to reduce the cost of
30 applying for state administered *state-administered* licenses and
31 permits by developing an online master application.

32 SEC. 2. Section 11547.5 is added to the Government Code, to
33 read:

34 11547.5. (a) ~~The State Chief Information Officer shall develop
35 an online master application for businesses to file for state permits
36 and licenses, and work in collaboration with the Secretary of State
37 and the Secretary of Consumer Services to accomplish this duty.~~

1 ~~The State Chief Information Officer may delegate the development~~
2 ~~of the actual application to an appropriate state agency.~~

3 ~~(b) The State Chief Information Officer shall do all of the~~
4 ~~following:~~

5 ~~(1) Establish the requirements for the initiation of the~~
6 ~~information technology project.~~

7 ~~(2) Define the resource requirements and proposed technical~~
8 ~~solution that is in compliance with statewide strategies, policies,~~
9 ~~and procedures.~~

10 ~~(3) Consult with state agencies during the initial project planning~~
11 ~~to ensure that project proposals are based on well-defined~~
12 ~~programmatic needs, clearly identify programmatic benefits, and~~
13 ~~consider feasible alternatives to address the identified needs of~~
14 ~~businesses that apply for multiple state licenses and permits over~~
15 ~~a period of time.~~

16 ~~(4) Work with the Secretary of State and the Secretary of~~
17 ~~Consumer Services to ensure that boards and commissions have~~
18 ~~the appropriate technical assistance to use and maintain the online~~
19 ~~application system.~~

20 *SEC. 2. Section 11547.5 is added to the Government Code, to*
21 *read:*

22 *11547.5. The State Chief Information Officer shall collaborate*
23 *with the Department of Consumer Affairs to acquire a new,*
24 *integrated, enterprise-wide enforcement and licensing system that*
25 *will replace the current licensing and monitoring system being*
26 *used by the department. The new system shall be Web based and*
27 *may include applicant tracking, licensing, renewal, enforcement,*
28 *monitoring, cashiering, and data management capabilities.*

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1659

Introduced by Assembly Member Huber

January 19, 2010

An act to add Article 7.5 (commencing with Section 9147.7) to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1659, as amended, Huber. State government: agency repeals.

Existing law establishes the Joint Committee on Boards, Commissions, and Consumer Protection and, until January 1, 2012, requires the committee to hold public hearings at specified times and to evaluate whether a board or regulatory program has demonstrated a need for its continued existence. Existing law states the intent of the Legislature that all existing and proposed state boards be subject to review every 4 years to evaluate and determine whether each has demonstrated a public need for its continued existence, as specified.

This bill would create the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies, as defined, and to conduct a comprehensive analysis of every agency to determine if the agency is still necessary and cost effective. The bill would require each agency scheduled for repeal to submit a report to the committee containing specified information. The bill would require the committee to take public testimony and evaluate the agency prior to the date the agency is scheduled to be repealed, and would require that an agency be eliminated unless the Legislature enacts a law, based upon a recommendation endorsed by a vote of the majority

~~of the members of the committee, to extend, consolidate, or reorganize the agency. The bill would specify the composition of the committee, which would be appointed by the President pro Tempore of the Senate; and the Speaker of the Assembly, and the Governor; and certain aspects of its operating procedure. The bill would also make a statement of legislative intent to enact legislation that provides for the repeal of every entity of state government, excluding an agency that is constitutionally created or an agency related to higher education.~~

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. (a) It is the intent of the Legislature to enact
2 legislation that provides for the repeal of every entity of state
3 government, excluding an agency that is constitutionally created
4 or an agency related to higher education, in order to eliminate
5 waste, duplication, and inefficiency in state government, subject
6 to a review and a subsequent affirmative act of the Legislature to
7 extend, consolidate, or reorganize the entity.

8 (b) It is further the intent of the Legislature to create a special
9 committee specifically composed to conduct a periodic review and
10 evaluation of every entity described in subdivision (a), which
11 would make recommendations, after appropriate factfinding and
12 evaluation, regarding the continued existence of state governmental
13 agencies or their consolidation or reorganization.

14 SEC. 2. Article 7.5 (commencing with Section 9147.7) is added
15 to Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government
16 Code, to read:

Article 7.5. Sunset Review

17
18
19
20 9147.7. (a) For the purpose of this section, "agency" means
21 any agency, authority, board, bureau, commission, conservancy,
22 council, department, division, or office of state government,
23 however denominated, excluding an agency that is constitutionally
24 created or an agency related to postsecondary education.

25 (b) The Joint Sunset Review Committee is hereby created to
26 identify and eliminate waste, duplication, and inefficiency in
27 government agencies. The purpose of the committee is to conduct

1 a comprehensive analysis of every agency to determine if the
2 agency is still necessary and cost effective.

3 (c) Each agency scheduled for repeal shall submit to the
4 committee, on or before December 1 prior to the year it is set to
5 be repealed, a complete agency report covering the entire period
6 since last reviewed, including, but not limited to, the following:

7 (1) The purpose and necessity of the agency.

8 (2) A description of the agency budget, priorities, and job
9 descriptions of employees of the agency.

10 (3) All programs and projects under the direction of the agency.

11 (4) Measures of the success or failures of the agency and
12 justifications for the metrics used to evaluate successes and failures.

13 (5) Any recommendations of the agency for changes or
14 reorganization in order to better fulfill its purpose.

15 (d) The committee shall take public testimony and evaluate the
16 agency prior to the date the agency is scheduled to be repealed.
17 An agency shall be eliminated unless the Legislature enacts a law,
18 based upon a recommendation endorsed by a vote of the majority
19 of the members of the committee, to extend, consolidate, or
20 reorganize the agency. No agency shall be extended in perpetuity
21 unless specifically exempted from the provisions of this section.
22 The committee may recommend that the Legislature extend the
23 statutory sunset date for no more than one year to allow the
24 committee more time to evaluate the agency.

25 (e) The committee shall be comprised of ~~nine~~ 10 members of
26 the Legislature. The President pro Tempore of the Senate shall
27 appoint ~~three~~ five members of the Senate to the committee, not
28 more than ~~two~~ three of whom shall be members of the same
29 political party. The Speaker of the Assembly shall appoint ~~three~~
30 five members of the Assembly to the committee, not more than
31 ~~two~~ three of whom shall be members of the same political party.
32 ~~The Governor, with the advice and consent of the Senate, shall~~
33 ~~appoint three members to the committee, not more than two of~~
34 ~~whom shall be members of the same political party.~~ Members shall
35 be appointed within 15 days after the commencement of the regular
36 session. Each member of the committee who is appointed by the
37 President pro Tempore of the Senate or the Speaker of the
38 Assembly shall serve during that committee member's term of
39 office or until that committee member no longer is a Member of
40 the Senate or the Assembly, whichever is applicable. ~~Each member~~

1 ~~of the committee who is appointed by the Governor shall serve a~~
2 ~~two-year term that ends on the 30th day of November in even~~
3 ~~number years.~~ A vacancy on the committee shall be filled in the
4 same manner as the original appointment. ~~Five~~ Six members of
5 the committee shall constitute a quorum for the conduct of
6 committee business. Members of the committee shall receive no
7 compensation for their work with the committee.

8 (f) The committee shall meet not later than 30 days after the
9 first day of the regular session to choose a chairperson and to
10 establish the schedule for agency review provided for in the statutes
11 governing the agencies. The chairperson of the committee shall
12 alternate every two years between a Member of the Senate and a
13 Member of the Assembly, and the vice chairperson of the
14 committee shall be a member of the opposite house as the
15 chairperson.

16 (g) This section shall not be construed to change the existing
17 jurisdiction of the budget or policy committees of the Legislature.

ASSEMBLY BILL

No. 2130

Introduced by Assembly Member Huber

February 18, 2010

An act to amend Sections 22, 101.1, 1917.2, 2001, 2450.3, 2460, 2531, 2569, 2570.19, 2602, 2607.5, 2701, 2841, 3010.5, 3502.1, 3504, 3685, 3710, 4001, 4615, 4800, 4809.8, 4989, 4990.24, 5000, 5510, 5810, 6510, 6710, 7304, 7501, 8710, 9882, 11506, and 22259 of, to amend and repeal Section 1601.1 of, to add Sections 7200.2, 7611, and 9815 to, and to repeal Division 1.2 (commencing with Section 473) of, the Business and Professions Code, and to amend Sections 9148.51 and 9148.52 of the Government Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2130, as introduced, Huber. Professions and vocations: sunset review.

Existing law establishes the Joint Committee on Boards, Commissions, and Consumer Protection and, until January 1, 2012, requires the committee to hold public hearings at specified times and to evaluate whether a board or regulatory program has demonstrated a need for its continued existence. Existing law states the intent of the Legislature that all existing and proposed state boards be subject to review every 4 years to evaluate and determine whether each has demonstrated a public need for its continued existence, as specified.

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would instead make specified boards and regulatory programs subject to review by the Joint Sunset Review Committee. The bill would provide that its provisions would not become

operative unless Assembly Bill 1659 is enacted and establishes the Joint Sunset Review Committee.

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

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

1 SECTION 1. Section 22 of the Business and Professions Code
2 is amended to read:

3 22. (a) "Board," as used in any provision of this code, refers
4 to the board in which the administration of the provision is vested,
5 and unless otherwise expressly provided, shall include "bureau,"
6 "commission," "committee," "department," "division," "examining
7 committee," "program," and "agency."

8 (b) Whenever the regulatory program of a board that is subject
9 to review by the Joint *Sunset Review Committee on Boards,*
10 ~~Commissions, and Consumer Protection~~, as provided for in
11 ~~Division 1.2 (commencing with Section 473)~~ *Article 7.5*
12 *(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of*
13 *Division 2 of Title 2 of the Government Code*, is taken over by the
14 department, that program shall be designated as a "bureau."

15 SEC. 2. Section 101.1 of the Business and Professions Code
16 is amended to read:

17 101.1. (a) It is the intent of the Legislature that all existing
18 and proposed consumer-related boards or categories of licensed
19 professionals be subject to a review every four years to evaluate
20 and determine whether each board has demonstrated a public need
21 for the continued existence of that board in accordance with
22 enumerated factors and standards as set forth in ~~Division 1.2~~
23 ~~(commencing with Section 473)~~ *Article 7.5 (commencing with*
24 *Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2*
25 *of the Government Code.*

26 (b) (1) ~~In the event that~~ *If* any board, as defined in Section ~~477~~
27 ~~22~~, becomes inoperative or is repealed in accordance with the act
28 that added this section, or by subsequent acts, the Department of
29 Consumer Affairs shall succeed to and is vested with all the duties,
30 powers, purposes, responsibilities and jurisdiction not otherwise
31 repealed or made inoperative of that board and its executive officer.

32 (2) Any provision of existing law that provides for the
33 appointment of board members and specifies the qualifications

1 and tenure of board members shall not be implemented and shall
2 have no force or effect while that board is inoperative or repealed.
3 Every reference to the inoperative or repealed board, as defined
4 in Section 477 22, shall be deemed to be a reference to the
5 department.

6 (3) Notwithstanding Section 107, any provision of law
7 authorizing the appointment of an executive officer by a board
8 subject to the review described in ~~Division 1.2 (commencing with~~
9 ~~Section 473) Article 7.5 (commencing with Section 9147.7) of~~
10 ~~Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government~~
11 ~~Code~~, or prescribing his or her duties, shall not be implemented
12 and shall have no force or effect while the applicable board is
13 inoperative or repealed. Any reference to the executive officer of
14 an inoperative or repealed board shall be deemed to be a reference
15 to the director or his or her designee.

16 (c) It is the intent of the Legislature that subsequent legislation
17 to extend or repeal the inoperative date for any board shall be a
18 separate bill for that purpose.

19 SEC. 3. Division 1.2 (commencing with Section 473) of the
20 Business and Professions Code is repealed.

21 SEC. 4. Section 1601.1 of the Business and Professions Code,
22 as added by Section 1 of Chapter 35 of the Statutes of 2008, is
23 amended to read:

24 1601.1. (a) There shall be in the Department of Consumer
25 Affairs the Dental Board of California in which the administration
26 of this chapter is vested. The board shall consist of eight practicing
27 dentists, one registered dental hygienist, one registered dental
28 assistant, and four public members. Of the eight practicing dentists,
29 one shall be a member of a faculty of any California dental college,
30 and one shall be a dentist practicing in a nonprofit community
31 clinic. The appointing powers, described in Section 1603, may
32 appoint to the board a person who was a member of the prior board.
33 The board shall be organized into standing committees dealing
34 with examinations, enforcement, and other subjects as the board
35 deems appropriate.

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

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

4 (d) This section shall remain in effect only until January 1, 2012,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before January 1, 2012, deletes or extends that date. The
7 repeal of this section renders the board subject to the review
8 required by ~~Division 1.2 (commencing with Section 473) Article~~
9 ~~7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
10 ~~Division 2 of Title 2 of the Government Code.~~

11 SEC. 5. Section 1601.1 of the Business and Professions Code,
12 as added by Section 3 of Chapter 31 of the Statutes of 2008, is
13 repealed.

14 ~~1601.1. (a) There shall be in the Department of Consumer~~
15 ~~Affairs the Dental Board of California in which the administration~~
16 ~~of this chapter is vested. The board shall consist of eight practicing~~
17 ~~dentists, one registered dental hygienist, one registered dental~~
18 ~~assistant, and four public members. Of the eight practicing dentists,~~
19 ~~one shall be a member of a faculty of any California dental college~~
20 ~~and one shall be a dentist practicing in a nonprofit community~~
21 ~~clinic. The appointing powers, described in Section 1603, may~~
22 ~~appoint to the board a person who was a member of the prior board.~~
23 ~~The board shall be organized into standing committees dealing~~
24 ~~with examinations, enforcement, and other subjects as the board~~
25 ~~deems appropriate.~~

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

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

32 (d) This section shall remain in effect only until January 1, 2012,
33 and as of that date, is repealed, unless a later enacted statute that
34 is enacted before January 1, 2012, deletes or extends that date. The
35 repeal of this section renders the board subject to the review
36 required by ~~Division 1.2 (commencing with Section 473):~~

37 SEC. 6. Section 1917.2 of the Business and Professions Code
38 is amended to read:

39 1917.2. (a) The committee shall license as a registered dental
40 hygienist a third- or fourth-year dental student who is in good

1 standing at an accredited California dental school and who satisfies
2 the following requirements:

3 (1) Satisfactorily performs on a clinical examination and an
4 examination in California law and ethics as prescribed by the
5 committee.

6 (2) Satisfactorily completes a national written dental hygiene
7 examination approved by the committee.

8 (b) A dental student who is granted a registered dental hygienist
9 license pursuant to this section may only practice in a dental
10 practice that serves patients who are insured under Denti-Cal, the
11 Healthy Families Program, or other government programs, or a
12 dental practice that has a sliding scale fee system based on income.

13 (c) Upon receipt of a license to practice dentistry pursuant to
14 Section 1634, a registered dental hygienist license issued pursuant
15 to this ~~subdivision~~ section is automatically revoked.

16 (d) The dental hygienist license is granted for two years upon
17 passage of the dental hygiene examination, without the ability for
18 renewal.

19 (e) Notwithstanding subdivision (d), if a dental student fails to
20 remain in good standing at an accredited California dental school,
21 or fails to graduate from the dental program, a registered dental
22 hygienist license issued pursuant to this section shall be revoked.
23 The student shall be responsible for submitting appropriate
24 verifying documentation to the committee.

25 (f) The provisions of this section shall be reviewed pursuant to
26 ~~Division 1.2 (commencing with Section 473) Article 7.5~~
27 *(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of*
28 *Division 2 of Title 2 of the Government Code.* However, the review
29 shall be limited to the fiscal feasibility and impact on the
30 committee.

31 (g) This section shall become inoperative ~~as of~~ on January 1,
32 2012.

33 SEC. 7. Section 2001 of the Business and Professions Code is
34 amended to read:

35 2001. (a) There is in the Department of Consumer Affairs a
36 Medical Board of California that consists of 15 members, seven
37 of whom shall be public members.

38 (b) The Governor shall appoint 13 members to the board, subject
39 to confirmation by the Senate, five of whom shall be public

1 members. The Senate Committee on Rules and the Speaker of the
2 Assembly shall each appoint a public member.

3 (c) Notwithstanding any other provision of law, to reduce the
4 membership of the board to 15, the following shall occur:

5 (1) Two positions on the board that are public members having
6 a term that expires on June 1, 2010, shall terminate instead on
7 January 1, 2008.

8 (2) Two positions on the board that are not public members
9 having a term that expires on June 1, 2008, shall terminate instead
10 on August 1, 2008.

11 (3) Two positions on the board that are not public members
12 having a term that expires on June 1, 2011, shall terminate instead
13 on January 1, 2008.

14 (d) This section shall remain in effect only until January 1, 2013,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2013, deletes or extends that date. The
17 repeal of this section renders the board subject to the review
18 required by ~~Division 1.2 (commencing with Section 473) Article~~
19 *7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of*
20 *Division 2 of Title 2 of the Government Code.*

21 SEC. 8. Section 2450.3 of the Business and Professions Code
22 is amended to read:

23 2450.3. There is within the jurisdiction of the Osteopathic
24 Medical Board of California a Naturopathic Medicine Committee
25 authorized under the Naturopathic Doctors Act (Chapter 8.2
26 (commencing with Section 3610)). This section shall become
27 inoperative on January 1, 2013, and, as of that date is repealed,
28 unless a later enacted statute that is enacted before January 1, 2013,
29 deletes or extends that date. The repeal of this section renders the
30 Naturopathic Medicine Committee subject to the review required
31 by ~~Division 1.2 (commencing with Section 473) Article 7.5~~
32 *(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of*
33 *Division 2 of Title 2 of the Government Code.*

34 SEC. 9. Section 2460 of the Business and Professions Code is
35 amended to read:

36 2460. (a) There is created within the jurisdiction of the Medical
37 Board of California the California Board of Podiatric Medicine.

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

1 repeal of this section renders the California Board of Podiatric
2 Medicine subject to the review required by ~~Division 1.2~~
3 ~~(commencing with Section 473) Article 7.5 (commencing with~~
4 ~~Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2~~
5 ~~of the Government Code.~~

6 SEC. 10. Section 2531 of the Business and Professions Code
7 is amended to read:

8 2531. (a) There is in the Department of Consumer Affairs a
9 Speech-Language Pathology and Audiology and Hearing Aid
10 Dispensers Board in which the enforcement and administration of
11 this chapter are vested. The Speech-Language Pathology and
12 Audiology and Hearing Aid Dispensers Board shall consist of nine
13 members, three of whom shall be public members.

14 (b) This section shall remain in effect only until January 1, 2012,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2012, deletes or extends that date. The
17 repeal of this section renders the board subject to the review
18 required by ~~Division 1.2 (commencing with Section 473) Article~~
19 ~~7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
20 ~~Division 2 of Title 2 of the Government Code.~~

21 SEC. 11. Section 2569 of the Business and Professions Code
22 is amended to read:

23 2569. The powers and duties of the board, as set forth in this
24 chapter, shall be subject to the review required by ~~Division 1.2~~
25 ~~(commencing with Section 473) Article 7.5 (commencing with~~
26 ~~Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2~~
27 ~~of the Government Code. The review shall be performed as if this~~
28 ~~chapter were scheduled to become inoperative on July 1, 2003,~~
29 ~~and would be repealed as of January 1, 2004, as described in~~
30 ~~Section 473.1.~~

31 SEC. 12. Section 2570.19 of the Business and Professions
32 Code is amended to read:

33 2570.19. (a) There is hereby created a California Board of
34 Occupational Therapy, hereafter referred to as the board. The board
35 shall enforce and administer this chapter.

36 (b) The members of the board shall consist of the following:

37 (1) Three occupational therapists who shall have practiced
38 occupational therapy for five years.

39 (2) One occupational therapy assistant who shall have assisted
40 in the practice of occupational therapy for five years.

1 (3) Three public members who shall not be licentiates of the
2 board or of any board referred to in Section 1000 or 3600.

3 (c) The Governor shall appoint the three occupational therapists
4 and one occupational therapy assistant to be members of the board.
5 The Governor, the Senate Rules Committee, and the Speaker of
6 the Assembly shall each appoint a public member. Not more than
7 one member of the board shall be appointed from the full-time
8 faculty of any university, college, or other educational institution.

9 (d) All members shall be residents of California at the time of
10 their appointment. The occupational therapist and occupational
11 therapy assistant members shall have been engaged in rendering
12 occupational therapy services to the public, teaching, or research
13 in occupational therapy for at least five years preceding their
14 appointments.

15 (e) The public members may not be or have ever been
16 occupational therapists or occupational therapy assistants or in
17 training to become occupational therapists or occupational therapy
18 assistants. The public members may not be related to, or have a
19 household member who is, an occupational therapist or an
20 occupational therapy assistant, and may not have had, within two
21 years of the appointment, a substantial financial interest in a person
22 regulated by the board.

23 (f) The Governor shall appoint two board members for a term
24 of one year, two board members for a term of two years, and one
25 board member for a term of three years. Appointments made
26 thereafter shall be for four-year terms, but no person shall be
27 appointed to serve more than two consecutive terms. Terms shall
28 begin on the first day of the calendar year and end on the last day
29 of the calendar year or until successors are appointed, except for
30 the first appointed members who shall serve through the last
31 calendar day of the year in which they are appointed, before
32 commencing the terms prescribed by this section. Vacancies shall
33 be filled by appointment for the unexpired term. The board shall
34 annually elect one of its members as president.

35 (g) The board shall meet and hold at least one regular meeting
36 annually in the Cities of Sacramento, Los Angeles, and San
37 Francisco. The board may convene from time to time until its
38 business is concluded. Special meetings of the board may be held
39 at any time and place designated by the board.

1 (h) Notice of each meeting of the board shall be given in
2 accordance with the Bagley-Keene Open Meeting Act (Article 9
3 commencing with Section 11120) of Chapter 1 of Part 1 of
4 Division 3 of Title 2 of the Government Code).

5 (i) Members of the board shall receive no compensation for
6 their services, but shall be entitled to reasonable travel and other
7 expenses incurred in the execution of their powers and duties in
8 accordance with Section 103.

9 (j) The appointing power shall have the power to remove any
10 member of the board from office for neglect of any duty imposed
11 by state law, for incompetency, or for unprofessional or
12 dishonorable conduct.

13 (k) A loan is hereby authorized from the General Fund to the
14 Occupational Therapy Fund on or after July 1, 2000, in an amount
15 of up to one million dollars (\$1,000,000) to fund operating,
16 personnel, and other startup costs of the board. Six hundred ten
17 thousand dollars (\$610,000) of this loan amount is hereby
18 appropriated to the board to use in the 2000-01 fiscal year for the
19 purposes described in this subdivision. In subsequent years, funds
20 from the Occupational Therapy Fund shall be available to the board
21 upon appropriation by the Legislature in the annual Budget Act.
22 The loan shall be repaid to the General Fund over a period of up
23 to five years, and the amount paid shall also include interest at the
24 rate accruing to moneys in the Pooled Money Investment Account.
25 The loan amount and repayment period shall be minimized to the
26 extent possible based upon actual board financing requirements
27 as determined by the Department of Finance.

28 (l) This section shall become inoperative on July 1, 2013, and,
29 as of January 1, 2014, is repealed, unless a later enacted statute
30 that is enacted before January 1, 2014, deletes or extends the dates
31 on which it becomes inoperative and is repealed. The repeal of
32 this section renders the board subject to the review required by
33 ~~Division 1.2 (commencing with Section 473) Article 7.5~~
34 *(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of*
35 *Division 2 of Title 2 of the Government Code.*

36 SEC. 13. Section 2602 of the Business and Professions Code
37 is amended to read:

38 2602. The Physical Therapy Board of California, hereafter
39 referred to as the board, shall enforce and administer this chapter.
40 This section shall become inoperative on July 1, 2013, and, as of

1 January 1, 2014, is repealed, unless a later enacted statute, which
2 becomes effective on or before January 1, 2014, deletes or extends
3 the dates on which it becomes inoperative and is repealed.

4 The repeal of this section renders the board subject to the review
5 required by ~~Division 1.2 (commencing with Section 473) Article~~
6 *7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of*
7 *Division 2 of Title 2 of the Government Code.*

8 SEC. 14. Section 2607.5 of the Business and Professions Code
9 is amended to read:

10 2607.5. The board may appoint a person exempt from civil
11 service who shall be designated as an executive officer and who
12 shall exercise the powers and perform the duties delegated by the
13 board and vested in him or her by this chapter.

14 This section shall become inoperative on July 1, 2013, and, as
15 of January 1, 2014, is repealed, unless a later enacted statute, which
16 becomes effective on or before January 1, 2014, deletes or extends
17 the dates on which it becomes inoperative and is repealed.

18 The repeal of this section renders the board subject to the review
19 required by ~~Division 1.2 (commencing with Section 473).~~

20 SEC. 15. Section 2701 of the Business and Professions Code
21 is amended to read:

22 2701. (a) There is in the Department of Consumer Affairs the
23 Board of Registered Nursing consisting of nine members.

24 (b) Within the meaning of this chapter, board, or the board,
25 refers to the Board of Registered Nursing. Any reference in state
26 law to the Board of Nurse Examiners of the State of California or
27 California Board of Nursing Education and Nurse Registration
28 shall be construed to refer to the Board of Registered Nursing.

29 (c) This section shall remain in effect only until January 1, 2013,
30 and as of that date is repealed, unless a later enacted statute, that
31 is enacted before January 1, 2013, deletes or extends that date. The
32 repeal of this section renders the board subject to the review
33 required by ~~Division 1.2 (commencing with Section 473) Article~~
34 *7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of*
35 *Division 2 of Title 2 of the Government Code.*

36 SEC. 16. Section 2841 of the Business and Professions Code
37 is amended to read:

38 2841. (a) There is in the Department of Consumer Affairs a
39 Board of Vocational Nursing and Psychiatric Technicians of the
40 State of California, consisting of 11 members.

1 (b) Within the meaning of this chapter, "board," or "the board,"
2 refers to the Board of Vocational Nursing and Psychiatric
3 Technicians of the State of California.

4 (c) This section shall remain in effect only until January 1, 2012,
5 and as of that date is repealed, unless a later enacted statute, that
6 is enacted before January 1, 2012, deletes or extends that date. The
7 repeal of this section renders the board subject to the review
8 required by ~~Division 1.2 (commencing with Section 473) Article~~
9 ~~7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
10 ~~Division 2 of Title 2 of the Government Code.~~

11 SEC. 17. Section 3010.5 of the Business and Professions Code
12 is amended to read:

13 3010.5. (a) There is in the Department of Consumer Affairs
14 a State Board of Optometry in which the enforcement of this
15 chapter is vested. The board consists of 11 members, five of whom
16 shall be public members.

17 Six members of the board shall constitute a quorum.

18 (b) The board shall, with respect to conducting investigations,
19 inquiries, and disciplinary actions and proceedings, have the
20 authority previously vested in the board as created pursuant to
21 Section 3010. The board may enforce any disciplinary actions
22 undertaken by that board.

23 (c) This section shall remain in effect only until January 1, 2013,
24 and as of that date is repealed, unless a later enacted statute, that
25 is enacted before January 1, 2013, deletes or extends that date. The
26 repeal of this section renders the board subject to the review
27 required by ~~Division 1.2 (commencing with Section 473) Article~~
28 ~~7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
29 ~~Division 2 of Title 2 of the Government Code.~~

30 SEC. 18. Section 3502.1 of the Business and Professions Code
31 is amended to read:

32 3502.1. (a) In addition to the services authorized in the
33 regulations adopted by the board, and except as prohibited by
34 Section 3502, while under the supervision of a licensed physician
35 and surgeon or physicians and surgeons authorized by law to
36 supervise a physician assistant, a physician assistant may
37 administer or provide medication to a patient, or transmit orally,
38 or in writing on a patient's record or in a drug order, an order to a
39 person who may lawfully furnish the medication or medical device
40 pursuant to subdivisions (c) and (d).

1 (1) A supervising physician and surgeon who delegates authority
2 to issue a drug order to a physician assistant may limit this authority
3 by specifying the manner in which the physician assistant may
4 issue delegated prescriptions.

5 (2) Each supervising physician and surgeon who delegates the
6 authority to issue a drug order to a physician assistant shall first
7 prepare and adopt, or adopt, a written, practice specific, formulary
8 and protocols that specify all criteria for the use of a particular
9 drug or device, and any contraindications for the selection.
10 Protocols for Schedule II controlled substances shall address the
11 diagnosis of illness, injury, or condition for which the Schedule II
12 controlled substance is being administered, provided, or issued.
13 The drugs listed in the protocols shall constitute the formulary and
14 shall include only drugs that are appropriate for use in the type of
15 practice engaged in by the supervising physician and surgeon.
16 When issuing a drug order, the physician assistant is acting on
17 behalf of and as an agent for a supervising physician and surgeon.

18 (b) "Drug order" for purposes of this section means an order
19 for medication that is dispensed to or for a patient, issued and
20 signed by a physician assistant acting as an individual practitioner
21 within the meaning of Section 1306.02 of Title 21 of the Code of
22 Federal Regulations. Notwithstanding any other provision of law,

23 (1) a drug order issued pursuant to this section shall be treated in
24 the same manner as a prescription or order of the supervising
25 physician, (2) all references to "prescription" in this code and the
26 Health and Safety Code shall include drug orders issued by
27 physician assistants pursuant to authority granted by their
28 supervising physicians and surgeons, and (3) the signature of a
29 physician assistant on a drug order shall be deemed to be the
30 signature of a prescriber for purposes of this code and the Health
31 and Safety Code.

32 (c) A drug order for any patient cared for by the physician
33 assistant that is issued by the physician assistant shall either be
34 based on the protocols described in subdivision (a) or shall be
35 approved by the supervising physician and surgeon before it is
36 filled or carried out.

37 (1) A physician assistant shall not administer or provide a drug
38 or issue a drug order for a drug other than for a drug listed in the
39 formulary without advance approval from a supervising physician
40 and surgeon for the particular patient. At the direction and under

1 the supervision of a physician and surgeon, a physician assistant
2 may hand to a patient of the supervising physician and surgeon a
3 properly labeled prescription drug prepackaged by a physician and
4 surgeon, manufacturer as defined in the Pharmacy Law, or a
5 pharmacist.

6 (2) A physician assistant may not administer, provide, or issue
7 a drug order to a patient for Schedule II through Schedule V
8 controlled substances without advance approval by a supervising
9 physician and surgeon for that particular patient unless the
10 physician assistant has completed an education course that covers
11 controlled substances and that meets standards, including
12 pharmacological content, approved by the committee. The
13 education course shall be provided either by an accredited
14 continuing education provider or by an approved physician assistant
15 training program. If the physician assistant will administer, provide,
16 or issue a drug order for Schedule II controlled substances, the
17 course shall contain a minimum of three hours exclusively on
18 Schedule II controlled substances. Completion of the requirements
19 set forth in this paragraph shall be verified and documented in the
20 manner established by the committee prior to the physician
21 assistant's use of a registration number issued by the United States
22 Drug Enforcement Administration to the physician assistant to
23 administer, provide, or issue a drug order to a patient for a
24 controlled substance without advance approval by a supervising
25 physician and surgeon for that particular patient.

26 (3) Any drug order issued by a physician assistant shall be
27 subject to a reasonable quantitative limitation consistent with
28 customary medical practice in the supervising physician and
29 surgeon's practice.

30 (d) A written drug order issued pursuant to subdivision (a),
31 except a written drug order in a patient's medical record in a health
32 facility or medical practice, shall contain the printed name, address,
33 and phone number of the supervising physician and surgeon, the
34 printed or stamped name and license number of the physician
35 assistant, and the signature of the physician assistant. Further, a
36 written drug order for a controlled substance, except a written drug
37 order in a patient's medical record in a health facility or a medical
38 practice, shall include the federal controlled substances registration
39 number of the physician assistant and shall otherwise comply with
40 the provisions of Section 11162.1 of the Health and Safety Code.

1 Except as otherwise required for written drug orders for controlled
2 substances under Section 11162.1 of the Health and Safety Code,
3 the requirements of this subdivision may be met through stamping
4 or otherwise imprinting on the supervising physician and surgeon's
5 prescription blank to show the name, license number, and if
6 applicable, the federal controlled substances number of the
7 physician assistant, and shall be signed by the physician assistant.
8 When using a drug order, the physician assistant is acting on behalf
9 of and as the agent of a supervising physician and surgeon.

10 (e) The medical record of any patient cared for by a physician
11 assistant for whom the physician assistant's Schedule II drug order
12 has been issued or carried out shall be reviewed and countersigned
13 and dated by a supervising physician and surgeon within seven
14 days.

15 (f) All physician assistants who are authorized by their
16 supervising physicians to issue drug orders for controlled
17 substances shall register with the United States Drug Enforcement
18 Administration (DEA).

19 (g) The committee shall consult with the Medical Board of
20 California and report during its sunset review required by ~~Division~~
21 ~~1.2 (commencing with Section 473) Article 7.5 (commencing with~~
22 ~~Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2~~
23 ~~of the Government Code~~ the impacts of exempting Schedule III
24 and Schedule IV drug orders from the requirement for a physician
25 and surgeon to review and countersign the affected medical record
26 of a patient.

27 SEC. 19. Section 3504 of the Business and Professions Code
28 is amended to read:

29 3504. There is established a Physician Assistant Committee
30 of the Medical Board of California. The committee consists of
31 nine members. This section shall become inoperative on July 1,
32 2011, and, as of January 1, 2012, is repealed, unless a later enacted
33 statute, which becomes effective on or before January 1, 2012,
34 deletes or extends the dates on which it becomes inoperative and
35 is repealed. The repeal of this section renders the committee subject
36 to the review required by ~~Division 1.2 (commencing with Section~~
37 ~~473) Article 7.5 (commencing with Section 9147.7) of Chapter 1.5~~
38 ~~of Part 1 of Division 2 of Title 2 of the Government Code.~~

39 SEC. 20. Section 3685 of the Business and Professions Code
40 is amended to read:

1 3685. (a) The repeal of this chapter renders the committee
2 subject to the review required by ~~Division 1.2 (commencing with~~
3 ~~Section 473) Article 7.5 (commencing with Section 9147.7) of~~
4 ~~Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government~~
5 ~~Code.~~

6 (b) ~~The committee shall prepare the report required by Section~~
7 ~~473.2 no later than September 1, 2010.~~

8 SEC. 21. Section 3710 of the Business and Professions Code
9 is amended to read:

10 3710. (a) The Respiratory Care Board of California, hereafter
11 referred to as the board, shall enforce and administer this chapter.

12 (b) This section shall remain in effect only until January 1, 2013,
13 and as of that date is repealed, unless a later enacted statute, that
14 is enacted before January 1, 2013, deletes or extends that date. The
15 repeal of this section renders the board subject to the review
16 required by ~~Division 1.2 (commencing with Section 473) Article~~
17 ~~7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
18 ~~Division 2 of Title 2 of the Government Code.~~

19 SEC. 22. Section 4001 of the Business and Professions Code
20 is amended to read:

21 4001. (a) There is in the Department of Consumer Affairs a
22 California State Board of Pharmacy in which the administration
23 and enforcement of this chapter is vested. The board consists of
24 13 members.

25 (b) The Governor shall appoint seven competent pharmacists
26 who reside in different parts of the state to serve as members of
27 the board. The Governor shall appoint four public members, and
28 the Senate Committee on Rules and the Speaker of the Assembly
29 shall each appoint a public member who shall not be a licensee of
30 the board, any other board under this division, or any board referred
31 to in Section 1000 or 3600.

32 (c) At least five of the seven pharmacist appointees to the board
33 shall be pharmacists who are actively engaged in the practice of
34 pharmacy. Additionally, the membership of the board shall include
35 at least one pharmacist representative from each of the following
36 practice settings: an acute care hospital, an independent community
37 pharmacy, a chain community pharmacy, and a long-term health
38 care or skilled nursing facility. The pharmacist appointees shall
39 also include a pharmacist who is a member of a labor union that
40 represents pharmacists. For the purposes of this subdivision, a

1 “chain community pharmacy” means a chain of 75 or more stores
2 in California under the same ownership, and an “independent
3 community pharmacy” means a pharmacy owned by a person or
4 entity who owns no more than four pharmacies in California.

5 (d) Members of the board shall be appointed for a term of four
6 years. No person shall serve as a member of the board for more
7 than two consecutive terms. Each member shall hold office until
8 the appointment and qualification of his or her successor or until
9 one year shall have elapsed since the expiration of the term for
10 which the member was appointed, whichever first occurs.
11 Vacancies occurring shall be filled by appointment for the
12 unexpired term.

13 (e) Each member of the board shall receive a per diem and
14 expenses as provided in Section 103.

15 (f) ~~In accordance with Sections 101.1 and 473.1, this This~~
16 ~~section shall remain in effect only until January 1, 2013, and as of~~
17 ~~that date is repealed, unless a later enacted statute, that is enacted~~
18 ~~before January 1, 2013, deletes or extends that date. The repeal of~~
19 ~~this section renders the board subject to the review required by~~
20 ~~Division 1.2 (commencing with Section 473) Article 7.5~~
21 ~~(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
22 ~~Division 2 of Title 2 of the Government Code.~~

23 SEC. 23. Section 4615 of the Business and Professions Code
24 is amended to read:

25 4615. This chapter shall be subject to the review required by
26 ~~Division 1.2 (commencing with Section 473) Article 7.5~~
27 ~~(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
28 ~~Division 2 of Title 2 of the Government Code.~~

29 SEC. 24. Section 4800 of the Business and Professions Code
30 is amended to read:

31 4800. There is in the Department of Consumer Affairs a
32 Veterinary Medical Board in which the administration of this
33 chapter is vested. The board consists of seven members, three of
34 whom shall be public members.

35 This section shall become inoperative on July 1, 2011, and, as
36 of January 1, 2012, is repealed, unless a later enacted statute, which
37 becomes effective on or before January 1, 2012, deletes or extends
38 the dates on which it becomes inoperative and is repealed.

39 The repeal of this section renders the board subject to the review
40 provided for by ~~Division 1.2 (commencing with Section 473)~~

1 *Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of*
2 *Part 1 of Division 2 of Title 2 of the Government Code.*

3 SEC. 25. Section 4809.8 of the Business and Professions Code
4 is amended to read:

5 4809.8. (a) The board shall appoint a voluntary, advisory
6 multidisciplinary committee to assist, advise, and make
7 recommendations for the implementation of rules and regulations
8 necessary to ensure proper administration and enforcement of this
9 chapter. Members of the committee shall be appointed from lists
10 of nominees solicited by the board. The committee shall consist
11 of no more than nine members.

12 (b) The committee shall be subject to the requirements of Article
13 9 (commencing with Section 11120) of Chapter 1 of Part 1 of
14 Division 3 of Title 2 of the Government Code.

15 (c) Committee members shall receive a per diem as provided
16 in Section 103 and shall be compensated for their actual travel
17 expenses in accordance with the rules and regulations adopted by
18 the Department of Personnel Administration.

19 (d) This section shall become inoperative on July 1, 2011, and
20 as of January 1, 2012, is repealed, unless a later enacted statute,
21 that becomes operative on or before January 1, 2012, deletes or
22 extends the dates on which it becomes inoperative and is repealed.
23 The repeal of this section renders the committee subject to the
24 review required by ~~Division 1.2 (commencing with Section 473)~~
25 *Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of*
26 *Part 1 of Division 2 of Title 2 of the Government Code.*

27 SEC. 26. Section 4989 of the Business and Professions Code
28 is amended to read:

29 4989. The powers and duties of the board, as set forth in this
30 chapter, shall be subject to the review required by ~~Division 1.2~~
31 ~~(commencing with Section 473).~~ The review shall be performed
32 ~~as if this chapter were scheduled to become inoperative on July 1,~~
33 ~~2005, and would be repealed as of January 1, 2006, as described~~
34 ~~in Section 473.1~~ *Article 7.5 (commencing with Section 9147.7) of*
35 *Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government*
36 *Code.*

37 SEC. 27. Section 4990.24 of the Business and Professions
38 Code is amended to read:

39 4990.24. The powers and duties of the board, as set forth in
40 this chapter, shall be subject to the review required by ~~Division~~

1 ~~1.2 (commencing with Section 473)~~ *Article 7.5 (commencing with*
2 *Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2*
3 *of the Government Code.*

4 SEC. 28. Section 5000 of the Business and Professions Code
5 is amended to read:

6 5000. There is in the Department of Consumer Affairs the
7 California Board of Accountancy, which consists of 15 members,
8 seven of whom shall be licensees, and eight of whom shall be
9 public members who shall not be licentiates of the board or
10 registered by the board. The board has the powers and duties
11 conferred by this chapter.

12 The Governor shall appoint four of the public members, and the
13 seven licensee members as provided in this section. The Senate
14 Rules Committee and the Speaker of the Assembly shall each
15 appoint two public members. In appointing the seven licensee
16 members, the Governor shall appoint members representing a cross
17 section of the accounting profession with at least two members
18 representing a small public accounting firm. For the purposes of
19 this chapter, a small public accounting firm shall be defined as a
20 professional firm that employs a total of no more than four
21 licensees as partners, owners, or full-time employees in the practice
22 of public accountancy within the State of California.

23 This section shall become inoperative on July 1, 2011, and as
24 of January 1, 2012, is repealed, unless a later enacted statute, that
25 becomes effective on or before January 1, 2012, deletes or extends
26 the dates on which this section becomes inoperative and is repealed.

27 The repeal of this section renders the board subject to the review
28 required by ~~Division 1.2 (commencing with Section 473)~~ *Article*
29 *7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of*
30 *Division 2 of Title 2 of the Government Code.* However, the review
31 of the board shall be limited to reports or studies specified in this
32 chapter and those issues identified by the Joint *Sunset Review*
33 ~~Committee on Boards, Commissions, and Consumer Protection~~
34 and the board regarding the implementation of new licensing
35 requirements.

36 SEC. 29. Section 5510 of the Business and Professions Code
37 is amended to read:

38 5510. There is in the Department of Consumer Affairs a
39 California Architects Board which consists of 10 members.

1 Any reference in law to the California Board of Architectural
2 Examiners shall mean the California Architects Board.

3 This section shall become inoperative on July 1, 2011, and, as
4 of January 1, 2012, is repealed, unless a later enacted statute, which
5 becomes effective on or before January 1, 2012, deletes or extends
6 the dates on which it becomes inoperative and is repealed. The
7 repeal of this section renders the board subject to the review
8 required by ~~Division 1.2 (commencing with Section 473) Article~~
9 ~~7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
10 ~~Division 2 of Title 2 of the Government Code.~~

11 SEC. 30. Section 5810 of the Business and Professions Code
12 is amended to read:

13 5810. (a) This chapter shall be subject to the review required
14 by ~~Division 1.2 (commencing with Section 473) Article 7.5~~
15 ~~(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
16 ~~Division 2 of Title 2 of the Government Code.~~

17 (b) This chapter shall remain in effect only until January 1,
18 2013, and as of that date is repealed, unless a later enacted statute,
19 that is enacted before January 1, 2013, deletes or extends that date.

20 SEC. 31. Section 6510 of the Business and Professions Code
21 is amended to read:

22 6510. (a) There is within the jurisdiction of the department
23 the Professional Fiduciaries Bureau. The bureau is under the
24 supervision and control of the director. The duty of enforcing and
25 administering this chapter is vested in the chief of the bureau, who
26 is responsible to the director. Every power granted or duty imposed
27 upon the director under this chapter may be exercised or performed
28 in the name of the director by a deputy director or by the chief,
29 subject to conditions and limitations as the director may prescribe.

30 (b) The Governor shall appoint, subject to confirmation by the
31 Senate, the chief of the bureau, at a salary to be fixed and
32 determined by the director with the approval of the Director of
33 Finance. The chief shall serve under the direction and supervision
34 of the director and at the pleasure of the Governor.

35 (c) This section shall become inoperative on July 1, 2011, and,
36 as of January 1, 2012, is repealed, unless a later enacted statute,
37 that becomes operative on or before January 1, ~~2011~~ 2012, deletes
38 or extends the dates on which it becomes inoperative and is
39 repealed. The repeal of this section renders the bureau subject to
40 the review required by ~~Division 1.2 (commencing with Section~~

1 ~~473) Article 7.5 (commencing with Section 9147.7) of Chapter 1.5~~
2 ~~of Part 1 of Division 2 of Title 2 of the Government Code.~~

3 Notwithstanding any other provision of law, upon the repeal of
4 this section, the responsibilities and jurisdiction of the bureau shall
5 be transferred to the Professional Fiduciaries Advisory Committee,
6 as provided by Section 6511.

7 SEC. 32. Section 6710 of the Business and Professions Code
8 is amended to read:

9 6710. (a) There is in the Department of Consumer Affairs a
10 Board for Professional Engineers and Land Surveyors, which
11 consists of 13 members.

12 (b) Any reference in any law or regulation to the Board of
13 Registration for Professional Engineers and Land Surveyors is
14 deemed to refer to the Board for Professional Engineers and Land
15 Surveyors.

16 (c) This section shall become inoperative on July 1, 2011, and,
17 as of January 1, 2012, is repealed, unless a later enacted statute,
18 that becomes effective on or before January 1, 2012, deletes or
19 extends the dates on which it becomes inoperative and is repealed.

20 The repeal of this section renders the board subject to the review
21 required by ~~Division 1.2 (commencing with Section 473) Article~~
22 ~~7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
23 ~~Division 2 of Title 2 of the Government Code.~~

24 SEC. 33. Section 7200.2 is added to the Business and
25 Professions Code, to read:

26 7200.2. The board shall be subject to the review required by
27 Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of
28 Part 1 of Division 2 of Title 2 of the Government Code.

29 SEC. 34. Section 7304 of the Business and Professions Code
30 is amended to read:

31 7304. The board shall be subject to review pursuant to ~~Division~~
32 ~~1.2 (commencing with Section 473) Article 7.5 (commencing with~~
33 ~~Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title 2~~
34 ~~of the Government Code.~~

35 SEC. 35. Section 7501 of the Business and Professions Code
36 is amended to read:

37 7501. (a) There is in the Department of Consumer Affairs a
38 Bureau of Security and Investigative Services. The bureau is under
39 the supervision and control of the director. The director shall
40 administer and enforce the provisions of this chapter.

1 (b) The bureau shall be subject to the review required by Article
2 7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of
3 Division 2 of Title 2 of the Government Code.

4 SEC. 36. Section 7611 is added to the Business and Professions
5 Code, to read:

6 7611. The bureau shall be subject to the review required by
7 Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of
8 Part 1 of Division 2 of Title 2 of the Government Code.

9 SEC. 37. Section 8710 of the Business and Professions Code
10 is amended to read:

11 8710. (a) The Board for Professional Engineers and Land
12 Surveyors is vested with power to administer the provisions and
13 requirements of this chapter, and may make and enforce rules and
14 regulations that are reasonably necessary to carry out its provisions.

15 (b) The board may adopt rules and regulations of professional
16 conduct that are not inconsistent with state and federal law. The
17 rules and regulations may include definitions of incompetence and
18 negligence. Every person who holds a license or certificate issued
19 by the board pursuant to this chapter, or a license or certificate
20 issued to a civil engineer pursuant to Chapter 7 (commencing with
21 Section 6700), shall be governed by these rules and regulations.

22 (c) This section shall become inoperative on July 1, 2011, and,
23 as of January 1, 2012, is repealed, unless a later enacted statute,
24 which becomes effective on or before January 1, 2012, deletes or
25 extends the dates on which it becomes inoperative and is repealed.
26 The repeal of this section shall render the board subject to the
27 review required by ~~Division 1.2 (commencing with Section 473)~~
28 ~~Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of~~
29 ~~Part 1 of Division 2 of Title 2 of the Government Code.~~

30 SEC. 38. Section 9815 is added to the Business and Professions
31 Code, to read:

32 9815. The bureau shall be subject to the review required by
33 Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of
34 Part 1 of Division 2 of Title 2 of the Government Code.

35 SEC. 39. Section 9882 of the Business and Professions Code
36 is amended to read:

37 9882. (a) There is in the Department of Consumer Affairs a
38 Bureau of Automotive Repair under the supervision and control
39 of the director. The duty of enforcing and administering this chapter
40 is vested in the chief who is responsible to the director. The director

1 may adopt and enforce those rules and regulations that he or she
2 determines are reasonably necessary to carry out the purposes of
3 this chapter and declaring the policy of the bureau, including a
4 system for the issuance of citations for violations of this chapter
5 as specified in Section 125.9. These rules and regulations shall be
6 adopted pursuant to Chapter 3.5 (commencing with Section 11340)
7 of Part 1 of Division 3 of Title 2 of the Government Code.

8 (b) In 2003 and every four years thereafter, the Joint *Sunset*
9 ~~Review Committee on Boards, Commissions, and Consumer~~
10 ~~Protection~~ shall hold a public hearing to receive testimony from
11 the Director of Consumer Affairs and the bureau. In those hearings,
12 the bureau shall have the burden of demonstrating a compelling
13 public need for the continued existence of the bureau and its
14 regulatory program, and that its function is the least restrictive
15 regulation consistent with the public health, safety, and welfare.
16 The committee shall evaluate and review the effectiveness and
17 efficiency of the bureau ~~based on factors and minimum standards~~
18 ~~of performance that are specified in Section 473.4. The committee~~
19 ~~and shall report its findings and recommendations to the~~
20 ~~Legislature as specified in Section 473.5 Article 7.5 (commencing~~
21 ~~with Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of Title~~
22 ~~2 of the Government Code.~~ The bureau shall prepare an analysis
23 and submit a report to the committee as specified in ~~Section 473.2~~
24 ~~subdivision (c) of Section 9147.7 of the Government Code.~~

25 SEC. 40. Section 11506 of the Business and Professions Code
26 is amended to read:

27 11506. This part shall be subject to the review required by
28 ~~Division 1.2 (commencing with Section 473) Article 7.5~~
29 ~~(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
30 ~~Division 2 of Title 2 of the Government Code.~~ This part shall
31 remain in effect only until January 1, 2012, and as of that date is
32 repealed, unless a later enacted statute, that is enacted before
33 January 1, 2012, deletes or extends that date.

34 SEC. 41. Section 22259 of the Business and Professions Code
35 is amended to read:

36 22259. This chapter shall be subject to the review required by
37 ~~Division 1.2 (commencing with Section 473). This Article 7.5~~
38 ~~(commencing with Section 9147.7) of Chapter 1.5 of Part 1 of~~
39 ~~Division 2 of Title 2 of the Government Code.~~

1 This chapter shall remain in effect only until January 1, 2012,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2012, deletes or extends that date.

4 SEC. 42. Section 9148.51 of the Government Code is amended
5 to read:

6 9148.51. (a) It is the intent of the Legislature that all existing
7 and proposed state boards be subject to review every four years
8 to evaluate and determine whether each has demonstrated a public
9 need for its continued existence in accordance with enumerated
10 factors and standards as set forth in ~~Chapter 2 (commencing with~~
11 ~~Section 474) of Division 1.2 of the Business and Professions Code~~
12 ~~Article 7.5 (commencing with Section 9147.7).~~

13 (b) ~~In the event that~~ If any state board becomes inoperative or
14 is repealed in accordance with the act that added this section, any
15 provision of existing law that provides for the appointment of
16 board members and specifies the qualifications and tenure of board
17 members shall not be implemented and shall have no force or effect
18 while that state board is inoperative or repealed.

19 (c) Any provision of law authorizing the appointment of an
20 executive officer by a state board subject to the review described
21 in ~~Chapter 2 (commencing with Section 474) of Division 1.2 of~~
22 ~~the Business and Professions Code Article 7.5 (commencing with~~
23 ~~Section 9147.7), or prescribing his or her duties, shall not be~~
24 implemented and shall have no force or effect while the applicable
25 state board is inoperative or repealed.

26 (d) It is the intent of the Legislature that subsequent legislation
27 to extend or repeal the inoperative date for any state board shall
28 be a separate bill for that purpose.

29 SEC. 43. Section 9148.52 of the Government Code is amended
30 to read:

31 9148.52. (a) ~~The Joint Sunset Review Committee on Boards,~~
32 ~~Commissions, and Consumer Protection established pursuant to~~
33 ~~Section 473 of the Business and Professions Code 9147.7 shall~~
34 review all state boards, as defined in Section 9148.2, ~~other than a~~
35 ~~board subject to review pursuant to Chapter 1 (commencing with~~
36 ~~Section 473) of Division 1.2 of the Business and Professions Code,~~
37 every four years.

38 (b) The committee shall evaluate and make determinations
39 pursuant to ~~Chapter 2 (commencing with Section 474) of Division~~

1 ~~1.2 of the Business and Professions Code Article 7.5 (commencing~~
2 ~~with Section 9147.7).~~

3 SEC. 44. This act shall not become operative unless Assembly
4 Bill 1659 of the 2009–10 Regular Session is also enacted and
5 becomes operative on or before January 1, 2011, and adds Article
6 7.5 (commencing with Section 9147.7) to Chapter 1.5 of Part 1 of
7 Division 2 of Title 2 of the Government Code to establish the Joint
8 Sunset Review Committee.

AMENDED IN ASSEMBLY APRIL 26, 2010

AMENDED IN ASSEMBLY APRIL 14, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2699

Introduced by Assembly Member Bass

February 19, 2010

An act to amend Section 900 of, and to add Section 901 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2699, as amended, Bass. Healing arts: licensure exemption.

Existing law provides for the licensure and regulation of various healing arts practitioners by boards within the Department of Consumer Affairs. Existing law provides an exemption from these requirements for a health care practitioner licensed in another state who offers or provides health care for which he or she is licensed during a state of emergency, as defined, and upon request of the Director of the Emergency Medical Services Authority, as specified.

This bill would also provide an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in another state who offers or provides health care services for which he or she is licensed or certified (1) on a short-term voluntary basis, (2) in association with a sponsoring entity that registers with, and provides specified information to, the designated local agency, as defined, selected by a local government entity, as defined, and (3) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. The bill would also prohibit a contract of professional

AB 2699

— 2 —

liability insurance issued, amended, or renewed on or after January 1, 2011, from excluding coverage of these practitioners or a sponsoring entity for providing care under these provisions. The bill would state the intent of the Legislature that these health care services be provided primarily to uninsured and underinsured persons, as specified.

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

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

1 SECTION 1. Section 900 of the Business and Professions Code
2 is amended to read:

3 900. (a) Nothing in this division applies to a health care
4 practitioner licensed in another state or territory of the United
5 States who offers or provides health care for which he or she is
6 licensed, if the health care is provided only during a state of
7 emergency as defined in subdivision (b) of Section 8558 of the
8 Government Code, which emergency overwhelms the response
9 capabilities of California health care practitioners and only upon
10 the request of the Director of the Emergency Medical Services
11 Authority.

12 (b) The director shall be the medical control and shall designate
13 the licensure and specialty health care practitioners required for
14 the specific emergency and shall designate the areas to which they
15 may be deployed.

16 (c) Health care practitioners shall provide, upon request, a valid
17 copy of a professional license and a photograph identification
18 issued by the state in which the practitioner holds licensure before
19 being deployed by the director.

20 (d) Health care practitioners deployed pursuant to this chapter
21 shall provide the appropriate California licensing authority with
22 verification of licensure upon request.

23 (e) Health care practitioners providing health care pursuant to
24 this chapter shall have immunity from liability for services rendered
25 as specified in Section 8659 of the Government Code.

26 (f) For the purposes of this section, "health care practitioner"
27 means any person who engages in acts which are the subject of
28 licensure or regulation under this division or under any initiative
29 act referred to in this division.

1 (g) For purposes of this section, "director" means the Director
2 of the Emergency Medical Services Authority who shall have the
3 powers specified in Division 2.5 (commencing with Section 1797)
4 of the Health and Safety Code.

5 SEC. 2. Section 901 is added to the Business and Professions
6 Code, to read:

7 901. (a) For purposes of this section, the following definitions
8 apply:

9 (1) "Board" means a healing arts board under this division or
10 under any initiative act referred to in this division.

11 (1)

12 (2) "Designated local agency" means an office, department,
13 agency, or other entity of a local government entity designated to
14 act on behalf of a local government entity in accordance with this
15 section.

16 (2)

17 (3) "Health care practitioner" means any person who engages
18 in acts that are subject to licensure or regulation under this division
19 or under any initiative act referred to in this division.

20 (3)

21 (4) "Local government entity" means a city, county, or city and
22 county having a public health officer.

23 (4)

24 (5) "Sponsoring entity" may include, but is not limited to, a
25 nonprofit organization or a community-based organization.

26 (b) A local government entity may, at its discretion, elect to
27 allow for the provision of health care services within its jurisdiction
28 in accordance with this section.

29 (c) Nothing in this division applies to a health care practitioner
30 licensed or certified in good standing in another state, district, or
31 territory of the United States who offers or provides health care
32 services for which he or she is licensed or certified if both of the
33 following requirements are met:

34 (1) Prior to providing that care, he or she submits to the
35 designated local agency a valid copy of his or her professional
36 license or certificate and a photographic identification issued by
37 the state in which he or she holds licensure or certification. A
38 sponsoring entity may submit copies of those documents to the
39 designated local agency on behalf of a health care practitioner.

1 (2) The care is provided under all of the following
2 circumstances:

3 (A) On a short-term voluntarily basis, not to exceed a ~~90-day~~
4 *10-day period per sponsored event.*

5 (B) In association with a sponsoring entity that complies with
6 subdivision (d).

7 (C) Without charge to the recipient or to a third party on behalf
8 of the recipient.

9 (d) A sponsoring entity seeking to provide, or arrange for the
10 provision of, health care services under this section shall do both
11 of the following:

12 (1) Register with the applicable designated local agency by
13 completing a registration form that shall include all of the following
14 elements:

15 (A) The name of the sponsoring entity.

16 (B) The name of the principal individual or individuals who are
17 the officers or organizational officials responsible for the operation
18 of the sponsoring entity.

19 (C) The address, including street, city, ZIP Code, and county,
20 of the sponsoring entity's principal office and each individual listed
21 pursuant to subparagraph (B).

22 (D) The telephone number for the principal office of the
23 sponsoring entity and each individual listed pursuant to
24 subparagraph (B).

25 (E) Any additional information required by the designated local
26 agency.

27 (2) Obtain authorization from the designated local agency to
28 provide health care services.

29 (e) The sponsoring entity shall notify the designated local agency
30 in writing of any change to the information required under
31 subdivision (d) within 30 days of the change.

32 (f) (1) Within 15 days of the provision of health care services
33 pursuant to this section, the sponsoring entity shall file a report
34 with the designated local agency. This report shall contain the date,
35 place, type, and general description of the care provided, along
36 with a listing of the health care practitioners who participated in
37 providing that care.

38 (2) The sponsoring entity shall maintain a list of health care
39 practitioners associated with the provision of health care services
40 under this section. The sponsoring entity shall maintain a copy of

1 each health care practitioner's current license or certificate and
2 shall require each health care practitioner to attest in writing that
3 his or her license or certificate is not suspended or revoked pursuant
4 to disciplinary proceedings in any jurisdiction. The sponsoring
5 entity shall maintain these records for a period of at least five years
6 following the provision of health care services under this section
7 and shall, upon request, furnish those records to the designated
8 local agency.

9 (g) The designated local agency may revoke the registration of
10 a sponsoring entity that fails to comply with subdivision (d), (e),
11 or (f).

12 (h) A contract of professional liability insurance issued,
13 amended, or renewed in this state on or after January 1, 2011, shall
14 not exclude coverage of a health care practitioner or a sponsoring
15 entity that provides, or arranges for the provision of, health care
16 services under this section, provided that the practitioner or entity
17 complies with this section.

18 (i) The designated local agency shall verify the current state
19 licensure or certification of each health care practitioner and shall
20 notify the sponsoring entity if the current licensure or certification
21 of a health care practitioner cannot be verified.

22 (j) It is the intent of the Legislature that health care services
23 provided pursuant to this section be provided primarily to uninsured
24 or underinsured persons. "Uninsured or underinsured person"
25 means a person who does not have health care coverage, including
26 private coverage or coverage through a program funded in whole
27 or in part by a governmental entity, or a person who has health
28 care coverage, but the coverage does not extend to the health care
29 services offered by the health care practitioner under this section.



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PRESS RELEASE

04/22/2010 GAAS:252:10 FOR IMMEDIATE RELEASE

Gov. Schwarzenegger Issues Statement on Senate Business, Professions and Economic Development Committee's Failure to Pass Important Consumer Protections

Governor Arnold Schwarzenegger issued the following statement today after the Senate Business, Professions and Economic Development Committee failed to pass SB 1111 by Senator Gloria Negrete McLeod (D-Chino) that would have enacted stronger enforcement mechanisms at the healing arts boards under the Department of Consumer Affairs to better protect patients and consumers from health professionals that are incompetent, suffering from drug or alcohol addictions, or otherwise unable to practice in a safe manner:

"As soon as I became aware of a problem with one of our regulatory boards, I took immediate action to better protect patients and consumers from dangerous health professionals. I also directed my Department of Consumer Affairs to conduct a thorough review of how to strengthen our existing enforcement authority, and SB 1111 reflects that work. I applaud Senator McLeod for carrying this important legislation and her commitment to address this issue, but I am disappointed that the remainder of this Committee chose to remain silent and continue jeopardizing patient safety. By not voting for this bill today, these members are saying they side with protecting incompetent providers.

"Safeguarding patients and strengthening our state's enforcement remains a top priority of my Administration, and I intend to continue pursuing this important policy to protect patients from incompetent health providers."

AMENDED IN SENATE APRIL 12, 2010

SENATE BILL

No. 1111

Introduced by Senator Negrete McLeod

February 17, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Under existing law, healing arts licensees are regulated by various healing arts boards and these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their

laws and regulations. Existing law requires or authorizes a healing arts board to appoint an executive officer or an executive director to, among other things, perform duties delegated by the board. *Under existing law, the State Board of Chiropractic Examiners has the authority to issue, suspend, revoke a license to practice chiropractic, and to place a licensee on probation for various violations. Existing law requires the State Board of Chiropractic Examiners to employ an executive officer to carryout certain duties.*

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

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

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

drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

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

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

The bill would authorize the Attorney General and his or her investigative agents and the healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. The bill would also set forth procedures related to the inspection of patient records and patient confidentiality. The bill would require cooperation between state agencies and healing arts boards when investigating a licensee, and would require a state agency to provide to the board all records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide records to a healing arts board upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would require the healing arts boards to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total

number of licensees in diversion or on probation for alcohol or drug abuse. The bill would require the healing arts boards to ~~search~~ *submit licensee information to specified national databases, and to search those databases* prior to licensure of an applicant or licensee ~~who holds a license in another state~~, and would authorize a healing arts board to charge a fee for the cost of conducting the search. *The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.*

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

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

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

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

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

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

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

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

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

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

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

This bill would authorize healing arts boards and the State Board of Chiropractic Examiners to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to

contract for investigative services provided by the ~~Medical Board of California or provided by the~~ Department of Justice. The bill would also provide within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (c) It is further the intent of the Legislature that the changes
24 made by this act will provide the healing arts boards within the
25 Department of Consumer Affairs with the regulatory tools and
26 authorities necessary to reduce the average timeframe for

1 investigating and prosecuting violations of law by healing arts
2 practitioners to between 12 and 18 months.

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

5 27. (a) ~~Every~~ Each entity specified in ~~subdivision (b)~~
6 ~~subdivisions (b) and (c)~~ shall provide on the Internet information
7 regarding the status of every license issued by that entity, *whether*
8 *the license is current, expired, canceled, suspended, or revoked,*
9 in accordance with the California Public Records Act (Chapter 3.5
10 (commencing with Section 6250) of Division 7 of Title 1 of the
11 Government Code) and the Information Practices Act of 1977
12 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part
13 4 of Division 3 of the Civil Code). The public information to be
14 provided on the Internet shall include information on suspensions
15 and revocations of licenses issued by the entity and other related
16 enforcement action taken by the entity relative to persons,
17 businesses, or facilities subject to licensure or regulation by the
18 entity. In providing information on the Internet, each entity shall
19 comply with the Department of Consumer Affairs Guidelines for
20 Access to Public Records. The information may not include
21 personal information, including home telephone number, date of
22 birth, or social security number. Each entity shall disclose a
23 licensee's address of record. However, each entity shall allow a
24 licensee to provide a post office box number or other alternate
25 address, instead of his or her home address, as the address of
26 record. This section shall not preclude an entity from also requiring
27 a licensee, who has provided a post office box number or other
28 alternative mailing address as his or her address of record, to
29 provide a physical business address or residence address only for
30 the entity's internal administrative use and not for disclosure as
31 the licensee's address of record or disclosure on the Internet.

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (13) The Bureau for Private Postsecondary Education shall
40 disclose information on private postsecondary institutions under

1 its jurisdiction, including disclosure of notices to comply issued
2 pursuant to Section 94935 of the Education Code.

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

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

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

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

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

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

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

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

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

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

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

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

30 *(e)*

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

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

35 *27.5. (a) Each entity specified in subdivision (b) shall provide*
36 *on the Internet information regarding the status of every license*
37 *issued by that entity, whether the license is current, expired,*
38 *canceled, suspended, or revoked, in accordance with the California*
39 *Public Records Act (Chapter 3.5 (commencing with Section 6250)*
40 *of Division 7 of Title 1 of the Government Code) and the*

1 *Information Practices Act of 1977 (Chapter 1 (commencing with*
2 *Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).*
3 *The public information to be provided on the Internet shall include*
4 *information on suspensions and revocations of licenses issued by*
5 *the entity and other related enforcement action taken by the entity*
6 *relative to persons, businesses, or facilities subject to licensure or*
7 *regulation by the entity. In providing information on the Internet,*
8 *each entity shall comply with the Department of Consumer Affairs*
9 *Guidelines for Access to Public Records. The information may not*
10 *include personal information, including home telephone number,*
11 *date of birth, or social security number. The information may not*
12 *include the licensee's address, but may include the city and county*
13 *of the licensee's address of record.*
14 *(b) Each of the following entities within the Department of*
15 *Consumer Affairs shall comply with the requirements of this*
16 *section:*
17 *(1) The Board of Registered Nursing shall disclose information*
18 *on its licensees.*
19 *(2) The Board of Vocational Nursing and Psychiatric*
20 *Technicians of the State of California shall disclose information*
21 *on its licensees.*
22 *(3) The Veterinary Medical Board shall disclose information*
23 *on its licensees and registrants.*
24 *(4) The Physical Therapy Board of California shall disclose*
25 *information on its licensees.*
26 *(5) The California State Board of Pharmacy shall disclose*
27 *information on its licensees.*
28 *(6) The Speech-Language Pathology and Audiology and Hearing*
29 *Aid Dispensers Board shall disclose information on its licensees.*
30 *(7) The Respiratory Care Board of California shall disclose*
31 *information on its licensees.*
32 *(8) The California Board of Occupational Therapy shall disclose*
33 *information on its licensees.*
34 *(9) The Naturopathic Medicine Committee within the*
35 *Osteopathic Medical Board of California shall disclose information*
36 *on its licensees.*
37 *(10) The Physician Assistant Committee of the Medical Board*
38 *of California shall disclose information on its licensees.*
39 *(11) The Dental Hygiene Committee of California shall disclose*
40 *information on its licensees.*

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

3 ~~SEC. 4:~~

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

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

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

20 ~~SEC. 5:~~

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

24 125.3. (a) (1) Except as otherwise provided by law, in any
25 order issued in resolution of a penalty or disciplinary proceeding
26 or hearing on a citation issued pursuant to Section 125.9 or
27 regulations adopted *pursuant* thereto, before any board specified
28 in Section 101, the board or the administrative law judge may
29 direct any licensee or applicant found to have committed a violation
30 or violations of law to pay to the board a sum not to exceed the
31 ~~actual~~ *reasonable* costs of the investigation, prosecution, and
32 enforcement of the case.

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

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

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

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

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

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

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

40 ~~(g)~~

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

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

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

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

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

26 ~~(k)~~
27 (l) Notwithstanding the provisions of this section, the Medical
28 Board of California shall not request nor obtain from a physician
29 and surgeon, investigation and prosecution costs for a disciplinary
30 proceeding against the licentiate. The board shall ensure that this
31 subdivision is revenue neutral with regard to it and that any loss
32 of revenue or increase in costs resulting from this subdivision is
33 offset by an increase in the amount of the initial license fee and
34 the biennial renewal fee, as provided in subdivision (e) of Section
35 2435.

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

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

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

8 125.4. (a) Notwithstanding any other provision of law, a board
 9 may contract with a collection agency for the purpose of collecting
 10 outstanding fees, fines, or cost recovery amounts from any person
 11 who owes that money to the board, and, for those purposes, may
 12 provide to the collection agency the personal information of that
 13 person, including his or her birth date, telephone number, and
 14 social security number. The contractual agreement shall provide
 15 that the collection agency may use or release personal information
 16 only as authorized by the contract, and shall provide safeguards
 17 to ensure that the personal information is protected from
 18 unauthorized disclosure. The contractual agreement shall hold the
 19 collection agency liable for the unauthorized use or disclosure of
 20 personal information received or collected under this section.

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

24 ~~SEC. 8.~~
 25 *SEC. 9.* Section 125.9 of the Business and Professions Code
 26 is amended to read:

27 125.9. (a) Except with respect to persons regulated under
 28 Chapter 11 (commencing with Section 7500), and Chapter 11.6
 29 (commencing with Section 7590) of Division 3, any board, bureau,
 30 commission, or committee within the department, the board created
 31 by the Chiropractic Initiative Act, and the Osteopathic Medical
 32 Board of California, may establish, by regulation, a system for the
 33 issuance to a licensee of a citation that may contain an order of
 34 abatement or an order to pay an administrative fine assessed by
 35 the board, bureau, commission, or committee where the licensee
 36 is in violation of the applicable licensing act or any regulation
 37 adopted pursuant thereto.

38 (b) The system shall contain the following provisions:

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

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

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

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

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

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

1 ~~A licensee desiring to appeal the citation decision shall file a~~
2 ~~written appeal of the citation decision with the bureau within 30~~
3 ~~days of issuance of the decision. The appeal shall be considered~~
4 ~~by the director or his or her designee who shall issue a written~~
5 ~~decision on the appeal.~~

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

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

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

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

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

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

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

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

36 (c) The system may contain the following provisions:

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

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

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

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

8 ~~SEC. 9:~~

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

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

16 (b) It is the intent of the Legislature that inspectors used by
17 boards, bureaus, or commissions in the department shall not be
18 required to be employees of the Division of Investigation, but may
19 either be employees of, or under contract to, the boards, bureaus,
20 or commissions. Contracts for services shall be consistent with
21 Article 4.5 (commencing with Section 19130) of Chapter 6 of Part
22 2 of Division 5 of Title 2 of the Government Code. All civil service
23 employees currently employed as inspectors whose functions are
24 transferred as a result of this section shall retain their positions,
25 status, and rights in accordance with Section 19994.10 of the
26 Government Code and the State Civil Service Act (Part 2
27 (commencing with Section 18500) of Division 5 of Title 2 of the
28 Government Code).

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

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

1 ~~SEC. 10.~~
2 *SEC. 11.* Section 159.5 of the Business and Professions Code
3 is amended to read:

4 159.5. There is in the department the Division of Investigation.
5 The division is in the charge of a person with the title of chief of
6 the division. There is in the division the Health Quality
7 Enforcement Unit. The primary responsibility of the unit is to
8 investigate complaints against licensees and applicants within the
9 jurisdiction of the healing arts boards ~~specified~~ *listed* in Section
10 720.

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

16 ~~SEC. 11.~~
17 *SEC. 12.* Section 160 of the Business and Professions Code is
18 amended to read:

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

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

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

1 Article 10.1. Healing Arts Licensing Enforcement

2
3 720. (a) Unless otherwise provided, as used in this article, the
4 term "healing arts board" shall include all of the following:

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

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

32 720.2. (a) ~~The~~ *A healing arts board may delegate to its*
33 ~~executive officer or executive director of a healing arts board may~~
34 *the authority to* adopt a proposed default decision where an
35 administrative action to revoke a license has been filed and the
36 licensee has failed to file a notice of defense or to appear at the
37 hearing and a proposed default decision revoking the license has
38 been issued.

39 (b) ~~The~~ *A healing arts board may delegate to its* executive
40 ~~officer or executive director of a healing arts board may the~~

1 authority to adopt a proposed settlement agreement where an
2 administrative action to revoke a license has been filed by the
3 healing arts board and the licensee has agreed to surrender the
4 revocation or surrender of his or her license.

5 720.4. (a) Notwithstanding Section 11415.60 of the
6 Government Code, a healing arts board may enter into a settlement
7 with a licensee or applicant prior to the board's in lieu of the
8 issuance of an accusation or statement of issues against that
9 licensee or applicant, as applicable.

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

13 ~~(b) No~~

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

19 ~~(e) Any settlement~~

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

26 720.6. (a) Notwithstanding any other provision of law, upon
27 receipt of evidence that a licensee of a healing arts board has
28 engaged in conduct that poses an imminent risk of serious harm
29 to the public health, safety, or welfare, ~~or has failed to comply~~
30 ~~with a request to inspect or copy records made pursuant to Section~~
31 ~~720.16~~, the executive officer of that board may petition the director
32 to issue a temporary order that the licensee cease all practice and
33 activities that require a license by that board.

34 (b) (1) The executive officer of the healing arts board shall, to
35 the extent practicable, provide telephonic, electronic mail, message,
36 or facsimile written notice to the licensee of a hearing on the
37 petition at least ~~24 hours~~ five business days prior to the hearing.
38 The licensee and his or her counsel and the executive officer or
39 his or her designee shall have the opportunity to present oral or
40 written argument before the director. After presentation of the

1 evidence and consideration of any arguments presented, the director
2 may issue an order that the licensee cease all practice and activities
3 that require a license by that board when, in the opinion of the
4 director, the action is necessary to protect the public health, safety,
5 or welfare, if, in the director's opinion, the petitioner has
6 established by a preponderance of the evidence that an imminent
7 risk of serious harm to the public health, safety, or welfare exists,
8 the director may issue an order that the licensee cease all practice
9 and activities that require a license by that board.

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

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

18 (d) A licensee who fails or refuses to comply with an order of
19 the director to cease practice pursuant to this section is subject to
20 disciplinary action to revoke or suspend his or her license by his
21 or her the respective healing arts board and an administrative fine
22 assessed by the board not to exceed twenty-five thousand dollars
23 (\$25,000). The remedies provided herein are in addition to any
24 other authority of the healing arts board to sanction a licensee for
25 practicing or engaging in activities subject to the jurisdiction of
26 the board without proper legal authority.

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

39 (f) Any petition and order to cease practice shall be displayed
40 on the Internet Web site of the applicable healing arts board, except

1 that if the petition is not granted or the director vacates the
2 suspension order pursuant to subdivision (e), the petition and order
3 shall be removed from the respective board's Internet Web site.

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

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

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

17 720.8. (a) The license of a licensee of a healing arts board
18 shall be suspended automatically during any time that the licensee
19 is incarcerated after conviction of a felony, regardless of whether
20 the conviction has been appealed. The healing arts board shall,
21 immediately upon receipt of the certified copy of the record of
22 conviction, determine whether the license of the licensee has been
23 automatically suspended by virtue of his or her incarceration, and
24 if so, the duration of that suspension. The healing arts board shall
25 notify the licensee *in writing* of the license suspension and of his
26 or her right to elect to have the issue of penalty heard as provided
27 in subdivision (d).

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

37 (c) Notwithstanding subdivision (b), a conviction of a charge
38 of violating any federal statute or regulation or any statute or
39 regulation of this state, regulating dangerous drugs or controlled
40 substances, or a conviction of Section 187, 261, 262, or 288 of the

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

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

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

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

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

1 720.10. Except as otherwise provided, any proposed decision
 2 or decision issued under this article in accordance with the
 3 procedures set forth in Chapter 5 (commencing with Section 11500)
 4 of Part 1 of Division 3 of Title 2 of the Government Code, that
 5 contains any finding of fact that the licensee or registrant engaged
 6 in any act of sexual contact, as defined in subdivision (c) of Section
 7 729, with a patient, or has committed an act or been convicted of
 8 a sex offense as defined in Section 44010 of the Education Code,
 9 shall contain an order of revocation. The revocation shall not be
 10 stayed by the administrative law judge. ~~Unless otherwise provided~~
 11 ~~in the laws and regulations of the healing arts board, the patient~~
 12 ~~shall no longer be considered a patient of the licensee when the~~
 13 ~~order for medical services and procedures provided by the licensee~~
 14 ~~is terminated, discontinued, or not renewed by the prescribing~~
 15 ~~physician and surgeon.~~

16 720.12. (a) Except as otherwise provided, with regard to an
 17 individual who is required to register as a sex offender pursuant
 18 to Section 290 of the Penal Code, or the equivalent in another state
 19 or territory, under military law, or under federal law, the healing
 20 arts board shall be subject to the following requirements:

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

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

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

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

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

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

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

16 720.14. (a) A licensee of a healing arts board shall not include
 17 or permit to be included any of the following provisions in an
 18 agreement to settle a civil dispute arising from his or her practice,
 19 whether the agreement is made before or after the filing of an
 20 action:

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

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

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

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

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

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

34 720.16. (a) Notwithstanding any other provision of law making
 35 a communication between a licensee of a healing arts board and
 36 his or her patients a privileged communication, those provisions
 37 shall not apply to investigations or proceedings conducted by a
 38 healing arts board. Members of a healing arts board, deputies,
 39 employees, agents, the office of the Attorney General, and
 40 representatives of the board shall keep in confidence during the

1 course of investigations the names of any patients whose records
 2 are reviewed and may not disclose or reveal those names, except
 3 as is necessary during the course of an investigation, unless and
 4 until proceedings are instituted. The authority under this
 5 subdivision to examine records of patients in the office of a licensee
 6 is limited to records of patients who have complained to the healing
 7 arts board about that licensee.

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

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

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

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

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

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

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

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

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

13 720.18. (a) (1) Notwithstanding any other provision of law,
 14 a licensee who fails or refuses to comply with a request for the
 15 certified medical records of a patient, that is accompanied by that
 16 patient's written authorization for release of records to a healing
 17 arts board, within ~~10~~ 15 days of receiving the request and
 18 authorization, shall pay to the healing arts board a civil penalty of
 19 *up to one thousand dollars (\$1,000) per day for each day that the*
 20 *documents have not been produced after the ~~10th~~ 15th day, up to*
 21 *one hundred thousand dollars (~~\$100,000~~) ten thousand dollars*
 22 *(\$10,000), unless the licensee is unable to provide the documents*
 23 *within this time period for good cause.*

24 (2) A health care facility shall comply with a request for the
 25 certified medical records of a patient that is accompanied by that
 26 patient's written authorization for release of records to a healing
 27 arts board together with a notice citing this section and describing
 28 the penalties for failure to comply with this section. Failure to
 29 provide the authorizing patient's certified medical records to the
 30 healing arts board within ~~10~~ 30 days of receiving the request,
 31 authorization, and notice shall subject the health care facility to a
 32 civil penalty, payable to the healing arts board, of up to one
 33 thousand dollars (\$1,000) per day for each day that the documents
 34 have not been produced after the ~~10th~~ 30th day, up to ~~one hundred~~
 35 ~~thousand dollars (\$100,000) ten thousand dollars (\$10,000), unless~~
 36 ~~the health care facility is unable to provide the documents within~~
 37 ~~this time period for good cause. This paragraph shall not require~~
 38 ~~health care facilities to assist a healing arts board in obtaining the~~
 39 ~~patient's authorization. A healing arts board shall pay the~~
 40 ~~reasonable costs of copying the certified medical records, but shall~~

1 not be required to make that payment prior to the production of
2 the medical records.

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

14 (2) Any licensee who fails or refuses to comply with a court
15 order, issued in the enforcement of a subpoena, mandating the
16 release of records to a board is guilty of a misdemeanor punishable
17 by a fine payable to the board not to exceed five thousand dollars
18 (\$5,000). The fine shall be added to the licensee's renewal fee if
19 it is not paid by the next succeeding renewal date. Any statute of
20 limitations applicable to the filing of an accusation by a healing
21 arts board shall be tolled during the period the licensee is out of
22 compliance with the court order and during any related appeals.

23 (3) A health care facility that fails or refuses to comply with a
24 court order, issued in the enforcement of a subpoena, mandating
25 the release of patient records to a healing arts board, that is
26 accompanied by a notice citing this section and describing the
27 penalties for failure to comply with this section, shall pay to the
28 healing arts board a civil penalty of up to one thousand dollars
29 (\$1,000) per day for each day that the documents have not been
30 produced, ~~up to one hundred thousand dollars (\$100,000)~~ *ten*
31 *thousand dollars (\$10,000)*, after the date by which the court order
32 requires the documents to be produced, unless it is determined that
33 the order is unlawful or invalid. Any statute of limitations
34 applicable to the filing of an accusation by the board against a
35 licensee shall be tolled during the period the health care facility is
36 out of compliance with the court order and during any related
37 appeals.

38 (4) Any health care facility that fails or refuses to comply with
39 a court order, issued in the enforcement of a subpoena, mandating
40 the release of records to a healing arts board is guilty of a

1 misdemeanor punishable by a fine payable to the board not to
2 exceed five thousand dollars (\$5,000). Any statute of limitations
3 applicable to the filing of an accusation by the healing arts board
4 against a licensee shall be tolled during the period the health care
5 facility is out of compliance with the court order and during any
6 related appeals.

7 (c) Multiple acts by a licensee in violation of subdivision (b)
8 shall be punishable by a fine not to exceed five thousand dollars
9 (\$5,000) or by imprisonment in a county jail not exceeding six
10 months, or by both that fine and imprisonment. Multiple acts by
11 a health care facility in violation of subdivision (b) shall be
12 punishable by a fine not to exceed five thousand dollars (\$5,000),
13 shall be reported to the State Department of Public Health, and
14 shall be considered as grounds for disciplinary action with respect
15 to licensure, including suspension or revocation of the license or
16 certificate.

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

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

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

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

36 (h) If a board complies with ~~Section 1684.5~~ *1684.1*, 2225.5, or
37 2969, that board shall not be subject to the requirements of this
38 section.

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

1 720.20. (a) Notwithstanding any other provision of law, a state
 2 agency shall, upon receiving a request in writing from a healing
 3 arts board *for records*, immediately provide to the healing arts
 4 board all records in the custody of the state agency, including, but
 5 not limited to, confidential records, medical records, and records
 6 related to closed or open investigations.

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

18 720.22. Notwithstanding any other provision of law, all local
 19 and state law enforcement agencies, state and local governments,
 20 state agencies, licensed health care facilities, and employers of a
 21 licensee of a healing arts board shall provide records to the healing
 22 arts board upon request prior to receiving payment from the board
 23 *for the cost of providing the records*.

24 720.24. (a) ~~Any~~ Notwithstanding any other provision of law,
 25 any employer of a health care licensee shall report to the board the
 26 suspension or termination for cause, or any resignation in lieu of
 27 suspension or termination for cause, of any health care licensee in
 28 its employ within ~~five~~ 15 business days. The report shall not be
 29 made until after the conclusion of the review process specified in
 30 Section 52.3 of Title 2 of the California Code of Regulations and
 31 *Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194*, for public
 32 employees. This required reporting shall not constitute a waiver
 33 of confidentiality of medical records. The information reported or
 34 disclosed shall be kept confidential except as provided in
 35 subdivision (c) of Section 800 and shall not be subject to discovery
 36 in civil cases.

37 (b) For purposes of the section, "suspension or termination for
 38 cause" ~~is defined as suspension or "resignation in lieu of~~
 39 *suspension or termination for cause" is defined as resignation,*

1 *suspension*, or termination from employment for any of the
 2 following reasons:

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

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

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

9 ~~(4) Falsification of medical records.~~

10 ~~(5)~~

11 (4) Gross negligence or incompetence.

12 ~~(6)~~

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

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

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

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

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

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

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

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

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

1 (2) Any failure of an employer, other than willful failure, to
 2 make a report required by this section is punishable by an
 3 administrative fine not to exceed fifty thousand dollars (\$50,000).
 4 (e) Pursuant to Section 43.8 of the Civil Code, no person shall
 5 incur any civil penalty as a result of making any report required
 6 by this article.
 7 (f) No report is required under this section where a report of
 8 the action taken is already required under Section 805.
 9 720.26. (a) Each healing arts board shall report annually to
 10 the department and the Legislature, not later than October 1 of
 11 each year, the following information:
 12 (1) The total number of consumer calls received by the board
 13 and the number of consumer calls or letters designated as
 14 discipline-related complaints.
 15 (2) The total number of complaint forms received by the board.
 16 (3) The total number of reports received by the board pursuant
 17 to Sections 801, 801.01, and 803, as applicable.
 18 (4) The total number of coroner reports received by the board.
 19 (5) The total number of convictions reported to the board.
 20 (6) The total number of criminal filings reported to the board.
 21 (7) If the board is authorized to receive reports pursuant to
 22 Section 805, the total number of Section 805 reports received by
 23 the board, by the type of peer review body reporting and, where
 24 applicable, the type of health care facility involved, and the total
 25 number and type of administrative or disciplinary actions taken
 26 by the board with respect to the reports, and their disposition.
 27 (8) The total number of complaints closed or resolved without
 28 discipline, prior to accusation.
 29 (9) The total number of complaints and reports referred for
 30 formal investigation.
 31 (10) The total number of accusations filed and the final
 32 disposition of accusations through the board and court review,
 33 respectively.
 34 (11) The total number of citations issued, with fines and without
 35 fines, and the number of public letters of reprimand, letters of
 36 admonishment, or other similar action issued, if applicable.
 37 (12) The total number of final licensee disciplinary actions
 38 taken, by category.

1 (13) The total number of cases in process for more than six
 2 months, more than 12 months, more than 18 months, and more
 3 than 24 months, from receipt of a complaint by the board.
 4 (14) The average and median time in processing complaints,
 5 from original receipt of the complaint by the board, for all cases,
 6 at each stage of the disciplinary process and court review,
 7 respectively.
 8 (15) The total number of licensees in diversion or on probation
 9 for alcohol or drug abuse or mental disorder, and the number of
 10 licensees successfully completing diversion programs or probation,
 11 and failing to do so, respectively.
 12 (16) The total number of probation violation reports and
 13 probation revocation filings, and their dispositions.
 14 (17) The total number of petitions for reinstatement, and their
 15 dispositions.
 16 (18) The total number of caseloads of investigators for original
 17 cases and for probation cases, respectively.
 18 (b) "Action," for purposes of this section, includes proceedings
 19 brought by, or on behalf of, the healing arts board against licensees
 20 for unprofessional conduct that have not been finally adjudicated,
 21 as well as disciplinary actions taken against licensees.
 22 (c) ~~If a board~~ A board that complies with Section 2313, ~~that~~
 23 ~~board~~ shall not be subject to the requirements of this section.
 24 720.28. Unless otherwise provided, on or after July 1, 2013,
 25 every healing arts board shall post on the Internet the following
 26 information in its possession, custody, or control regarding every
 27 licensee for which the board licenses:
 28 (a) With regard to the status of every healing arts license,
 29 whether or not the licensee *or former licensee* is in good standing,
 30 subject to a temporary restraining order, subject to an interim
 31 suspension order, subject to a restriction or cease practice ordered
 32 pursuant to Section 23 of the Penal Code, or subject to any of the
 33 enforcement actions described in Section 803.1.
 34 (b) With regard to prior discipline of a licensee, whether or not
 35 the licensee *or former licensee* has been subject to discipline by
 36 the healing arts board or by the board of another state or
 37 jurisdiction, as described in Section 803.1.
 38 (c) Any felony conviction of a licensee reported to the healing
 39 arts board ~~after January 3, 1991.~~

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

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

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

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

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

22 720.30. (a) The office of the Attorney General shall serve, or
23 submit to a healing arts board for service, an accusation within 60
24 calendar days of receipt from the healing arts board.

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

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

33 720.32. (a) Whenever it appears that an applicant for a license,
34 certificate, or permit from a healing arts board may be unable to
35 practice his or her profession safely because the applicant's ability
36 to practice ~~would~~ *may* be impaired due to mental illness, or physical
37 illness affecting competency, the healing arts board may order the
38 applicant to be examined by one or more physicians and surgeons
39 or psychologists designated by the healing arts board. The report
40 of the examiners shall be made available to the applicant and may

1 be received as direct evidence in proceedings conducted pursuant
2 to Chapter 2 (commencing with Section 480) of Division 1.5.

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

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

12 720.34. (a) An applicant for a license, certificate, or permit
13 from a healing arts board who is otherwise eligible for that license
14 but is unable to practice some aspects of his or her profession
15 safely due to a disability may receive a limited license if he or she
16 does both of the following:

- 17 (1) Pays the initial licensure fee.
- 18 (2) Signs an agreement on a form prescribed by the healing arts
19 board in which the applicant agrees to limit his or her practice in
20 the manner prescribed by the healing arts board.

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

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

28 720.35. (a) ~~Each~~ *Each healing arts board listed in Section 720*
29 *shall report to the National Practitioner Data Bank and the*
30 *Healthcare Integrity and Protection Data Bank the following*
31 *information on each of its licensees:*

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

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

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

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

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

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

11 720.36. (a) Unless otherwise provided, if a licensee possesses
12 a license or is otherwise authorized to practice in any state other
13 than California or by any agency of the federal government and
14 that license or authority is suspended or revoked outright and is
15 reported to the National Practitioner Data Bank, the California
16 license of the licensee shall be suspended automatically for the
17 duration of the suspension or revocation, unless terminated or
18 rescinded as provided in subdivision (c). The healing arts board
19 shall notify the licensee of the license suspension and of his or her
20 right to have the issue of penalty heard as provided in this section.

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

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

39 (d) The record of the proceedings that resulted in the suspension
40 or revocation of the licensee's out-of-state license or authority to

1 practice, including a transcript of the testimony therein, may be
2 received in evidence.

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

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

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

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

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

27 720.36. ~~Unless it is~~

28 720.37. Unless otherwise expressly provided, any person,
29 whether licensed pursuant to this division or not, who violates any
30 provision of this article is guilty of a misdemeanor and shall be
31 punished by a fine of not less than two hundred dollars (\$200) nor
32 more than one thousand two hundred dollars (\$1,200), or by
33 imprisonment in a county jail for a term of not less than 60 days
34 nor no more than 180 days, or by both the fine and imprisonment.

35 720.38. (a) The Emergency Health Care Enforcement Reserve
36 Fund is hereby established in the State Treasury, to be
37 administered by the department. Notwithstanding Section 13340
38 of the Government Code, all moneys in the fund are hereby
39 continuously appropriated and shall be used to support the
40 investigation and prosecution of any matter within the authority

1 of any of the healing arts boards. The department, upon direction
2 of a healing arts board, shall pay out the funds or approve such
3 payments as deemed necessary from those funds as have been
4 designated for the purpose of this section.

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

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

16 720.40. Notwithstanding any other provision of law, if a healing
17 arts board's fund reserve exceeds its statutory maximum, the board
18 may lower its fees by resolution in order to reduce its reserves to
19 an amount below its maximum.

20 720.42. (a) The Legislature finds that there are occasions
21 when a healing arts board, as listed in Section 720, urgently
22 requires additional expenditure authority in order to fund
23 unanticipated enforcement and litigation activities. Without
24 sufficient expenditure authority to obtain the necessary additional
25 resources for urgent litigation and enforcement matters, the board
26 is unable to adequately protect the public. Therefore, it is the intent
27 of the Legislature that, apart from, and in addition to, the
28 expenditure authority that may otherwise be established, the
29 healing arts boards, as listed in Section 720, shall be given the
30 increase in its expenditure authority in any given current fiscal
31 year that is authorized by the Department of Finance pursuant to
32 the provisions of subdivision (b) of this section, for costs and
33 services in urgent litigation and enforcement matters, including,
34 but not limited to, costs for the services of the Attorney General
35 and the Office of Administrative Hearings.

36 (b) Notwithstanding any other provision of law, upon the request
37 of the department, the Department of Finance may augment the
38 amount available for expenditures to pay enforcement costs for
39 the services of the Attorney General's Office and the Office of
40 Administrative Hearings. If an augmentation exceeds 20% of the

1 board's budget for the Attorney General, it may be made no sooner
2 than 30 days after notification in writing to chairpersons of the
3 committees in each house of the Legislature that consider
4 appropriations and the Chairperson of the Joint Legislative Budget
5 Committee, or no sooner than whatever lesser time the chairperson
6 of the Joint Legislative Budget Committee may in each instance
7 determine.

8 ~~SEC. 13.~~

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

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

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

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

31 ~~SEC. 14.~~

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

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

1 (b) Discipline may be ordered against a licensee in accordance
 2 with the laws and regulations of the healing arts board or the board
 3 may order the denial of the license when the time for appeal has
 4 elapsed, or the judgment of conviction has been affirmed on appeal,
 5 or when an order granting probation is made suspending the
 6 imposition of sentence, irrespective of a subsequent order under
 7 the provisions of Section 1203.4 of the Penal Code allowing that
 8 person to withdraw his or her plea of guilty and to enter a plea of
 9 not guilty, or setting aside the verdict of guilty, or dismissing the
 10 accusation, complaint, information, or indictment.

11 ~~SEC. 15.~~

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

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

17 ~~SEC. 16.~~

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

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

31 (b) A plea or verdict of guilty or a conviction following a plea
 32 of nolo contendere is deemed to be a conviction within the meaning
 33 of this section. Discipline may be ordered against a licensee in
 34 accordance with the laws and regulations of the healing arts board
 35 or the board may order the denial of the license when the time for
 36 appeal has elapsed or the judgment of conviction has been affirmed
 37 on appeal or when an order granting probation is made suspending
 38 imposition of sentence, irrespective of a subsequent order under
 39 the provisions of Section 1203.4 of the Penal Code allowing that
 40 person to withdraw his or her plea of guilty and to enter a plea of

1 not guilty, or setting aside the verdict of guilty, or dismissing the
 2 accusation, complaint, information, or indictment.

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

7 ~~SEC. 17.~~

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

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

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

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

29 ~~SEC. 18.~~

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

32 802.1. (a) (1) A licensee of a healing arts board ~~defined under~~
 33 ~~Section 720 shall submit a written report of listed in Section 720~~
 34 shall report any of the following to the entity that issued his or her
 35 license:

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

38 (B) The arrest of the licensee.

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

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

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

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

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

17 *802.2. A licensee of a healing arts board listed in Section 720*
18 *shall identify himself or herself as a licensee of the board to law*
19 *enforcement and the court upon being arrested or charged with a*
20 *misdemeanor or felony. The healing arts boards shall inform its*
21 *licensees of this requirement.*

22 ~~SEC. 19.~~

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

25 803. (a) Except as provided in subdivision (b), within 10 days
26 after a judgment by a court of this state that a person who holds a
27 license, certificate, or other similar authority from a healing arts
28 board ~~defined listed~~ in Section 720, has committed a crime, or is
29 liable for any death or personal injury resulting in a judgment for
30 an amount in excess of thirty thousand dollars (\$30,000) caused
31 by his or her negligence, error or omission in practice, or his or
32 her rendering unauthorized professional services, the clerk of the
33 court that rendered the judgment shall report that fact to the agency
34 that issued the license, certificate, or other similar authority.

35 (b) For purposes of a physician and surgeon, osteopathic
36 physician and surgeon, or doctor of podiatric medicine, who is
37 liable for any death or personal injury resulting in a judgment of
38 any amount caused by his or her negligence, error or omission in
39 practice, or his or her rendering unauthorized professional services,

1 the clerk of the court that rendered the judgment shall report that
2 fact to the board that issued the license.

3 ~~SEC. 20.~~

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

6 803.5. (a) The district attorney, city attorney, or other
7 prosecuting agency shall notify the *appropriate* healing arts board
8 ~~defined listed~~ in Section 720 and the clerk of the court in which
9 the charges have been filed, of any filings against a licensee of
10 that board charging a felony immediately upon obtaining
11 information that the defendant is a licensee of the board. The notice
12 shall identify the licensee and describe the crimes charged and the
13 facts alleged. The prosecuting agency shall also notify the clerk
14 of the court in which the action is pending that the defendant is a
15 licensee, and the clerk shall record prominently in the file that the
16 defendant holds a license from one of the boards described above.

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

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

23 ~~803.6. (a) The clerk of the court shall transmit any felony~~
24 ~~preliminary hearing transcript concerning a defendant licensee to~~
25 ~~the appropriate healing arts boards defined in Section 720 where~~
26 ~~the total length of the transcript is under 800 pages and shall notify~~
27 ~~the appropriate board of any proceeding where the transcript~~
28 ~~exceeds that length.~~

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

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

35 803.6. (a) The clerk of the court shall transmit any felony
36 preliminary hearing transcript concerning a defendant licensee to
37 the ~~Medical Board of California, the Osteopathic Medical Board~~
38 ~~of California, the California Board of Podiatric Medicine, or other~~
39 ~~appropriate allied health board, as applicable; appropriate healing~~
40 ~~arts board listed in Section 720 where the total length of the~~

1 transcript is under 800 pages and shall notify the appropriate board
2 of any proceeding where the transcript exceeds that length.

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

7 ~~SEC. 22.~~

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

10 803.7. The Department of Justice shall ensure that subsequent
11 reports authorized to be issued to any board identified in Section
12 101 are submitted to that board within 30 days from notification
13 of subsequent arrests, convictions, or other updates.

14 ~~SEC. 23. Article 15 (commencing with Section 870) is added
15 to Chapter 1 of Division 2 of the Business and Professions Code,
16 to read:~~

17 ~~Article 15. Healing Arts Licensing Fees~~

18
19
20 ~~870. (a) Notwithstanding any provision of law establishing a
21 fee or a fee range in this division, the department may annually
22 establish a maximum fee amount for each healing arts board, as
23 defined in Section 720, adjusted consistent with the California
24 Consumer Price Index.~~

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

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

32 ~~SEC. 24.~~

33 *SEC. 25.* Article 16 (commencing with Section 880) is added
34 to Chapter 1 of Division 2 of the Business and Professions Code,
35 to read:

36 *Article 16. Unlicensed Practice*

37
38
39 880. (a) (1) It is a public offense, punishable by a fine not to
40 exceed one hundred thousand dollars (\$100,000), by imprisonment

1 in a county jail not to exceed one year, or by both that fine and
2 imprisonment, ~~for a person to do any of the following:~~ *for:*

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

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

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

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

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

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

27 1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35,
28 104, 114, 115, 119, 121, 121.5, 125, 125.3, 125.4, 125.6, 125.9,
29 136, 137, 140, 141, 143, 155, 163.5, 461, 462, 475, 480, 484, 485,
30 487, 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512,
31 701, 702, 703, 704, 710, 716, 720.2, 720.4, 720.8, 720.10, 720.12,
32 720.14, 720.16, 720.18, 720.20, 720.22, 720.24, 720.28, 720.30,
33 720.32, 720.35, 720.36, 730.5, 731, ~~and 734, 735, 736, 737, 802.1,
34 803, 803.5, 803.6, 803.7, 851, and 880~~ are applicable to persons
35 licensed by the State Board of Chiropractic Examiners under the
36 Chiropractic Act.

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

39 1006. (a) *Notwithstanding any other provision of law, upon
40 receipt of evidence that a licensee of the State Board of*

1 *Chiropractic Examiners has engaged in conduct that poses an*
2 *imminent risk of serious harm to the public health, safety, or*
3 *welfare, the executive officer may issue a temporary order that*
4 *the licensee cease all practice and activities that require a license*
5 *by the board.*

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

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

16 *(d) Any temporary order to cease practice issued pursuant to*
17 *this section shall automatically be vacated within 90 days of*
18 *issuance, or until the board files a petition pursuant to Section*
19 *494 for an interim suspension order and the petition is denied or*
20 *granted, whichever occurs first.*

21 *(e) A licensee who fails or refuses to comply with a temporary*
22 *order of the executive officer to cease practice pursuant to this*
23 *section shall be subject to disciplinary action to revoke or suspend*
24 *his or her license and by the board and an administrative fine*
25 *assessed by the board not to exceed twenty-five thousand dollars*
26 *(\$25,000). The remedies provided herein are in addition to any*
27 *other authority of the board to sanction a licensee for practicing*
28 *or engaging in activities subject to the jurisdiction of the board*
29 *without proper legal authority.*

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

37 *(g) Any order to cease practice including an order pursuant to*
38 *Section 494 shall be displayed on the board's Internet Web site,*
39 *except that if the executive officer vacates the suspension order*

1 *pursuant to subdivision (e), the petition and order shall be removed*
2 *from the respective board's Internet Web site.*

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

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

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

16 *1007. (a) The State Board of Chiropractic Examiners shall*
17 *report annually to the Legislature, not later than October 1 of*
18 *each year, the following information:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 ~~SEC. 25.~~

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

25 1699.2. This article shall remain in effect only until January
26 1, 2013, and as of that date is repealed, unless a later enacted
27 statute, that is enacted before January 1, 2013, deletes or extends
28 that date.

29 ~~SEC. 26.~~

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

32 2372. This article shall remain in effect only until January 1,
33 2013, and as of that date is repealed, unless a later enacted statute,
34 that is enacted before January 1, 2013, deletes or extends that date.

35 ~~SEC. 27.~~

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

38 2669.2. This article shall remain in effect only until January
39 1, 2013, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2013, deletes or extends
2 that date.

3 ~~SEC. 28.~~

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

6 2715. The board shall prosecute all persons guilty of violating
7 the provisions of this chapter.

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

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

20 ~~SEC. 29.~~

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

23 2770.18. This article shall remain in effect only until January
24 1, 2013, and as of that date is repealed, unless a later enacted
25 statute, that is enacted before January 1, 2013, deletes or extends
26 that date.

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

29 2815.6. (a) *It is the intent of the Legislature that,*
30 *notwithstanding Section 128.5, in order to maintain an appropriate*
31 *fund reserve, and in setting fees pursuant to this chapter, the Board*
32 *of Registered Nursing shall seek to maintain a reserve in the Board*
33 *of Registered Nursing Fund of not less than three and no more*
34 *than six months’ operating expenditures.*

35 ~~SEC. 30.~~

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

38 3534.12. This article shall remain in effect only until January
39 1, 2013, and as of that date is repealed, unless a later enacted

1 statute, that is enacted before January 1, 2013, deletes or extends
2 that date.

3 ~~SEC. 31.~~

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

6 4375. This article shall remain in effect only until January 1,
7 2013, and as of that date is repealed, unless a later enacted statute,
8 that is enacted before January 1, 2013, deletes or extends that date.

9 ~~SEC. 32.~~

10 ~~SEC. 37.~~ Section 4873.2 is added to the Business and
11 Professions Code, to read:

12 4873.2. This article shall remain in effect only until January
13 1, 2013, and as of that date is repealed, unless a later enacted
14 statute, that is enacted before January 1, 2013, deletes or extends
15 that date.

16 ~~SEC. 33.~~ Section 12529 of the Government Code, as amended
17 by Section 8 of Chapter 505 of the Statutes of 2009, is amended
18 to read:

19 ~~12529. (a) There is in the Department of Justice the Health~~
20 ~~Quality Enforcement Section. The primary responsibility of the~~
21 ~~section is to investigate and prosecute proceedings against licensees~~
22 ~~and applicants within the jurisdiction of the Medical Board of~~
23 ~~California, the California Board of Podiatric Medicine, the Board~~
24 ~~of Psychology, any committee under the jurisdiction of the Medical~~
25 ~~Board of California, or any other healing arts board, as defined in~~
26 ~~Section 720 of the Business and Professions Code, as requested~~
27 ~~by the executive officer of that board.~~

28 ~~(b) The Attorney General shall appoint a Senior Assistant~~
29 ~~Attorney General of the Health Quality Enforcement Section. The~~
30 ~~Senior Assistant Attorney General of the Health Quality~~
31 ~~Enforcement Section shall be an attorney in good standing licensed~~
32 ~~to practice in the State of California, experienced in prosecutorial~~
33 ~~or administrative disciplinary proceedings and competent in the~~
34 ~~management and supervision of attorneys performing those~~
35 ~~functions.~~

36 ~~(c) The Attorney General shall ensure that the Health Quality~~
37 ~~Enforcement Section is staffed with a sufficient number of~~
38 ~~experienced and able employees that are capable of handling the~~
39 ~~most complex and varied types of disciplinary actions against the~~
40 ~~licensees of the boards.~~

1 ~~(d) Funding for the Health Quality Enforcement Section shall~~
2 ~~be budgeted in consultation with the Attorney General from the~~
3 ~~special funds financing the operations of the Medical Board of~~
4 ~~California, the California Board of Podiatric Medicine, the Board~~
5 ~~of Psychology, the committees under the jurisdiction of the Medical~~
6 ~~Board of California, and any other healing arts board, as defined~~
7 ~~in Section 720 of the Business and Professions Code, with the~~
8 ~~intent that the expenses be proportionally shared as to services~~
9 ~~rendered.~~

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

13 ~~SEC. 34.~~ Section 12529 of the Government Code, as amended
14 by Section 9 of Chapter 505 of the Statutes of 2009, is amended
15 to read:

16 ~~12529. (a) There is in the Department of Justice the Health~~
17 ~~Quality Enforcement Section. The primary responsibility of the~~
18 ~~section is to prosecute proceedings against licensees and applicants~~
19 ~~within the jurisdiction of the Medical Board of California, the~~
20 ~~California Board of Podiatric Medicine, the Board of Psychology,~~
21 ~~any committee under the jurisdiction of the Medical Board of~~
22 ~~California, or any other healing arts board, as defined in Section~~
23 ~~720 of the Business and Professions Code, as requested by the~~
24 ~~executive officer of that board, and to provide ongoing review of~~
25 ~~the investigative activities conducted in support of those~~
26 ~~prosecutions, as provided in subdivision (b) of Section 12529.5.~~

27 ~~(b) The Attorney General shall appoint a Senior Assistant~~
28 ~~Attorney General of the Health Quality Enforcement Section. The~~
29 ~~Senior Assistant Attorney General of the Health Quality~~
30 ~~Enforcement Section shall be an attorney in good standing licensed~~
31 ~~to practice in the State of California, experienced in prosecutorial~~
32 ~~or administrative disciplinary proceedings and competent in the~~
33 ~~management and supervision of attorneys performing those~~
34 ~~functions.~~

35 ~~(c) The Attorney General shall ensure that the Health Quality~~
36 ~~Enforcement Section is staffed with a sufficient number of~~
37 ~~experienced and able employees that are capable of handling the~~
38 ~~most complex and varied types of disciplinary actions against the~~
39 ~~licensees of the boards.~~

1 (d) Funding for the Health Quality Enforcement Section shall
 2 be budgeted in consultation with the Attorney General from the
 3 special funds financing the operations of the Medical Board of
 4 California, the California Board of Podiatric Medicine, the Board
 5 of Psychology, the committees under the jurisdiction of the Medical
 6 Board of California, and any other healing arts board, as defined
 7 in Section 720 of the Business and Professions Code, with the
 8 intent that the expenses be proportionally shared as to services
 9 rendered.

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

11 SEC. 35. Section 12529.5 of the Government Code, as amended
 12 by Section 10 of Chapter 505 of the Statutes of 2009, is amended
 13 to read:

14 12529.5. (a) All complaints or relevant information concerning
 15 licensees that are within the jurisdiction of the Medical Board of
 16 California, the California Board of Podiatric Medicine, or the
 17 Board of Psychology shall be made available to the Health Quality
 18 Enforcement Section. Complaints or relevant information may be
 19 referred to the Health Quality Enforcement Section as determined
 20 by the executive officer of any other healing arts board, as defined
 21 in Section 720 of the Business and Professions Code.

22 (b) The Senior Assistant Attorney General of the Health Quality
 23 Enforcement Section shall assign attorneys to work on location at
 24 the intake unit of the Medical Board of California, the California
 25 Board of Podiatric Medicine, or the Board of Psychology, and
 26 shall assign attorneys to work on location at the Health Quality
 27 Enforcement Unit of the Division of Investigation of the
 28 Department of Consumer Affairs to assist in evaluating and
 29 screening complaints and to assist in developing uniform standards
 30 and procedures for processing complaints.

31 (c) The Senior Assistant Attorney General or his or her deputy
 32 attorneys general shall assist the boards, committees, and the
 33 Division of Investigation in designing and providing initial and
 34 in-service training programs for staff of the boards or committees,
 35 including, but not limited to, information collection and
 36 investigation.

37 (d) The determination to bring a disciplinary proceeding against
 38 a licensee of the boards shall be made by the executive officer of
 39 the boards or committees as appropriate in consultation with the
 40 senior assistant.

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

4 SEC. 36. Section 12529.5 of the Government Code, as amended
 5 by Section 11 of Chapter 505 of the Statutes of 2009, is amended
 6 to read:

7 12529.5. (a) All complaints or relevant information concerning
 8 licensees that are within the jurisdiction of the Medical Board of
 9 California, the California Board of Podiatric Medicine, or the
 10 Board of Psychology shall be made available to the Health Quality
 11 Enforcement Section. Complaints or relevant information may be
 12 referred to the Health Quality Enforcement Section as determined
 13 by the executive officer of any other healing arts board, as defined
 14 in Section 720 of the Business and Professions Code.

15 (b) The Senior Assistant Attorney General of the Health Quality
 16 Enforcement Section shall assign attorneys to assist the boards in
 17 intake and investigations, shall assign attorneys to work on location
 18 at the Health Quality Enforcement Unit of the Division of
 19 Investigation of the Department of Consumer Affairs, and to direct
 20 discipline-related prosecutions. Attorneys shall be assigned to
 21 work closely with each major intake and investigatory unit of the
 22 boards, to assist in the evaluation and screening of complaints from
 23 receipt through disposition and to assist in developing uniform
 24 standards and procedures for the handling of complaints and
 25 investigations.

26 A deputy attorney general of the Health Quality Enforcement
 27 Section shall frequently be available on location at each of the
 28 working offices at the major investigation centers of the boards,
 29 to provide consultation and related services and engage in case
 30 review with the boards' investigative, medical advisory, and intake
 31 staff and the Division of Investigation. The Senior Assistant
 32 Attorney General and deputy attorneys general working at his or
 33 her direction shall consult as appropriate with the investigators of
 34 the boards, medical advisors, and executive staff in the
 35 investigation and prosecution of disciplinary cases.

36 (c) The Senior Assistant Attorney General or his or her deputy
 37 attorneys general shall assist the boards or committees in designing
 38 and providing initial and in-service training programs for staff of
 39 the boards or committees, including, but not limited to, information
 40 collection and investigation.

1 ~~(d) The determination to bring a disciplinary proceeding against~~
2 ~~a licensee of the boards shall be made by the executive officer of~~
3 ~~the boards or committees as appropriate in consultation with the~~
4 ~~senior assistant.~~

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

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

8 ~~12529.6. (a) The Legislature finds and declares that the healing~~
9 ~~arts boards, as defined in Section 720 of the Business and~~
10 ~~Professions Code, by ensuring the quality and safety of health care,~~
11 ~~perform one of the most critical functions of state government.~~
12 ~~Because of the critical importance of a board's public health and~~
13 ~~safety function, the complexity of cases involving alleged~~
14 ~~misconduct by health care practitioners, and the evidentiary burden~~
15 ~~in a healing arts board's disciplinary cases, the Legislature finds~~
16 ~~and declares that using a vertical enforcement and prosecution~~
17 ~~model for those investigations is in the best interests of the people~~
18 ~~of California.~~

19 ~~(b) Notwithstanding any other provision of law, each complaint~~
20 ~~that is referred to a district office of the Medical Board of~~
21 ~~California, the California Board of Podiatric Medicine, the Board~~
22 ~~of Psychology, or the Health Quality Enforcement Unit for~~
23 ~~investigation shall be simultaneously and jointly assigned to an~~
24 ~~investigator and to the deputy attorney general in the Health Quality~~
25 ~~Enforcement Section responsible for prosecuting the case if the~~
26 ~~investigation results in the filing of an accusation. The joint~~
27 ~~assignment of the investigator and the deputy attorney general~~
28 ~~shall exist for the duration of the disciplinary matter. During the~~
29 ~~assignment, the investigator so assigned shall, under the direction~~
30 ~~but not the supervision of the deputy attorney general, be~~
31 ~~responsible for obtaining the evidence required to permit the~~
32 ~~Attorney General to advise the board on legal matters such as~~
33 ~~whether the board should file a formal accusation, dismiss the~~
34 ~~complaint for a lack of evidence required to meet the applicable~~
35 ~~burden of proof, or take other appropriate legal action.~~

36 ~~(c) The Medical Board of California, the Department of~~
37 ~~Consumer Affairs, and the Office of the Attorney General shall,~~
38 ~~if necessary, enter into an interagency agreement to implement~~
39 ~~this section.~~

1 ~~(d) This section does not affect the requirements of Section~~
2 ~~12529.5 as applied to the Medical Board of California where~~
3 ~~complaints that have not been assigned to a field office for~~
4 ~~investigation are concerned.~~

5 ~~(e) It is the intent of the Legislature to enhance the vertical~~
6 ~~enforcement and prosecution model as set forth in subdivision (a):~~
7 ~~The Medical Board of California shall do all of the following:~~

8 ~~(1) Increase its computer capabilities and compatibilities with~~
9 ~~the Health Quality Enforcement Section in order to share case~~
10 ~~information.~~

11 ~~(2) Establish and implement a plan to collocate, when feasible,~~
12 ~~its enforcement staff and the staff of the Health Quality~~
13 ~~Enforcement Section, in order to carry out the intent of the vertical~~
14 ~~enforcement and prosecution model.~~

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

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

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

24 ~~12529.7. By March 1, 2012, the Department of Consumer~~
25 ~~Affairs, in consultation with the healing arts boards, as defined in~~
26 ~~Section 720 of the Business and Professions Code, and the~~
27 ~~Department of Justice, shall report and make recommendations to~~
28 ~~the Governor and the Legislature on the vertical enforcement and~~
29 ~~prosecution model created under Section 12529.6.~~

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

32 ~~12529.8. (a) Any healing arts board listed in Section 720 of~~
33 ~~the Business and Professions Code may utilize the model~~
34 ~~prescribed in Sections 12529 to 12529.6, inclusive, for the~~
35 ~~investigation and prosecution of some or all of its enforcement~~
36 ~~actions and may utilize the services of the Department of Justice~~
37 ~~Health Quality Enforcement Section or the licensing section. If a~~
38 ~~board elects to proceed pursuant to this section and utilizes the~~
39 ~~services of the licensing section, the Department of Justice shall~~

1 *assign attorneys to work on location at the licensing unit of the*
2 *Division of Investigation of the Department of Consumer Affairs.*

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

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

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

9 830.3. The following persons are peace officers whose authority
10 extends to any place in the state for the purpose of performing
11 their primary duty or when making an arrest pursuant to Section
12 836 of the Penal Code as to any public offense with respect to
13 which there is immediate danger to person or property, or of the
14 escape of the perpetrator of that offense, or pursuant to Section
15 8597 or 8598 of the Government Code. These peace officers may
16 carry firearms only if authorized and under those terms and
17 conditions as specified by their employing agencies:

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

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

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

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

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

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

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

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

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

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

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

39 (l) Investigators of the Department of Corporations designated
40 by the Commissioner of Corporations, provided that the primary

1 duty of these investigators shall be the enforcement of the
2 provisions of law administered by the Department of Corporations.
3 Notwithstanding any other provision of law, the peace officers
4 designated pursuant to this subdivision shall not carry firearms.

5 (m) Persons employed by the Contractors' State License Board
6 designated by the Director of Consumer Affairs pursuant to Section
7 7011.5 of the Business and Professions Code, provided that the
8 primary duty of these persons shall be the enforcement of the law
9 as that duty is set forth in Section 7011.5, and in Chapter 9
10 (commencing with Section 7000) of Division 3, of that code. The
11 Director of Consumer Affairs may designate as peace officers not
12 more than three persons who shall at the time of their designation
13 be assigned to the special investigations unit of the board.
14 Notwithstanding any other provision of law, the persons designated
15 pursuant to this subdivision shall not carry firearms.

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

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

25 (p) The Deputy Director for Security designated by Section
26 8880.38 of the Government Code, and all lottery security personnel
27 assigned to the California State Lottery and designated by the
28 director, provided that the primary duty of any of those peace
29 officers shall be the enforcement of the laws related to ~~assuring~~
30 *ensuring* the integrity, honesty, and fairness of the operation and
31 administration of the California State Lottery.

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

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

39 (r) The chief and assistant chief of museum security and safety
40 of the California Science Center, as designated by the executive

1 director pursuant to Section 4108 of the Food and Agricultural
2 Code, provided that the primary duty of those peace officers shall
3 be the enforcement of the law as that duty is set forth in Section
4 4108 of the Food and Agricultural Code.

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

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

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

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

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

31 SEC. 40. (a) It is the intent of the Legislature that the
32 Department of Consumer Affairs shall, on or before December
33 31, 2012, establish an enterprise information technology system
34 necessary to electronically create and update healing arts license
35 information, track enforcement cases, and allocate enforcement
36 efforts pertaining to healing arts licensees. The Legislature intends
37 the system to be designed as an integrated system to support all
38 business automation requirements of the department's licensing
39 and enforcement functions.

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

5 SEC. 41. No reimbursement is required by this act pursuant
6 to Section 6 of Article XIII B of the California Constitution for
7 certain costs that may be incurred by a local agency or school
8 district because, in that regard, this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.

14 However, if the Commission on State Mandates determines that
15 this act contains other costs mandated by the state, reimbursement
16 to local agencies and school districts for those costs shall be made
17 pursuant to Part 7 (commencing with Section 17500) of Division
18 4 of Title 2 of the Government Code.

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1171

Introduced by Senator Negrete McLeod

February 18, 2010

An act to amend Sections 22, 473.1, 473.15, 473.2, 473.3, 473.4, 473.6, and 9882 of, to add Sections 473.12 and 473.7 to, to repeal Sections 473.16 and 473.5 of, and to repeal and add Sections 101.1 and 473 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 1171, as amended, Negrete McLeod. Regulatory boards: operations.

Existing law creates various regulatory boards, as defined, within the Department of Consumer Affairs, with board members serving specified terms of office. Existing law generally makes the regulatory boards inoperative and repealed on specified dates, unless those dates are deleted or extended by subsequent legislation, and subjects these boards that are scheduled to become inoperative and repealed as well as other boards in state government, as specified, to review by the Joint Committee on Boards, Commissions, and Consumer Protection. Under existing law, that committee, following a specified procedure, recommends whether the board should be continued or its functions modified. Existing law requires the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California to submit certain analyses and reports to the committee on specified dates and requires the committee to review those boards and hold hearings as specified, and to make certain evaluations and findings.

This bill would abolish the Joint Committee on Boards, Commissions, and Consumer Protection and would authorize the appropriate policy

committees of the Legislature to carry out its duties. The bill would terminate the terms of office of each board member or bureau chief within the department on unspecified dates and would authorize successor board members and bureau chiefs to be appointed, as specified. The bill would also subject interior design organizations, the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, the Tax Education Council, and the Naturopathic Medical Committee, and the certification of common interest development managers and massage therapists to review on unspecified dates. The bill would authorize the appropriate policy committees of the Legislature to review the boards, bureaus, or entities that are scheduled to have their board membership or bureau chief so terminated or reviewed, as specified, and would authorize the appropriate policy committees of the Legislature to investigate their operations and to hold specified public hearings. The bill would require a board, bureau, or entity, if its annual report contains certain information, to post that report on its Internet Web site. The bill would make other conforming changes.

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

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

- 1 SECTION 1. Section 22 of the Business and Professions Code
- 2 is amended to read:
- 3 22. "Board," as used in any provision of this code, refers to
- 4 the board in which the administration of the provision is vested,
- 5 and unless otherwise expressly provided, shall include "bureau,"
- 6 "commission," "committee," "department," "division," "examining
- 7 committee," "program," and "agency."
- 8 SEC. 2. Section 101.1 of the Business and Professions Code
- 9 is repealed.
- 10 SEC. 3. Section 101.1 is added to the Business and Professions
- 11 Code, to read:
- 12 101.1. (a) Notwithstanding any other provision of law, if the
- 13 terms of office of the members of a board are terminated in
- 14 accordance with the act that added this section or by subsequent
- 15 acts, successor members shall be appointed that shall succeed to,
- 16 and be vested with, all the duties, powers, purposes,
- 17 responsibilities, and jurisdiction not otherwise repealed or made
- 18 inoperative of the members that they are succeeding. The successor

1 members shall be appointed by the same appointing authorities,
2 for the remainder of the previous members' terms, and shall be
3 subject to the same membership requirements as the members they
4 are succeeding.

5 (b) Notwithstanding any other provision of law, if the term of
6 office for a bureau chief is terminated in accordance with the act
7 that added this section or by subsequent acts, a successor bureau
8 chief shall be appointed who shall succeed to, and be vested with,
9 all the duties, powers, purposes, responsibilities, and jurisdiction
10 not otherwise repealed or made inoperative of the bureau chief
11 that he or she is succeeding. The successor bureau chief shall be
12 appointed by the same appointing authorities, ~~for the remainder~~
13 ~~of the previous bureau chief's term,~~ authority and shall be subject
14 to the same requirements as the bureau chief he or she is
15 succeeding.

16 SEC. 4. Section 473 of the Business and Professions Code is
17 repealed.

18 SEC. 5. Section 473 is added to the Business and Professions
19 Code, to read:

20 473. Whenever the provisions of this code refer to the Joint
21 Committee on Boards, Commissions, and Consumer Protection,
22 the reference shall be construed to be a reference to the appropriate
23 policy committees of the Legislature.

24 SEC. 6. Section 473.1 of the Business and Professions Code
25 is amended to read:

26 473.1. This chapter shall apply to all of the following:

27 (a) Every board, as defined in Section 22, that is scheduled to
28 have its membership reconstituted on a specified date as provided
29 by subdivision (a) of Section 473.12.

30 (b) Every bureau that is named in subdivision (b) of Section
31 473.12.

32 (c) Every entity that is named in subdivision (c) of Section
33 473.12.

34 SEC. 7. Section 473.12 is added to the Business and Professions
35 Code, to read:

36 473.12. (a) Notwithstanding any other provision of law, the
37 term of office of each member of the following boards in the
38 department shall terminate on the date listed, unless a later enacted
39 statute, that is enacted before the date listed for that board, deletes
40 or extends that date:

- 1 (1) The Dental Board of California: January 1, ____.
- 2 (2) The Medical Board of California: January 1, ____.
- 3 (3) The State Board of Optometry: January 1, ____.
- 4 (4) The California State Board of Pharmacy: January 1, ____.
- 5 (5) The Veterinary Medical Board: January 1, ____.
- 6 (6) The California Board of Accountancy: January 1, ____.
- 7 (7) The California Architects Board: January 1, ____.
- 8 (8) The State Board of Barbering and Cosmetology: January 1,

9
10 (9) The Board for Professional Engineers and Land Surveyors:
11 January 1, ____.

12 (10) The Contractors' State License Board: January 1, ____.

13 (11) The Board of Registered Nursing: January 1, ____.

14 (12) The Board of Behavioral Sciences: January 1, ____.

15 (13) The State Athletic Commission: January 1, ____.

16 (14) The State Board of Guide Dogs for the Blind: January 1,

17
18 (15) The Court Reporters Board of California: January 1, ____.

19 (16) The Board of Vocational Nursing and Psychiatric
20 Technicians: January 1, ____.

21 (17) The Landscape Architects Technical Committee: January
22 1, ____.

23 (18) The Respiratory Care Board of California: January 1, ____.

24 (19) The Acupuncture Board: January 1, ____.

25 (20) The Board of Psychology: January 1, ____.

26 (21) The California Board of Podiatric Medicine: January 1,

27
28 (22) The Physical Therapy Board of California: January 1, ____.

29 (23) The Physician Assistant Committee of the Medical Board
30 of California: January 1, ____.

31 (24) The Speech-Language Pathology and Audiology and
32 Hearing Aid Dispensers Board: January 1, ____.

33 (25) The California Board of Occupational Therapy: January
34 1, ____.

35 (26) The Dental Hygiene Committee of California: January 1,
36

37 (b) Notwithstanding any other provision of law, the term of
38 office for the bureau chief of each of the following bureaus shall
39 terminate on the date listed, unless a later enacted statute, that is

1 enacted before the date listed for that bureau, deletes or extends
2 that date:

- 3 (1) Arbitration Review Program: January 1, ____.
- 4 (2) Bureau for Private Postsecondary Education: January 1,
- 5 ____.
- 6 (3) Bureau of Automotive Repair: January 1, ____.
- 7 (4) Bureau of Electronic and Appliance Repair, Home
- 8 Furnishings and Thermal Insulation: January 1, ____.
- 9 (5) Bureau of Security and Investigative Services: January 1,
- 10 ____.
- 11 (6) Cemetery and Funeral Bureau: January 1, ____.
- 12 (7) Professional Fiduciaries Bureau: January 1, ____.
- 13 (8) Telephone Medical Advice Services Bureau: January 1,
- 14 ____.

15 (9) Division of Investigation: January 1, ____.

16 (c) Notwithstanding any other provision of law, the following
17 shall be subject to review under this chapter on the following dates:

- 18 (1) Interior design certification organizations: January 1, ____.
- 19 (2) State Board of Chiropractic Examiners pursuant to Section
- 20 473.15: January 1, ____.
- 21 (3) Osteopathic Medical Board of California pursuant to Section
- 22 473.15: January 1, ____.
- 23 (4) California Tax Education Council: January 1, ____.
- 24 (5) Naturopathic Medicine Committee, Osteopathic Medical
- 25 Board of California: January 1, ____.

26 (6) *Common interest development manager certification:*

27 *January 1, ____.*

28 (7) *Massage therapy certification law: January 1, ____.*

29 (d) Nothing in this section or in Section 101.1 shall be construed
30 to preclude, prohibit, or in any manner alter the requirement of
31 Senate confirmation of a board member, chief officer, or other
32 appointee that is subject to confirmation by the Senate as otherwise
33 required by law.

34 (e) It is not the intent of the Legislature in enacting this section
35 to amend the initiative measure that established the State Board
36 of Chiropractic Examiners or the Osteopathic Medical Board of
37 California.

38 SEC. 8. Section 473.15 of the Business and Professions Code
39 is amended to read:

1 473.15. (a) The appropriate policy committees of the
2 Legislature shall review the following boards established by
3 initiative measures, as provided in this section:

4 (1) The State Board of Chiropractic Examiners established by
5 an initiative measure approved by electors November 7, 1922.

6 (2) The Osteopathic Medical Board of California established
7 by an initiative measure approved June 2, 1913, and acts
8 amendatory thereto approved by electors November 7, 1922.

9 (b) The Osteopathic Medical Board of California shall prepare
10 an analysis and submit a report as described in subdivision (a) of
11 Section 473.2, to the appropriate policy committees of the
12 Legislature on or before September 1, 2010.

13 (c) The State Board of Chiropractic Examiners shall prepare an
14 analysis and submit a report as described in subdivision (a), of
15 Section 473.2, to the appropriate policy committees of the
16 Legislature on or before September 1, 2011.

17 (d) The appropriate policy committees of the Legislature shall,
18 during the interim recess of 2011, hold public hearings to receive
19 testimony from the Director of Consumer Affairs, the Osteopathic
20 Medical Board of California, the State Board of Chiropractic
21 Examiners, the public, and the regulated industry. In those hearings,
22 each board shall be prepared to demonstrate a compelling public
23 need for the continued existence of the board or regulatory
24 program, and that its licensing function is the least restrictive
25 regulation consistent with the public health, safety, and welfare.

26 (e) The appropriate policy committees of the Legislature shall
27 evaluate and make determinations pursuant to Section 473.4.

28 (f) In the exercise of its inherent power to make investigations
29 and ascertain facts to formulate public policy and determine the
30 necessity and expediency of contemplated legislation for the
31 protection of the public health, safety, and welfare, it is the intent
32 of the Legislature that the State Board of Chiropractic Examiners
33 and the Osteopathic Medical Board of California be reviewed
34 pursuant to this section.

35 (g) It is not the intent of the Legislature in enacting this section
36 to amend the initiative measures that established the State Board
37 of Chiropractic Examiners or the Osteopathic Medical Board of
38 California.

39 SEC. 9. Section 473.16 of the Business and Professions Code
40 is repealed.

1 SEC. 10. Section 473.2 of the Business and Professions Code
2 is amended to read:

3 473.2. (a) All boards or bureaus listed in Section 473.12 shall,
4 with the assistance of the Department of Consumer Affairs, prepare
5 an analysis and submit a report to the appropriate policy
6 committees of the Legislature no later than ~~22~~ 16 months before
7 that board's membership or the bureau chief's term shall be
8 terminated pursuant to Section 473.12. The analysis and report
9 shall include, at a minimum, all of the following:

10 (1) The number of complaints it received per year, the number
11 of complaints per year that proceeded to investigation, the number
12 of accusations filed per year, and the number and kind of
13 disciplinary actions taken, including, but not limited to, interim
14 suspension orders, revocations, probations, and suspensions.

15 (2) The average amount of time per year that elapsed between
16 receipt of a complaint and the complaint being closed or referred
17 to investigation; the average amount of time per year elapsed
18 between the commencement of an investigation and the complaint
19 either being closed or an accusation being filed; the average amount
20 of time elapsed per year between the filing of an accusation and a
21 final decision, including appeals; and the average and median costs
22 per case.

23 (3) The average amount of time per year between final
24 disposition of a complaint and notice to the complainant.

25 (4) A copy of the enforcement priorities including criteria for
26 seeking an interim suspension order.

27 (5) A brief description of the board's or bureau's fund
28 conditions, sources of revenues, and expenditure categories for
29 the last four fiscal years by program component.

30 (6) A brief description of the cost per year required to implement
31 and administer its licensing examination, ownership of the license
32 examination, the last assessment of the relevancy and validity of
33 the licensing examination, the passage rate for each of the last four
34 years, and areas of examination.

35 (7) A copy of sponsored legislation and a description of its
36 budget change proposals.

37 (8) A brief assessment as to whether its licensing fees are
38 sufficient, too high, or too low.

39 (9) A brief statement detailing how the board or bureau over
40 the prior four years has improved its enforcement, public

1 disclosure, accessibility to the public, including, but not limited
2 to, Internet Web casts of its proceedings, and fiscal condition.

3 (b) If an annual report contains information that is required by
4 this section, a board or bureau may submit the annual report to the
5 committees and shall post that report on the board's or bureau's
6 Internet Web site.

7 SEC. 11. Section 473.3 of the Business and Professions Code
8 is amended to read:

9 473.3. Prior to the termination of the terms of office of the
10 membership of any board or the chief of any bureau described in
11 Section 473.12, the appropriate policy committees of the
12 Legislature, during the interim recess preceding the date upon
13 which a board member's or bureau chief's term of office is to be
14 terminated, may hold public hearings to receive and consider
15 testimony from the Director of Consumer Affairs, the board or
16 bureau involved, the Attorney General, members of the public,
17 and representatives of the regulated industry regarding whether
18 the board's or bureau's policies and practices, including
19 enforcement, disclosure, licensing examination, and fee structure,
20 are sufficient to protect consumers and are fair to licensees and
21 prospective licensees, whether licensure of the profession is
22 required to protect the public, and whether an enforcement monitor
23 may be necessary to obtain further information on operations.

24 SEC. 12. Section 473.4 of the Business and Professions Code
25 is amended to read:

26 473.4. (a) The appropriate policy committees of the Legislature
27 may evaluate and determine whether a board or regulatory program
28 has demonstrated a public need for the continued existence of the
29 regulatory program and for the degree of regulation the board or
30 regulatory program implements based on the following factors and
31 minimum standards of performance:

32 (1) Whether regulation by the board is necessary to protect the
33 public health, safety, and welfare.

34 (2) Whether the basis or facts that necessitated the initial
35 licensing or regulation of a practice or profession have changed.

36 (3) Whether other conditions have arisen that would warrant
37 increased, decreased, or the same degree of regulation.

38 (4) If regulation of the profession or practice is necessary,
39 whether existing statutes and regulations establish the least
40 restrictive form of regulation consistent with the public interest,

1 considering other available regulatory mechanisms, and whether
2 the board rules enhance the public interest and are within the scope
3 of legislative intent.

4 (5) Whether the board operates and enforces its regulatory
5 responsibilities in the public interest and whether its regulatory
6 mission is impeded or enhanced by existing statutes, regulations,
7 policies, practices, or any other circumstances, including budgetary,
8 resource, and personnel matters.

9 (6) Whether an analysis of board operations indicates that the
10 board performs its statutory duties efficiently and effectively.

11 (7) Whether the composition of the board adequately represents
12 the public interest and whether the board encourages public
13 participation in its decisions rather than participation only by the
14 industry and individuals it regulates.

15 (8) Whether the board and its laws or regulations stimulate or
16 restrict competition, and the extent of the economic impact the
17 board's regulatory practices have on the state's business and
18 technological growth.

19 (9) Whether complaint, investigation, powers to intervene, and
20 disciplinary procedures adequately protect the public and whether
21 final dispositions of complaints, investigations, restraining orders,
22 and disciplinary actions are in the public interest; or if it is, instead,
23 self-serving to the profession, industry, or individuals being
24 regulated by the board.

25 (10) Whether the scope of practice of the regulated profession
26 or occupation contributes to the highest utilization of personnel
27 and whether entry requirements encourage affirmative action.

28 (11) Whether administrative and statutory changes are necessary
29 to improve board operations to enhance the public interest.

30 (b) Nothing in this section precludes any board from submitting
31 other appropriate information to the appropriate policy committees
32 of the Legislature.

33 SEC. 13. Section 473.5 of the Business and Professions Code
34 is repealed.

35 SEC. 14. Section 473.6 of the Business and Professions Code
36 is amended to read:

37 473.6. The chairpersons of the appropriate policy committees
38 of the Legislature may refer to interim study review of any
39 legislative issues or proposals to create new licensure or regulatory
40 categories, change licensing requirements, modify scope of

1 practice, or create a new licensing board under the provisions of
2 this code or pursuant to Chapter 1.5 (commencing with Section
3 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

4 SEC. 15. Section 473.7 is added to the Business and Professions
5 Code, to read:

6 473.7. The appropriate policy committees of the Legislature
7 may, through their oversight function, investigate the operations
8 of any entity to which this chapter applies and hold public hearings
9 on any matter subject to public hearing under Section 473.3.

10 SEC. 16. Section 9882 of the Business and Professions Code
11 is amended to read:

12 9882. (a) There is in the Department of Consumer Affairs a
13 Bureau of Automotive Repair under the supervision and control
14 of the director. The duty of enforcing and administering this chapter
15 is vested in the chief who is responsible to the director. The director
16 may adopt and enforce those rules and regulations that he or she
17 determines are reasonably necessary to carry out the purposes of
18 this chapter and declaring the policy of the bureau, including a
19 system for the issuance of citations for violations of this chapter
20 as specified in Section 125.9. These rules and regulations shall be
21 adopted pursuant to Chapter 3.5 (commencing with Section 11340)
22 of Part 1 of Division 3 of Title 2 of the Government Code.

23 (b) In 2003 and every four years thereafter, the appropriate
24 policy committees of the Legislature may hold a public hearing to
25 receive and consider testimony from the Director of Consumer
26 Affairs, the bureau, the Attorney General, members of the public,
27 and representatives of this industry regarding the bureau's policies
28 and practices as specified in Section 473.3. The appropriate policy
29 committees of the Legislature may evaluate and review the
30 effectiveness and efficiency of the bureau based on factors and
31 minimum standards of performance that are specified in Section
32 473.4. The bureau shall prepare an analysis and submit a report to
33 the appropriate policy committees of the Legislature as specified
34 in Section 473.2.

AMENDED IN SENATE APRIL 27, 2010

AMENDED IN SENATE APRIL 12, 2010

SENATE BILL

No. 1172

Introduced by Senator Negrete McLeod

February 18, 2010

An act to amend Section 156.1 of, and to add Sections 315.2, 315.4, and 315.6 to, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Negrete McLeod. Regulatory boards: diversion programs.

(1) Existing law provides for the regulation of specified professions and vocations by various boards, as defined, within the Department of Consumer Affairs. Under existing law, individuals or entities contracting with the department or any board within the department for the provision of services relating to the treatment and rehabilitation of licentiates impaired by alcohol or dangerous drugs are required to retain all records and documents pertaining to those services for 3 years or until they are audited, whichever occurs first. Under existing law, those records and documents are required to be kept confidential and are not subject to discovery or subpoena.

This bill would specify that those records and documents shall be kept for 3 years and are not subject to discovery or subpoena unless otherwise expressly provided by law ~~and would prohibit the licentiate from waiving confidentiality~~. The bill would require the department or board contracting for those services to have an audit conducted at least once every 3 years by a specified independent reviewer or review team, would require that reviewer or review team to prepare an audit report

and to submit it to the Legislature, the department, and the board by June 30 every 3 years, with the first report due in 2013, and would require the department, the contract vendor, and the board to respond to the report, as specified.

(2) Existing law provides for the licensure and regulation of various healing arts by boards within the Department of Consumer Affairs. Under existing law, these boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against their licensees.

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

The bill would require a healing arts board to order a licensee to cease practice if the licensee tests positive for any prohibited substance under the terms of the licensee's probation or diversion program. The bill would also authorize a board to adopt regulations authorizing it to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation, as specified. Except as provided, the bill would prohibit a healing arts board from disclosing to the public that a licensee is participating in a board diversion program.

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

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

1 SECTION 1. Section 156.1 of the Business and Professions
2 Code is amended to read:
3 156.1. (a) Notwithstanding any other provision of law,
4 individuals or entities contracting with the department or any board
5 within the department for the provision of services relating to the
6 treatment and rehabilitation of licentiates impaired by alcohol or
7 dangerous drugs shall retain all records and documents pertaining
8 to those services until such time as these records and documents
9 have been reviewed for audit pursuant to subdivision (c). These
10 records and documents shall be retained for three years from the
11 date of the last treatment or service rendered to that licentiate, after

1 which time the records and documents may be purged and
2 destroyed by the contract vendor. This provision shall supersede
3 any other provision of law relating to the purging or destruction
4 of records pertaining to those treatment and rehabilitation
5 programs.

6 (b) Unless otherwise expressly provided by statute or regulation,
7 all records and documents pertaining to services for the treatment
8 and rehabilitation of licentiates impaired by alcohol or dangerous
9 drugs provided by any contract vendor to the department or to any
10 board within the department shall be kept confidential and are not
11 subject to discovery or subpoena. ~~A licentiate may not waive~~
12 ~~confidentiality pursuant to this subdivision.~~

13 (c) (1) An external independent audit of an individual or entity
14 contracting with the department pursuant to subdivision (a) shall
15 be conducted at least once every three years by a qualified,
16 independent reviewer or review team from outside the department
17 with no real or apparent conflict of interest with the contractor
18 providing the services. The independent reviewer or review team
19 shall be competent in the professional practice of internal auditing
20 and assessment processes.

21 (2) The independent reviewer or review team shall prepare an
22 audit report that assesses the contractor's performance in adhering
23 to any standards established by the department or the board and
24 shall submit that report to the Legislature, the department, and the
25 board by June 30 every three years, with the first report due in
26 2013. The audit report shall make findings and identify any
27 material inadequacies, deficiencies, irregularities, or any other
28 noncompliance with the terms of the contract.

29 (3) The department, contract vendor, and the board shall respond
30 to the assessment and findings in the audit report prior to
31 submission to the Legislature.

32 (d) With respect to all other contracts for services with the
33 department or any board within the department other than those
34 set forth in subdivision (a), the director or chief deputy director
35 may request an examination and audit by the department's internal
36 auditor of all performance under the contract. For this purpose, all
37 documents and records of the contract vendor in connection with
38 such performance shall be retained by such vendor for a period of
39 three years after final payment under the contract. Nothing in this
40 section shall affect the authority of the State Auditor to conduct

1 any examination or audit under the terms of Section 8546.7 of the
2 Government Code.

3 SEC. 2. Section 315.2 is added to the Business and Professions
4 Code, to read:

5 315.2. (a) A board, as described in Section 315, shall order a
6 licensee of the board to cease practice if the licensee tests positive
7 for any substance that is prohibited under the terms of the licensee's
8 probation or diversion program.

9 (b) An order to cease practice under this section shall not be
10 governed by the provisions of Chapter 5 (commencing with Section
11 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

12 (c) A cease practice order under this section shall not constitute
13 disciplinary action.

14 ~~(d) A licensee may petition to return to practice pursuant to the~~
15 ~~uniform and specific standards adopted and authorized under~~
16 ~~Section 315.~~

17 SEC. 3. Section 315.4 is added to the Business and Professions
18 Code, to read:

19 315.4. (a) A board, as described in Section 315, may adopt
20 regulations authorizing the board to order a licensee on probation
21 or in a diversion program to cease practice for major violations
22 and when the board orders a licensee to undergo a clinical
23 diagnostic evaluation pursuant to the uniform and specific standards
24 adopted and authorized under Section 315.

25 (b) An order to cease practice under this section shall not be
26 governed by the provisions of Chapter 5 (commencing with Section
27 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

28 (c) A cease practice order under this section shall not constitute
29 disciplinary action.

30 ~~(d) The regulations shall also include provisions for a licensee~~
31 ~~to petition to return to practice pursuant to the uniform and specific~~
32 ~~standards adopted and authorized under Section 315.~~

33 SEC. 4. Section 315.6 is added to the Business and Professions
34 Code, to read:

35 315.6. Unless otherwise authorized by statute or regulation, a
36 board, as described in Section 315, shall not disclose to the public
37 that a licensee is participating in a board diversion program unless
38 participation was ordered as a term of probation. However, a board
39 shall disclose to the public any restrictions that are placed on a
40 licensee's practice as a result of the licensee's participation in a

- 1 board diversion program provided that the disclosure does not
- 2 contain information linking the restriction to the licensee's
- 3 participation in the board's diversion program.

IN-HOUSE REVIEW / PENALTY DETERMINATION

In order to promote cost effectiveness and ensure the availability of funds to prosecute high priority complaints, the Board adopted the following guidelines for Respiratory Care Board staff in reviewing criminal history for applicants and licensees on February 22, 2002.

These are merely in-house guidelines and do not preclude the Board from imposing a different form of discipline. The goal of the in-house review program is to reduce the costs of the Board's enforcement function by providing for proposed discipline with a minimal amount of investigation, staff, attorney and judicial resources, while at the same time carrying out the mission of the Board.

Violation Types

- FRAUD (which can include welfare and other government fraud and misrepresentation and conspiracy to commit fraud);
- THEFT (which can include petty theft, receiving stolen property and trespass);
- ALCOHOL (which can include DUI, reckless driving, public intoxication and other use in violation of law);
- DRUGS (which can include use, possession, and possession for sale);
- BODILY INJURY (which can include domestic violence, assault, battery and attempted battery).

Only the above related offenses qualify for in-house review and determination of penalty as long as no other disqualifying factors or extenuating circumstances are present.

To qualify for in-house review and determination of penalty, the following criteria must be met for the particular offense or applicant:

1. Violations (with the exception of drug offense) must be misdemeanors.
2. A child must not be the victim of the offense.
3. The violation must not have occurred during employment as a health care worker.
4. Bodily injury resulting from the offense must not be to an unknowing victim, innocent bystander or defenseless person.
5. Bodily injury resulting from the offense must not have been the result of premeditation.
6. The offense must not have been extremely violent in nature, and must not have involved harassment or stalking.
7. Felony drug or alcohol offenses may qualify for in-house review and determination of penalty.

Where staff is in doubt as to the propriety of in-house review, the issues presented and the suggested discipline are to be addressed pursuant to previously established enforcement processes. Cases not qualified for this review will be reviewed individually and on a case-by-case basis for suggested discipline.

(continued)

APPLICANT PENALTY DETERMINATION GUIDELINES

No.	Case Type	Proposed Resolution
A-1	One (1) violation older than two (2) years from the date the application is received - excluding drugs	Strong Warning Letter
A-2	Two (2) violations older than five (5) years from the date the application is received - excluding drugs	Strong Warning Letter
A-3	Any violation(s) that does not meet the qualifications in numbers A1-A2	Citation and Fine or Probation
A-4	Multiple violations that show patterned behavior and at least two (2) violations showing that patterned behavior must have occurred within three (3) years from the date that application for licensure is received	Denial
A-5	Perjury on any Respiratory Care Board form that conceals any violation or would in anyway benefit the applicant	Citation and Fine, Probation or Denial

A single incident or occurrence represents one violation.

LICENSE PENALTY DETERMINATION GUIDELINES

No.	Case Type	Proposed Resolution
L-1	One (1) violation (within 7 years) - excluding drugs	Cite and Fine
L-2	One (1) violation for drug use/possession within seven (7) years	Probation (possible cite and fine)
L-3	Two (2) or more violations within seven (7) years	Probation or Revocation (possible cite and fine)
L-4	Multiple violations (generally 3 or more) that show patterned behavior and at least two (2) violations showing that patterned behavior must have occurred within the last five (5) years	Revocation (minimal possibility of probation)
L-5	Perjury on any Respiratory Care Board form that conceals any violation or would in anyway benefit the licensee	Citation and Fine \$1,000 for first offense, \$2,500 thereafter plus any other appropriate discipline

A single incident or occurrence represents one violation.