

Item: **2022 Legislation of Interest**

Item Summary: Following is an update on bills for which the Board previously adopted positions.

**AB 646 (Low) - Board Position: Watch**

Title: DCA: boards: expunged convictions

Status: This bill is dead.

This bill would require a board within the department that has posted on its internet website that a person's license was revoked because the person was convicted of a crime, within 90 days of receiving an expungement order for the underlying offense from the person, if the person reapplies for licensure or is relicensed, to post notification of the expungement order and the date thereof on the board's internet website. The bill would require the board, on receiving an expungement order, if the person is not currently licensed and does not reapply for licensure, to remove within the same period the initial posting on its internet website that the person's license was revoked and information previously posted regarding arrests, charges, and convictions. The bill would require a person in either case to pay a \$50 fee to the board, unless another amount is determined by the board to be necessary to cover the cost of administering the bill's provisions.

**AB 1604 (Holden) - Board Position: Watch**

Title: The Upward Mobility Act of 2022: boards and commissions: civil service: examinations: classifications.

Status: Approved by the Governor on September 13, 2022 [Chapter 313, Statutes of 2022]

This bill would require, on or after January 1, 2023, all state boards and commissions consisting of one or more volunteer members or commissioners, to have at least one volunteer board member or commissioner from an underrepresented community, as defined. This bill would further clarify that new board or commission members should be replaced, under these parameters, as vacancies occur.

**AB 1662 (Gipson) - Board Position: Watch**

Title: Licensing boards: disqualification from licensure: criminal conviction.

Status: This bill is dead.

This bill requires each licensing board under the Department of Consumer Affairs (DCA) to establish a process for a prospective applicant who has been convicted of a crime to request a preapplication determination as to whether that crime would disqualify the prospective applicant from licensure. This bill allows a board to charge a fee for the reasonable cost of administering the predetermination process, not to exceed \$50.

**AB 1733 (Quirk) - Board Position: Support**

Title: State bodies: open meetings.

Status: This bill is dead.

This urgency bill would specify that a "meeting" held under the Bagley-Keene Open Meeting Act includes a meeting held entirely by teleconference, as defined, so long as the state body adheres to certain specified requirements such as: ensuring the public has the means to hear, observe, and address the state body during the meeting; providing the public with at least one physical location where they can participate; posting the meeting agendas online and at the physical meeting location with information indicating how the meeting can be accessed; and ensuring that if a means of remote participation fails, the meeting must adjourn.

**AB 1914 (Davies) - Board Position: Watch**

Title: Resource family approval: training.

Status: Approved by the Governor on September 29, 2022 [Chapter 765, Statutes of 2022]

This bill would exempt a resource family member that has an active and unrestricted license issued by the Medical Board of California, the Osteopathic Medical Board of California, the Podiatric Medical Board of California, the Physician Assistant Board, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians of the State of California, the Respiratory Care Board of California, or the Emergency Medical Services Authority from any requirement to complete, or show proof of completing, CPR or first aid training.

**AB 2104 (Flora) - Board Position: Oppose**

Title: Professions and vocations.

Status: This bill is dead.

This bill would authorize the Department of Consumer Affairs and each board in the Department to charge a fee not to exceed \$2 for the certification of a copy of any record, document, or paper in its custody. The bill would also require the delinquency, penalty, or late fee for any licensee within the department to be 50% of the renewal fee for that license, but not to exceed \$150.

**AB 2948 (Cooper) - Board Position: Watch**

Title: Consumer protection: Department of Consumer Affairs: complaints.

Status: This bill is dead.

This bill would require the Director of the Department of Consumer Affairs to notify a consumer of any action taken on a complaint submitted by that consumer, and any other means which may be available to the consumer to secure relief, unless doing so would be injurious to the public health, safety or welfare. Current law requires the Director to make these notifications "if appropriate," whereas this bill would require the notifications in most cases.

**SB 962 (Jones) - Board Position: Support**

Title: Healing arts: clinical laboratory technology: moderate-complexity laboratories.

Status: This bill is dead.

For purposes of a moderate-complexity laboratory, this bill would expand the definition of a "laboratory director" to include an individual who meets specified requirements and guidelines. The bill would authorize a laboratory director to operate as a technical consultant in a moderate-complexity laboratory if certain conditions are met, and ensures respiratory care practitioners who meet the College of American Pathologists standards may work as laboratory directors and technical consultants in moderate complexity laboratories. This bill is sponsored by the California Society for Respiratory Care.

**SB 1031 (Ochoa Bogh) - Board Position: Oppose**

Title: Healing arts boards: inactive license fees.

Status: This bill is dead.

This bill would instead require the renewal fee for an inactive license to be 1/2 of the amount of the fee for a renewal of an active license, unless the board establishes a lower fee.

**SB 1237 (Newman) - Board Position: Watch**

Title: Licenses: military service.

Status: Approved by the Governor on September 17, 2022 [Chapter 386, Statutes of 2022]

This bill defines the phrase "called to active duty" to include active duty in the United States Armed Forces and on duty in the California National Guard, as specified for purposes of waiving license renewal fees for military service members.

**SB 1365 (Jones) - Board Position: Watch**

Title: Licensing boards: procedures.

Status: This bill is dead.

This bill would require each board within the department to publicly post on its internet website a list of criteria used to evaluate applicants with criminal convictions so that potential applicants for licensure may be better informed about their possibilities of gaining licensure before investing time and resources into education, training, and application fees. The bill would require the department to establish a process to assist each board in developing its internet website, as specified.

The bill would also require the department to develop a process for each board to use in verifying applicant information and performing background checks of applicants, and would require that process to require applicants with convictions to provide certified court documents instead of listing convictions on application documents. The bill would further require the board to develop a procedure to provide for an informal appeals process that would occur between an initial license denial and an administrative law hearing.

**SB 1436 (Roth) - Board Position: Support**

Title: Respiratory therapy.

Status: Approved by the Governor on September 27, 2022 [Chapter 624, Statutes of 2022]

Existing law, the Respiratory Care Practice Act, provides for the licensure and regulation of respiratory therapy practitioners by the Respiratory Care Board of California and makes a violation of that act a crime. Existing law requires the employer of a respiratory care practitioner to report to the board the suspension or termination for cause of any practitioner in their employ. Existing law defines suspension or termination for cause to mean suspension or termination from employment for specified reasons, including gross incompetence or negligence, falsification of medical records, and the use of controlled substances or alcohol to the extent that it impairs the ability to safely practice respiratory care.

This bill would expand the definition of suspension or termination for cause to include administrative leave, employee leave, or resignation from employment for specified reasons that would additionally include suspected acts, such as suspected or actual gross incompetence or negligence, suspected or actual falsification of medical records, and the suspected or actual use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care. The bill would also require an owner, director, partner, or manager of a registry or agency that places one or more practitioners at any facility to practice respiratory care to report those specified suspected or actual acts to the board.

As amended 4/19/22, the bill now also addresses the ongoing issues with the unqualified practice of respiratory care by licensed vocational nurses, and authorizes the Board to provide a temporary, rapid response beneficial to consumers during a State of Emergency.

## Senate Bill No. 1436

### CHAPTER 624

An act to amend Sections 2860, 3710, 3716, 3758, 3758.6, and 3765 of, and to add Sections 2878.2 and 3760.5 to, the Business and Professions Code, relating to respiratory therapy.

[Approved by Governor September 27, 2022. Filed with  
Secretary of State September 27, 2022.]

#### legislative counsel's digest

SB 1436, Roth. Respiratory therapy.

(1) Existing law, the Respiratory Care Practice Act, establishes the Respiratory Care Board of California for the licensure and regulation of respiratory therapy practitioners. Existing law makes a violation of that act a crime and repeals the act on January 1, 2023.

This bill would extend the operation of the act to January 1, 2027. By extending the operation of the act, a violation of which would be a crime, the bill would impose a state-mandated local program.

(2) Existing law requires the employer of a respiratory care practitioner to report to the board the suspension or termination for cause of any practitioner in their employ. Existing law defines suspension or termination for cause to mean suspension or termination from employment for specified reasons, including gross incompetence or negligence, falsification of medical records, and the use of controlled substances or alcohol to the extent that it impairs the ability to safely practice respiratory care.

This bill would additionally require an employer of a respiratory care practitioner to report to the board the leave or resignation for cause of a practitioner whom they employ. The bill would define “leave, resignation, suspension, or termination for cause” for these purposes to include administrative leave, employee leave, resignation, suspension, or termination from employment for specified reasons that would additionally include suspected acts, such as suspected gross incompetence or negligence, suspected falsification of medical records, and the suspected use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care. The bill would also require an owner, director, partner, or manager of a registry or agency that places one or more practitioners at a facility to practice respiratory care to report those specified suspected or actual acts to the board under specified circumstances. Because a violation of these requirements would be a crime, the bill would impose a state-mandated local program. The bill would also make conforming changes.

(3) Existing law, the Respiratory Care Practice Act, prohibits a person from engaging in the practice of respiratory care unless the person is a

licensed respiratory care practitioner, except for specified acts, including, among others, the performance of respiratory care services in case of an emergency, including an epidemic or public disaster.

Under this bill, the temporary performance of respiratory care services as identified and authorized by the board in the event of an epidemic, pandemic, public disaster, or emergency would not violate the Respiratory Care Practice Act.

(4) Existing law, the Vocational Nursing Practice Act, until January 1, 2025, establishes the Board of Vocational Nursing and Psychiatric Technicians of the State of California to license and regulate vocational nurses and psychiatric technicians. Existing law authorizes a licensed vocational nurse to withdraw blood, administer medications, and start and superimpose intravenous fluids, as described, when directed by a licensed physician and surgeon.

This bill would provide that a licensed vocational nurse is authorized to perform respiratory tasks and services that do not require a respiratory assessment and only require manual, technical skills, or data collection, as identified by the Respiratory Care Board of California, if the licensed vocational nurse has received training and demonstrated competency satisfactory to their employer and when directed by a physician and surgeon. The bill would also provide that a licensed vocational nurse who is employed by a licensed home health agency who performs respiratory tasks or services identified by the Respiratory Care Board of California does not violate the Respiratory Care Practice Act if, before January 1, 2025, the licensed vocational nurse has completed patient-specific training satisfactory to their employer, and, on or after January 1, 2025, the licensed vocational nurse has completed patient-specific training by the employer pursuant to guidelines that the bill would require the Respiratory Care Board of California to promulgate in collaboration with the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

This bill would require the Board of Vocational Nursing and Psychiatric Technicians of the State of California to share all complaints and information related to investigations involving respiratory care services with the Respiratory Care Board of California, as specified. The bill would require the Respiratory Care Board of California to share all complaints and information related to investigations involving a person licensed under the Vocational Nursing Practice Act with the Board of Vocational Nursing and Psychiatric Technicians of the State of California, as specified.

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

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 2860 of the Business and Professions Code is amended to read:

2860. (a) This chapter confers no authority to practice medicine or surgery, to provide respiratory care services and treatment, or to undertake the prevention, treatment, or cure of disease, pain, injury, deformity, or mental or physical condition in violation of any provision of law.

(b) Notwithstanding subdivision (a), a licensed vocational nurse who has received training and who demonstrates competency satisfactory to their employer may, when directed by a physician and surgeon, perform respiratory tasks and services expressly identified by the Respiratory Care Board of California pursuant to subdivision (a) of Section 3702.5.

SEC. 2. Section 2878.2 is added to the Business and Professions Code, to read:

2878.2. The board shall share all complaints and information related to investigations involving respiratory care services, as described in Chapter 8.3 (commencing with Section 3700), including, but not limited to, data, findings, interviews, and evidence, with the Respiratory Care Board of California.

SEC. 3. Section 3710 of the Business and Professions Code is amended to read:

3710. (a) The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

(b) This section shall remain in effect only until January 1, 2027, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 4. Section 3716 of the Business and Professions Code is amended to read:

3716. (a) The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

(b) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 5. Section 3758 of the Business and Professions Code is amended to read:

3758. (a) Any employer of a respiratory care practitioner shall report to the Respiratory Care Board of California any leave, resignation, suspension, or termination for cause of any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.

(b) For purposes of the section, “leave, resignation, suspension, or termination for cause” is defined to mean any administrative leave, employee

leave, resignation, suspension, or termination from employment for any of the following reasons:

- (1) Suspected or actual use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice respiratory care.
- (2) Suspected or actual unlawful sale of controlled substances or other prescription items.
- (3) Suspected or actual patient neglect, physical harm to a patient, or sexual contact with a patient.
- (4) Suspected or actual falsification of medical records.
- (5) Suspected or actual gross incompetence or negligence.
- (6) Suspected or actual theft from patients, other employees, or the employer.

(c) An owner, director, partner, or manager of a registry or agency that places one or more respiratory care practitioners at any facility to practice respiratory care shall report to the Respiratory Care Board of California pursuant to subdivision (a) if either of the following apply:

- (1) The owner, director, partner, or manager is aware that a respiratory care practitioner is no longer employed at the facility they were placed at by the registry or agency for any behavior described in subdivision (b).
- (2) The owner, director, partner, or manager is asked to place the practitioner on a “do not call” list or other status indicating the facility does not want that practitioner placed at their facility for any behavior described in subdivision (b).

(d) Failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

SEC. 6. Section 3758.6 of the Business and Professions Code is amended to read:

3758.6. (a) In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been subject to leave, resignation, suspension, or termination for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the leave, resignation, suspension, or termination for cause of the person licensed under this chapter to the appropriate licensing board.

(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars (\$10,000) per violation.

SEC. 7. Section 3760.5 is added to the Business and Professions Code, to read:

3760.5. The board shall share all complaints and information related to investigations involving a person licensed pursuant to Chapter 6.5 (commencing with Section 2840), including, but not limited to, data,



findings, interviews, and evidence, with the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

SEC. 8. Section 3765 of the Business and Professions Code is amended to read:

3765. This act does not prohibit any of the following activities:

(a) The performance of respiratory care that is an integral part of the program of study by students enrolled in approved respiratory therapy training programs.

(b) Self-care by the patient or the gratuitous care by a friend or member of the family who does not represent or hold themselves out to be a respiratory care practitioner licensed under the provisions of this chapter.

(c) The respiratory care practitioner from performing advances in the art and techniques of respiratory care learned through formal or specialized training.

(d) The performance of respiratory care in an emergency situation by paramedical personnel who have been formally trained in these modalities and are duly licensed under the provisions of an act pertaining to their specialty.

(e) Temporary performance, by other health care personnel, students, or groups, of respiratory care services, as identified and authorized by the board, in the event of an epidemic, pandemic, public disaster, or emergency.

(f) Persons from engaging in cardiopulmonary research.

(g) Formally trained licensees and staff of child day care facilities from administering to a child inhaled medication as defined in Section 1596.798 of the Health and Safety Code.

(h) The performance by a person employed by a home medical device retail facility or by a home health agency licensed by the State Department of Public Health of specific, limited, and basic respiratory care or respiratory care related services that have been authorized by the board.

(i) The performance, by a vocational nurse licensed by the Board of Vocational Nursing and Psychiatric Technicians of the State of California who is employed by a home health agency licensed by the State Department of Public Health, of respiratory tasks and services identified by the board, if the licensed vocational nurse complies with the following:

(1) Before January 1, 2025, the licensed vocational nurse has completed patient-specific training satisfactory to their employer.

(2) On or after January 1, 2025, the licensed vocational nurse has completed patient-specific training by the employer in accordance with guidelines that shall be promulgated by the board no later than January 1, 2025, in collaboration with the Board of Vocational Nursing and Psychiatric Technicians of the State of California.

(j) The performance of pulmonary function testing by persons who are currently employed by Los Angeles County hospitals and have performed pulmonary function testing for at least 15 years.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because

this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.