

FRIDAY

May 20, 2011



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov



NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of the Dental Board of California will be held as follows:

Friday, May 20, 2011
Embassy Suites SFO - 150 Anza Blvd.
Burlingame, CA 94010
650-342-4600 or 916-263-2300

Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the President. For verification of the meeting, call (916) 263-2300 or access the Board's Web Site at www.dbc.ca.gov. This Board meeting is open to the public and 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 Richard DeCuir, Executive Officer at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation.

Friday, May 20, 2011

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources.

8:00 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD

- ROLL CALL Establishment of a Quorum
- AGENDA ITEM 5 Approval of the Full Board Meeting Minutes from February 24-25, 2011
- AGENDA ITEM 6 President's Report
- AGENDA ITEM 7 Executive Officer's Report
- AGENDA ITEM 8 DCA Director's Report
- AGENDA ITEM 9 Update on Dental Hygiene Committee of California (DHCC) Activities
- AGENDA ITEM 10 Budget Reports: Dental Fund & Dental Assisting Fund
- AGENDA ITEM 11 Update on Dental Board of California's Sunset Review Process and Discussion and Possible Action Regarding SB 540 (Price)
- AGENDA ITEM 12 Discussion and Possible Action Regarding SB 544 (Price), Professions and Vocations: Regulatory Boards Relating to the Consumer Health Protection Enforcement Act
- AGENDA ITEM 13 Examination Committee Report
The Board may take action on any items listed on the attached Examination Committee agenda.
- AGENDA ITEM 14 Examination Appeals Committee Report
Recommendations to the Board to grant/deny appeals of exam candidates

AGENDA ITEM 15 Licensing, Certification & Permits Committee Report
(a) The Board may take action on any items listed on the attached Licensing, Certification & Permits Committee agenda.
(b) Recommendations to the Board regarding issuance of new licenses to replace cancelled licenses

AGENDA ITEM 16 Dental Assisting Committee Report
The Board may take action on any items listed on the attached Dental Assisting Committee agenda.

AGENDA ITEM 17 Legislative and Regulatory Committee Report
The Board may take action on any items listed on the attached Legislative and Regulatory Committee agenda.

AGENDA ITEM 18 Enforcement Committee Report
The Board may take action on any items listed on the attached Enforcement Committee agenda.

AGENDA ITEM 19 Update from Subcommittee Regarding Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

AGENDA ITEM 20 Report on the April 27, 2011 meeting of the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee, Discussion and Possible Action to Accept Committee and Subcommittee Recommendations for:

(a) Issuance of Permits and Changes to the Board's Web Site to Clarify the EFCS Permit Application Process

(b) Appointments of Credentialing Committee Member(s)

AGENDA ITEM 21 Discussion and Possible Action Regarding Subcommittee Report on Record Retention of Inactive Patient Records.

AGENDA ITEM 22 Discussion and Possible Action to Conduct a Feasibility Study for a Continuing Competency Program

PUBLIC COMMENT

ADJOURNMENT

Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the President. For verification of the meeting, call (916) 263-2300 or access the Board's Web Site at www.dbc.ca.gov. The meeting facilities are accessible to individuals with physical disabilities. Please make any request for accommodations to Richard DeCuir at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by calling (916) 263-2300 no later than one week prior to the day of the meeting.

AGENDA ITEM 5

Meeting Minutes



Dental Board of California Meeting
Thursday, February 24, 2011
San Diego
DRAFT

Members Present:

John Bettinger, DDS, President
Bruce Witcher, DDS, Vice President
Luis Dominicus, DDS, Secretary
Fran Burton, Public Member
Stephen Casagrande, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA
Huong Le, DDS
Suzanne McCormick, DDS
Steven Morrow, DDS, MS
Thomas Olinger, DDS

Members Absent:

Steven Afriat, Public Member

Staff Present:

Richard DeCuir, Executive Officer
Kim A. Trefry, Enforcement Chief
Jocelyn Campos, Enforcement Coordinator
Donna Kantner, Licensing & Examination Unit Manager
Karen Fischer, Administrative Analyst
Sarah Wallace, Legislative/Regulatory Analyst
Linda Byers, Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Thursday, February 24, 2011

8:00 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD

ROLL CALL: Establishment of a Quorum

President Bettinger called the meeting to order at 8:08 a.m. Secretary Dominicus called the roll and established a quorum. Mr. Afriat was absent. Dr. Bettinger thanked all the Board Members for taking time away from their families and work to be a part of this Board for the purpose of public protection. Dr. Bettinger asked that we observe a moment of silence in remembrance of Dr. Jeanne Savage-Adams the first female President of the Dental Board. The Board immediately went into Committee Meetings.

The Full Board reconvened at 11:20 p.m.

AGENDA ITEM 1: Subcommittee Report on the need to Revise the Dental Restorative Materials Fact Sheet

Dr. Morrow reported that he and Dr. Dominicus were appointed by Dr. Bettinger as a subcommittee to review and make recommendations regarding the Dental Materials Fact Sheet. The subcommittee reviewed the available literature relating to biomaterials and biological effects of materials and at this

time report that there is no scientific evidence to support any change in the Dental Materials Fact Sheet. M/S/C (Dominicis/Forsythe) to accept the subcommittee's report. The motion passed unanimously.

AGENDA ITEM 2: Discussion and Possible Action Regarding:

(A) Report on renewal application of the Universidad De La Salle and Board procedures and options

Dr. Dominicis recused himself and left the dais. Dr. Bettinger stated that the reason that this is on the agenda is that the Universidad De La Salle is up for renewal this year. Dr. Bettinger, Dr. Le and Richard DeCuir met with representatives from the Universidad De LaSalle to discuss their renewal and open direct lines of communication. Dr. Arianna Terlet, former Board member and part of the original certification team gave a verbal report. Just as this was the first foreign Dental School Program to receive approval, it is also the first to apply for renewal. Communication will be the key to making this process work. The Dean brought the renewal application that the Board had mailed to them, to the meeting in February and they reviewed it and went over expectations. Dr. Bettinger stated that we are waiting for them to return the application and documentation. Once we receive this and determine it is adequate, we will hopefully have a site team and try to get a waiver for out of the country travel for a site visit. Dr. Olinger voiced his concern about accrediting a foreign Dental School that we have not regularly visited. He speculated that it may put us at risk for successful litigation especially if we are not doing the required site visits. Kristy Shellans suggested that we wait until we get the renewal application before we start speculating on what may or may not happen. Dr. McCormick asked what the next step is. She asked if a technical advisory group should be formed. Dr. Bettinger stated that the technical advisory group is only necessary for the initial accreditation but is not necessary for the renewal. Dr. McCormick asked if given the Board's scheduled meetings, are we going to be able to meet the November deadline for re-accreditation. Dr. Bettinger stated that that will depend on when they return the application and if the documentation is sufficient. Dr. Le stated that because the Board is ever changing, members come and go, if the school were to seek CODA accreditation there would be set standards to insure that those students who attended the school would be eligible to obtain California licensure instead of ever changing standards due to new Board Members. Dr. McCormick stated that we should wait until we get the application back before we do anything. She stated that transparency and a level playing field are the most important points. Dr. Olinger stated that how can we have a level playing field when we don't accredit any other schools. M/S/C (Burton/Bettinger) to authorize creation of a subcommittee to review renewal documentation from De La Salle upon submittal. The motion passed unanimously. Bill Lewis of CDA publicly commented that we should look at the options given the statute. Kristy Shellans stated that her opinion is that there are only two options and those are to either approve or deny.

(B) Proposed Legislation to Amend Business and Professions Code Section 1636.4 Relative to the Provisional or Full Accreditation Process for Foreign Dental Schools

Dr. Bettinger stated that now that we have International CODA, do we want to require it for Foreign Dental Schools and give the Board authority to accept that accreditation as its own. Dr. McCormick stated that in light of the extensive regulatory packages that we already have she suggested that this item be tabled at this time. M/S/C (Olinger /Morrow) to recommend a statutory change to 1636.4 which would mirror 1024(B). The motion passed with 10 ayes and 1 nay. Bill Lewis publicly commented that by May the Board should have a better picture of where the process is going. You should have the application by then and with Sunset Review still open you may be able to get some of these changes inserted into the Sunset Review Bill. Earl Johnson speaking for himself stated that we should not be in the business of Dental school approval. We are not qualified. We need to pass this off to CODA because that's their line of business. We need to get the statute changed so we don't have to go through this again.

PUBLIC COMMENT - FOR ITEMS NOT ON THE AGENDA

There was no public comment.

Recess - Lunch Break

The Board recessed at 12:23 p.m. for lunch

Dr. Bettinger reconvened the Board at 2:10 p.m. Dr. Dominicis called the roll and established a quorum.

The Board went into closed session to discuss disciplinary matters and litigation.

The Board returned to open session at 6:00 pm.

PUBLIC COMMENT

There was no public comment.

The meeting recessed at 6:05 pm.



DENTAL BOARD OF CALIFORNIA
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Dental Board of California Meeting
Friday, February 25, 2011
San Diego
DRAFT

Members Present:

John Bettinger, DDS, President
Bruce Whitcher, DDS, Vice President
Luis Dominicus, DDS, Secretary
Steven Afriat, Public Member
Fran Burton, Public Member
Stephen Casagrande, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA
Huong Le, DDS
Suzanne McCormick, DDS
Steven Morrow, DDS, MS
Thomas Olinger, DDS

Members Absent:

Staff Present:

Richard DeCuir, Executive Officer
Kim A. Trefry, Enforcement Chief
Jocelyn Campos, Enforcement Coordinator
Donna Kantner, Licensing & Examination Unit Manager
Karen Fischer, Administrative Analyst
Sarah Wallace, Legislative/Regulatory Analyst
Linda Byers, Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Friday, February 25, 2011

8:00 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD

ROLL CALL: Establishment of a Quorum

President Bettinger called the meeting to order at 8:08 a.m. Secretary Dominicus called the roll and established a quorum. Dr. Bettinger thanked all the Board Members for taking time away from their families and work to be a part of this Board for the purpose of public protection.

AGENDA ITEM 1: Approval of the Full Board Meeting Minutes from November 4-5, 2010 and December 14, 2010.

Karen Fischer, Administrative Analyst stated that there was a correction to the Thursday November 4, 2010 minutes. In the first paragraph it should be stated that "Dr. Bettinger thanked all Board Members for taking time away from their families and work to be a part of this Board for the purpose of public protection." The next correction was to Friday November 5, 2010, on page 2, Agenda item 2 to delete that whole section and put under the first paragraph on page 1 that Dr. Bettinger recognized Dr. William Langstaff, President of the California Academy of General Dentistry and under Agenda item 2 the President's report, insert that "Dr. Bettinger stated that this was the first Dental Board Meeting in

California to be webcast live. Future meetings should be retrievable from archive on our website. Openness allows the public to see how we work on the many issues before us. Statute created last minute without collaboration can result in increased costs and more time required to formulate regulations. Ideally, private groups, foundations, professional associations and organizations that influence public policy would function with equal transparency. Our Dental Board welcomes stakeholder opinions on policy issues and we thank those who come to our meeting to give their opinions. Thank you to all who collaborated to make the new Portfolio Pathway to Licensure in California a reality. Recognition goes to the Dental Schools in California, Dental Board members, staff and the California Dental Association." Additionally, any reference to Kristy Schieldge was changed to Kristy Shellans.

AGENDA ITEM 2: President's Report

Dr. John Bettinger reported that our enforcement committee Chair, Rebecca Downing's work has been noticed by DCA and has reflected positively on our board. Rebecca Downing will be participating in the Sunset Review hearing March 14. Also participating will be Fran Burton, Legislative Chair. It is Fran's committee that has empowered the Board to better comply with our Vision, to be the leader in public protection, promotion of oral health and access to quality care. Dr. Casagrande and Dr. Bettinger traveled to Chicago to discuss Portfolio pathway to licensure with ADEX. Dr. Dominicus and Dr. Bettinger met with the Panjabi International Dental Association along with Greg Salute and Teresa Lane to discuss infection control and California law and enforcement. Dr. Le, Richard DeCuir and Dr. Bettinger met with the Dean and head of the international dental program of De La Salle Bajio at Pomona College for the purpose of establishing direct contact between the school and the Dental Board. Dr. Le, Richard DeCuir and Dr. Bettinger met with the Dean of the Western Sciences College of Dentistry in Pomona to discuss mobile dentistry/portable dentistry. Dr. Bruce Whitcher has been very active in numerous board regulatory packages and the GA/CS calibration issues. Dr. McCormick has been active with the Elective facial plastic surgery committee and GA/CS calibration issues. Dr. Steve Morrow plans to present portfolio to the AADS in Anaheim in a panel with Carrie Gordon from CDA. Dr's. Olinger and Morrow worked on the Dental Fact Sheet renewal project subcommittee. Judy Forsythe and Dr. Whitcher have been very active with the Dental Assistant Forum and Dental Assistant issues. Dr. Casagrande and Dr. Morrow have been active on the Portfolio issue. Dr. Dominicus has been active as the WREB liaison and as a long time liaison to De La Salle. Now that direct communication has opened up between the school and Richard DeCuir and staff, more direct communication with the school will continue for mutual benefit. Dr. John Bettinger participated in the recent CODA site visit to UCLA as a Dental Board Representative as part of the Dental School accreditation process. The position was to fully participate in the visit but not to vote on the outcome. An initial study of the School's Self Study was done which contained extensive documentation about the school. The Site visit began with an orientation session followed by 2 full days at the school. The benefit of this task was to learn the accreditation process first hand by fully participating in the process at a California School. Insight gained will enable the Board Subcommittee to better analyze the documentation submitted by De La Salle and in assembling a site visit team for De La Salle. We will need to develop guidelines for the site visit team based in part on the results of review of the documentation that is returned with their application. But this is a future topic. Please forgive me if any of your efforts have not been recognized today. The future newsletters will be available on the internet. Expanding interest in visiting our website will be an important outreach goal. Collecting and expanding our e-mail contact list should be incorporated into mailings so that we eventually can reach all our license holders by e-mail. Thanks again to all the Board members and Staff for working together harmoniously in the conduct of our business.

AGENDA ITEM 3: Executive Officer's Report

Richard DeCuir, Executive Officer reported that the Newsletter and the Strategic Plan are done thanks to Karen Fischer. The 2011 Dental Practice Act should be out by the end of this month. Due to the new Administration and the new Governor, there were many changes made including a 50% reduction in the number of cell phones provided to the Dental Board. Mr. DeCuir reported that staff made him aware of the need for more Expert Consultants due to the growing number of investigations. An email blast was sent out via our website asking interested parties to contact the office as well as letters to specialty organizations seeking applicants. April Alameda's new Investigative Analysis Unit has relieved the Investigators of over 160 cases that they are now taking over and working which otherwise would have

been put off for more egregious cases. Mr. DeCuir reported that most agencies work on 1-2 regulations per year, our Legislative and Regulatory Analyst, Sarah Wallace, is now working on 8. This is a huge workload. Dr. Bettinger recognized from CDA, Bill Lewis, Fred Noteware, and Alan Felsenfeld and welcomed them back. Dr. Bettinger asked for a moment of silence in remembrance of Dr. Jean Savage-Adams, the first female President of the Dental Board.

AGENDA ITEM 4: DCA Director's Report: (A) Update on Department of Consumer Affairs Substance Abuse Coordination Committee's Recommendations for the Board's Diversion and Probation Monitoring Programs, Pursuant to SB 1441

LaVonne Powell, former Legal Counsel for the Dental Board spoke on behalf of the Director of Consumer Affairs. She reported that the new hiring freeze implemented by Governor Brown does not seem to be as strict as the former one. She asked that Boards request exemptions and they will advocate on our behalf. She reported that there was a 50% cut in cell phones throughout DCA and they are looking at reducing the number of state vehicles again. She stated that boards were told that they needed to enter a more formal contract for their Expert Consultants. DCA is trying to find a way to streamline this process so that Enforcement processes are not held up. Ms. Powell stated that now that our Disciplinary Guidelines are done we need to reopen them and insert SB 1441, Uniform Standards for Drug Abusing Practitioners. Ms. Powell stated that the new "Breeze" computer system that will integrate our existing applicant tracking system and the CAS system which is the Enforcement system. Ms. Powell then read a statement regarding tax withholding. Ms. Powell thanked the Board for webcasting their meeting. She stated that more and more people are watching the webcast, not necessarily live but the archived version at their own convenience. Dr. Bettinger asked if there was any way to track how many are watching or have watched the webcast. Mr. DeCuir stated that there is a tracking system and that he will report those numbers at the next meeting in his Executive Officer's report.

AGENDA ITEM 5: Update on Dental Hygiene Committee of California (DHCC) Activities

Rhona Lee, President of DHCC, reported that Lori Hubble and Tom Jurach were with her to help put on a PowerPoint Presentation. Ms. Lee stated that Dr. William Langstaff is now a member of the Committee. At the last DHCC meeting in December 2010, the majority of the time was spent reviewing, revising and then adopting statutes and then promulgating regulations specifically focused on enforcement, licensing and education. Ms. Lee stated that they intend to focus their efforts this year on that as well in order to establish an infrastructure. Ms. Lee reported that during the past year, 682 candidates took the DHCC examination with only a 19% failure rate. This statistic correlates with the past four years when failure rates ranged from 14% - 21%. Western Regional Examination Board (WREB) tested about 117 California candidates who were also granted licensure. All of these statistics and others are available on their website: dhcc.ca.gov. Lori Hubble, Executive Officer of DHCC, reported that they have had an incredible year as evidenced by the video shown.

AGENDA ITEM 6: Update Regarding Dental Board of California's Sunset Review

Richard DeCuir stated that generally speaking Sunset Reviews are done every 4-6 years. The last time this Board went through the Sunset Review process was in 2001. The Board has been Sunset twice since then but not for reasons of performance and not for performance review. We submitted the initial document to the staff of the Business and Professions' and Economic Development Committee on October 1, 2010. We began answering questions from the staff in January. The majority of questions centered on the need for fee increases, the Enforcement program, specifically case aging. Mr. DeCuir suspects that the Diversion program will come into question especially regarding SB 1441 and possibly some Dental Assisting issues. Mr. DeCuir stated that he has been told that the staff report will be sent to Senator Price the chair of the Committee the week of 2/21/11 - 2/25/11. Our hearing was scheduled for March 14, 2011. Mr. DeCuir, Board Members, and all of the managers have devoted an extensive amount of time to this Sunset Review process. Dr. Casagrande asked how far back the Committee looks at this Sunset Review. Mr. DeCuir answered that we won't know until we get their report back. Dr. Casagrande stated that if they look back far enough, they will see that there was a time when there was such disinterest that they couldn't even gather a quorum of Board Members for a Meeting. Since then there have been many changes especially in the composition of the Board Members and now they are accomplishing many, many good things. Dr. Casagrande wanted to send the message to the Committee

that the Board is a constantly improving entity on a steady climb up to do bigger and better things. Dr. Morrow asked Mr. DeCuir what the reasons were for the last two Sunsets of the Board. Mr. DeCuir stated that the first time it was surrounding the Dental Materials Fact Sheet and a bill introduced by Senator Figueroa. The second time the Board was Sunset and became a Bureau involved a Dental Hygiene Bill. There was a Bill that was introduced to make Hygiene a separate Board which was vetoed by the Governor. There was a second Bill that was introduced the next year, again to make the Hygiene Board independent but there was a spin on that Bill that said if the Governor vetoed the Bill then the Dental Board would no longer be in existence. The Governor vetoed the Bill and the Board became a Bureau for about 6 months until it was reconstituted into a Board again. Dr. Morrow stated that we should look at Sunset Review as a positive experience of self evaluation to insure that we are achieving the goals and standards that we set out to achieve. Mr. Afriat stated that as a Legislative appointee he will stay in regular communication with the Speaker's office to keep us informed of potential changes that could have an impact on the Board. Mr. DeCuir stated that he sees this as an opportunity to investigate what avenues other Board's are using, for example, in their Enforcement units that may be useful, more efficient tools that the Dental Board may want to incorporate. Dr. Bettinger stated that Dr. Morrow's comment was very insightful because as the Dental Board went through the process of Sunset Review staff did see areas where they could improve so it was a learning experience for all of us. LaVonne Powell stated that obviously the focus of this Sunset Review is Enforcement, how far the Board has gotten with SB 1441 Substance Abuse developing regulations and implementing those standards and the Diversion Program. We know that these are the areas that they are focusing on. She urges the Board to be prepared to answer questions on these subjects.

AGENDA ITEM 7: Budget Reports: Dental Fund & Dental Assisting Fund

Richard DeCuir reported that originally part of the Governor's Budget was the repayment of \$3 million of the \$4.4 million still owed to the Board from prior loans. The Legislative hearings have reduced the repayment amount this year to \$1.2 million. Our Revenues and Expenditures have been nearly the same amount around \$7.8 million per year indicating that we have been operating within our yearly revenue base. With the implementation of the Consumer Protection Enforcement Initiative (CPEI) this balance will be thrown off. We will not be taking in as much as we will have to spend. Mr. DeCuir reported that the Dental Assisting Fund is running pretty much even as far as revenues and expenditures go.

AGENDA ITEM 8: Discussion and Possible Action to Consider:

(A)Comments Received During the 15-Day Third Modified Text Notice Comment Period Relative to Amendments to Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1071, and Proposed Additions to Title 16, CCR, Section 1070.6, 1070.7, 1070.8 for Dental Assisting Educational Programs and Courses, and

Sarah Wallace, Legislative and Regulatory Analyst, stated that at the December teleconference the board decided to modify the text. The notice of modified text went out on December 24, 2010. The comment period began on December 27, 2010 and ended on January 11, 2011. During that comment period the board received a comment of support from the California Association of Dental Assisting Teachers (CADAT) and we received and adverse comment from the Dental Assisting Alliance. After the comment period closed, we received an email from Karen Wyant from the Dental Assisting Alliance wishing to withdraw their comment. Ms. Wallace stated that the request to withdraw came after the comment period closed so she consulted with the Office of Administrative Law who informed her that there are no provisions in the Administrative Procedure Act dealing with the withdrawal of public comment. They suggested that it would be in the best interest of the board to be sure there was a clear record in the rulemaking about how the board dealt with it. Staff requests that the board either grant or deny the request to withdraw the comment. Dr. Olinger asked if it would be best to reject the comment on the grounds that the comment was withdrawn. Ms. Wallace agreed that that was an option as well. Dr. Olinger stated that to him that seems procedurally cleaner than to try to withdraw. M/S/C (Afriat/Morrow) to reject the comment on the grounds that the maker of the comment asked that the comment be withdrawn. The motion passed unanimously.

(B) Adoption of Amendments to Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1071, and Proposed Additions to Title 16, CCR, Section 1070.6, 1070.7, 1070.8 for Dental Assisting Educational Programs and Courses

Ms. Wallace stated that the final step in this rulemaking process would be for the board to adopt the third modified text as its regulatory language to file with administrative law as the final rulemaking. Kristy Shellans stated that the only modification she would suggest making to the motion is that at the very end she would add "as noticed in the third modified text notice" so that the Office of Administrative Law knows which notice you're adopting as your final text version. M/S/C (Forsythe/Burton) to adopt the final text as noticed and direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law and authorize the Executive Officer to make any none substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1071, and proposed additions to Title 16, CCR, Section 1070.6, 1070.7, 1070.8 as noticed in the third modified text. The motion passed unanimously.

Public Comment: Dr. Lori Gagliardi wanted to thank the staff and board for all their hard work. Bill Lewis also wanted to thank everyone involved.

AGENDA ITEM 9: Discussion and Possible Action to Consider:

(A) A Policy Decision to Extend Licensure Exemption for Out-of-State Licensed Dentists and Registered Dental Assistants to Provide Healthcare Services at Sponsored Free Health Care Events Pursuant to Business and Professions Code Section 901

Ms. Wallace stated that this policy deals with the regulations related to AB 2699 that was enacted into law last year. This bill provides for an out-of-state licensed practitioner to come in to California as an exemption and practice, for a sponsored event, on a voluntary basis to uninsured or under-insured populations in California. It is an "access to care" bill. The department has strongly encouraged the healing arts boards to pursue regulatory language as soon as possible due to the time constraints and especially due to Sunset hearings. Ms. Wallace stated that some language has been drafted. The first part of this language deals with regulations and forms for dentists. Licensing requirements and scope of practice for out-of-state dentists are similar from state to state. Staff was unable to come up with language for out-of-state dental auxiliaries as the licensing and scope of practice varies widely from state to state. Staff requested that the board discuss the necessity of authorizing out-of-state auxiliaries and if they find it necessary, help staff come up with the language. Dr. Olinger asked why we would bring in out-of-state Dental Assistants when we have local people available. Dr. Bettinger asked if CDA had a stand on this issue. Bill Lewis, CDA, stated that they don't have a stand on this particular issue. Dr. McCormick asked if on a similar vein, this would be an opportunity to do outreach with our Dental Hygiene community to make it one package. Kristy Shellans stated that DHCC would have the authority to do their own package. We don't have the authority to combine regulatory packages. Mr. Afriat stated that for his own clarification are we trying to decide whether or not to establish policy to allow registered dental assistants from out of state to come in and do voluntary clinical work for these special events as opposed to unlicensed dental assistants. He doesn't understand why it would be better to use unlicensed California assistants as opposed to licensed out-of-state assistants. Mr. Afriat stated that he feels that a licensed assistant from any other state is a better option than an unlicensed dental assistant from California. Judith Forsythe stated that the scope of duties varies widely from state to state. Most states don't even have RDA's so to have these people come in to California, we don't really know what they are qualified to do so her recommendation would be to have them come in to function as a DA. Dr. Olinger stated that we really haven't established that there is even a need for dental assistants since many of the programs have local RDA's who volunteer and in the interest of regulatory expediency we can bring in a non-licensed person without any regulations much quicker plus, if there is a need for RDA duties they're available locally. Dr. Dominicus stated that he had participated in the 2 events down south along with Judy Forsythe and they could see that the need was dentists. Dr. Morrow stated that hearing that there really doesn't seem to be a need for assistants, let's expedite the process and go forward with just dentists. M/S/C (Morrow/Afriat) to move ahead with the process to initiate a rulemaking to extend licensure exemption to out-of-state licensed dentists to provide healthcare services at sponsored free health care events pursuant to Business and Professions Code 901 and, if in the future there is a demonstrated need, consider extending it to out-of-state dental auxiliaries. The motion passed unanimously.

Lori Gagliardi, CADAT, stated to keep in mind that most states do not have an RDA license; they have a certification program which is not a license.

(B) Initiation of a Rulemaking to Add Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, 1023.18 and 1023.19 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events.

Sarah Wallace, Legislative and Regulatory Analyst, stated that this is the actual language we have drafted pertaining to dentistry exemptions for out-of-state dentists. We've modeled this language after the licensure by credential requirements. This language includes information regarding the sponsoring entity registering with the board to notify the board that there will be a sponsored event. There is an application tied to this regulation and that form is included in this language. This language also pertains to the out-of-state practitioner authorization to participate in the sponsored event. That participant would need to meet specified requirements. There is a form included in this language for acceptance as well. The language also outlines the requirements for termination of the authorization and finally there is a notice to patients regarding the practitioners' background information. There is a \$100 processing fee for the out-of-state practitioner to pay the board for the authorization processing. Another key part of this language is that participation is limited to a maximum of 3 events per year with each event being no more than 10 days. M/S/C (Burton/Afriat) to accept the proposed regulatory language based on the provisions of AB 2699 and direct staff to take all the necessary steps to initiate the formal rulemaking process, authorize the Executive Officer to make any non-substantive changes to the rulemaking package, and set the proposed regulations for a public hearing. The motion passed unanimously.

AGENDA ITEM 10: Discussion and Possible Action to Consider the Initiation of a Rulemaking to Amend Title 16, CCR, Section 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Healing Arts Licensees and Disciplinary Guidelines

Ms. Wallace stated that SB 1441 was signed into law in 2008 and established the Substance Abuse Coordination Committee comprised of all the executive officers of the healing arts boards of DCA. That committee created the 16 uniform standards for substance abusing licensees. The department is encouraging those boards to incorporate those standards into their disciplinary guidelines. There was lengthy discussion about the process. M/S/C (Afriat/McCormick) to initiate a rulemaking of the proposed regulatory amendments to the Dental Board's Disciplinary Guidelines to incorporate the Uniform Standards Related to Substance Abuse as established by the Department of Consumer Affairs Substance Abuse Coordination Committee, April 2010 and direct staff to take all steps necessary to initiate the formal rulemaking process, authorize the Executive Officer to make any non-substantive changes to the rulemaking package, and set the proposed regulations for a public hearing. The motion passed unanimously.

AGENDA ITEM 11: Discussion and Possible Action Regarding Proposals for Legislation to Exempt from Public Contracts Code Personal Services – Subject Matter Experts.

LaVonne Powell from DCA stated that she just came from a meeting at B & P where they are working hard to exempt most of the Boards and Bureau's from many parts of this contract. M/S/C (Casagrande/Le) to support a legislative proposal to allow the board to exempt subject matter experts it uses for administrative cases and exam development from the Public Contracts Code and authorize the Executive Officer and the Board President to pursue such a proposal on behalf of the Board. The motion passed unanimously.

AGENDA ITEM 12: Discussion and Possible Action Regarding Participation in the Office of Statewide Health Planning and Development's Phase 1 of the Clearinghouse Test Data Collection and the Impact on the Board's Staff Workload

Senita Robinson, Chief of OSHPD's Research Policy and Planning Section gave a report regarding this program that would serve as the central source of health care workforce and educational data in the state.

AGENDA ITEM 13: Examination Committee Report

The Board may take action on any items listed on the attached Examination Committee agenda.

Dr. Casagrande reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. The calendar of upcoming Dental and Registered Dental Assisting Examinations was reviewed and there was a comment that we would like to see more RDA exams in the south because there seem to be none scheduled at this time. Dr. Dominicis gave an update on WREB activities. Dr. Bettinger asked if staff could provide several years of data on the trends in the PTY1 pathway to licensure. M/S/C (Bettinger/Burton) to accept the Examination Committee report. The motion passed unanimously.

AGENDA ITEM 14: Licensing, Certification & Permits Committee Report

The Board may take action on any items listed on the attached Licensing, Certification & Permits Committee agenda.

Dr. Whitcher reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. Dr. Whitcher reviewed licensing statistics and talked about trends. General Anesthesia and Conscious Sedation evaluations and permit statistics were discussed. Dr. Whitcher stated that the GA/CS program is current and seems to be functioning well however, they are experiencing a shortage of Conscious Sedation evaluators. Outreach is being done in an attempt to address that issue. The LCP committee then moved into Closed Session. They had 3 RDA applications to replace cancelled licenses. Those 3 RDA applications were reviewed, all met the criteria and 3 RDA licenses to replace cancelled licenses were issued. M/S/C (Dominicis/ Olinger) to accept the committee's recommendation to approve the 3 applications for replacement of cancelled license. The motion passed unanimously. M/S/C (Afriat/McCormick) to accept the Licensing, Certification and Permits Committee report. The motion passed unanimously.

AGENDA ITEM 15: Dental Assisting Committee Report

The Board may take action on any items listed on the attached Dental Assisting Committee agenda.

Judy Forsythe reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. Board action was requested to accept, reject or table the Dental Assisting Forum's recommendation to consider changes to the examination outline to include infection control, dental radiation safety and preventative procedures after the current examination review is complete. The committee passed a motion to accept the DAF's recommendation to consider changes to the examination outline to include infection control, dental radiation safety and preventative procedures and to have staff incorporate this recommendation into the annual review of the examination. Ms. Forsythe stated that staff is working hard to secure a contract for a southern testing site for the RDA practical exam. Ms. Forsythe stated that there was a 3 part CADAT request, first, to allow RDA programs seeking to use a CPR provider who may not meet the Board's approval, to submit a request for approval as an equivalent provider. The second part is to consider for approval an RDA program to use CPR providers recognized by the Dental Assisting National Board (DANB). The committee passed a motion to have staff develop equivalency standards relating to CPR providers and bring them back to the committee at a future meeting. The third part of CADAT's request was to consider allowing clinical hours required for certification in coronal polishing, radiation safety and sealant education within the RDA programs to be performed within the school setting and still allow for those hours to be considered clinical in light of the new regulations requiring extramural facilities for all clinical training hours. The committee passed a motion to not reopen the regulatory comment period, which would be required to make these changes. Dr. Casagrande asked that alternative pathways to RDA licensure be put on the next agenda. Dr. Bettinger asked that the Board take action on each issue individually. M/S/C (Morrow/Afriat) to accept DAF's recommendation to consider changes to the examination outline to include infection control, dental radiation safety and preventative procedures after the current examination review is complete. The motion passed unanimously. M/S/C (Afriat/McCormick) to have staff develop equivalency standards relating to CPR providers and bring them back to the committee at a future meeting. The motion passed unanimously. M/S (Dominicis/Forsythe) to not reopen the regulatory comment period. Dr. Whitcher stated that he thought the intent was to include the hours but as written was confusing. Kristy Shellans stated that she would review the proposed regulations and see if it's possible to interpret them as intended. Dr.

Whitcher asked to amend the motion. M/S/C (Whitcher/Afriat) to amend the previous motion to: move ahead with the regulatory process and direct staff to further look at the issue of extramural settings and how clinical instruction might be done and to report back to the Board at the next meeting. The motion passed unanimously. M/S/C (Dominicis/Casagrande) to accept the Dental Assisting Committee's report. The motion passed unanimously.

AGENDA ITEM 16: Legislative and Regulatory Committee Report

The Board may take action on any items listed on the attached Legislative and Regulatory Committee agenda.

Fran Burton reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. Ms. Burton went down the list of positions the Committee recommended taking on each of the Bills. A "Watch" position was recommended for: AB 28, AB, SB 100, SB 103, AB 536, AB 675, AB 958, AB 1207, AB 1328, SB 227, SB233, SB 399 and SB 544. A "Neutral" position was recommended for SB 540 and an "Oppose" position was recommended for AB 127. M/S/C (Afriat/Olinger) to accept the Committee's recommended positions on the Bills. The motion passed unanimously. Ms. Burton gave an update on pending legislation. Ms. Wallace reported on the prospective legislative proposal regarding Advertising of Specialty Licensure. Ms. Burton reported that the Committee voted unanimously to recommend that the language be forwarded to the full Board for approval and direct the Executive Officer to incorporate the language into Sunset Review or seek an author to introduce this language as an urgency measure during the 2011-2012 Legislative session to repeal Business and Professions Code Sections 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii). M/S/C (Olinger/Casagrande) to accept the committee's recommendation. The motion passed unanimously. M/S/C (Downing/Forsythe) to accept the committee's report. The motion passed unanimously.

AGENDA ITEM 17: Enforcement Committee Report

The Board may take action on any items listed on the attached Enforcement Committee agenda.

Rebecca Downing reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. Ms. Downing reported that the Investigator Activity Reporting (IAR) system was up and running on a limited basis beginning in December 2010. This new system will assist the managers and chief in tracking how the investigators are spending their time as well as an efficiency and quality measure. Ms. Downing reported that the complaint unit is continuing to show a favorable downward trend in the amount of days it takes to close their cases. The Investigation unit is also showing a downward trend in its unassigned and pending cases equaling 36%. This decrease is largely due to the new non-sworn unit picking up some of the less egregious cases. Ms. Downing reported that the new contract, now in place, with Phamatech relieves staff from the duty of specimen collection. There was discussion regarding the Cite and Fine program and the fact that investigators are reluctant to use it because of the perception that licensee's will challenge them, resulting in a very time consuming hearing process. Ms. Downing is working with staff to come up with more streamlined reporting that would be more of a single page snapshot of the pathway of complaints and investigations. Ms. Downing again recognized Kim Trefry and Richard DeCuir and thanked them for encouraging staff to work harder, better and faster to do more to make improvements and to be proactive. M/S/C (Burton/Whitcher) to accept the committee's report. The motion passed unanimously.

AGENDA ITEM 18: Discussion and Possible Action regarding the Dental Board of California's Public Records Act Policy

Richard DeCuir, Executive Officer, requested that this item be deferred to the next Board Meeting. M/S/C (Afriat/McCormick) to defer the discussion and possible action regarding the Dental Board of California's Public Records Act Policy to the next Board Meeting in May. The motion passed unanimously.

AGENDA ITEM 19: Update from Subcommittee Regarding Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

Dr. Casagrande reported that Portfolio became law on January 1, 2011. Dr. Casagrande recognized Bill Lewis and Dr. Alan Felsenfeld of CDA who contributed immensely to this project along with Dr. Suzanne McCormick and Dr. Steven Morrow. Dr. Casagrande reported that the all day marathon meeting with Drs. Morrow and Casagrande, Kristy Shellans, Sarah Wallace, and Donna Kantner produced 3 things. The

first was that they were able to provide staff with the information that they needed about Portfolio. The second was that in going over the draft regulations, Ms. Shellans and Ms. Wallace helped everyone to understand the requirements for inclusion with the regulations. The third part was the readying of the Comira contract for signature in preparation of their implementation of Portfolio. Dr. Morrow also expressed his appreciation to staff, legal, and Dr. Casagrande for the long day spent finalizing some of the important details. Dr. Morrow reported that we are getting some notoriety around the country regarding the Portfolio process. Many other states and licensing authorities are looking at what we have developed. Dr. Bettinger and Dr. Casagrande have been to at least 2 out-of-state meetings to present this concept and the American Student Dental Association has invited them to its annual meeting in March. Dr. Casagrande also thanked Georgetta Coleman for her invaluable contribution to this project. Dr. Felsenfeld, CDA - Speaker of the House of Delegates, stated that the work that the Dental Board has done on Portfolio is a very high profile examination process. We understand that the process will be long and we must be very careful to do everything right. Dr. Felsenfeld stated that we collectively have put together a very fine piece of legislation that is the first of its kind in the nation. He believes it will have long term implications that the rest of the nation will follow. Dr. Bettinger stated that this is a fine example of what collaboration can do.

AGENDA ITEM 20: Report on the January 19, 2011 meeting of the Elective Facial Cosmetic Surgery Permit Credentialing Committee, Discussion and Possible Action to Accept Committee Recommendations for Issuance of Permits, and Appointments of Credentialing Committee Member(s)

Dr. McCormick reported that the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee met in January, 2011. She reported that this is the first meeting in over a year. Dr. McCormick thanked Karen Fischer for her eloquent summary of the committee's duties and oversight. The committee essentially reviews applications for Elective Facial Cosmetic Surgery Permits and brings recommendations back to the Board. On January 19, 2011, the committee met and reviewed three applications during closed session. The committee tabled one application (Applicant #1 – Dr. JPD) and is asking the applicant for additional information. The committee deemed another applicant ineligible (Applicant #2 – Dr. JAB) because he is only licensed by the Medical Board and therefore ineligible for the permit according to Business & Professions Code, Section 1638.1. Applicant #3 – Dr. Erik Feider's application was reviewed and the committee recommends issuance of an EFCS permit without limitation. The Credentialing Committee recommends approval of Category I and Category II permit issuance without limitation. M/S/C (Whitcher/Afriat) to accept the committee's recommendation to approve and issue a permit for Elective Facial Cosmetic Surgery in Categories I and II to Dr. Feider. The motion passed unanimously. Dr. McCormick reported that Dr. Karas tendered his resignation from the Committee on January 19, 2011 creating a vacancy. Staff asked that a 2 person subcommittee be appointed to review resumes which will then be taken to the Board. Ms. Fischer stated that the letters were mailed on February 22, 2011 and recipients were asked to respond by April 15, 2011 in order to give the subcommittee, if appointed, time to review and interview candidates to bring back a recommendation to the Board at the May Meeting. Dr. McCormick states that additionally the Committee is working on drafting regulations. M/S/C (Olinger/Afriat) to accept the subcommittee's report. The motion passed unanimously. Dr. Bettinger appointed Dr. McCormick and Dr. Whitcher to the subcommittee to review the applications and bring back recommendations to the Board at the May Board Meeting.

AGENDA ITEM 21: Discussion and Possible Action Regarding Length of Time for Retention of Inactive Patient Records

Dr. Casagrande reported that when this subject was brought up 2 years ago, it was found that 7 years seems to be the consistent number with many of the healing arts Boards. Kristy Shellans stated that she believes that the Board has Regulatory authority to set retention timeframes. Our standards would only apply to us. CDA, IRS, managed care and Medicare all have their own standards that must be adhered to. Dr. Dominicus stated that he thinks we should explore what we should do. He stated that Denti-Cal has one standard while Delta Dental requires another. Maybe start with 7 years and go from there. Dr. Le stated that community clinics require 7 years past 18 years of age. However, now, with electronic medical records, maybe we're supposed to keep them forever. Dr. Morrow stated that he questions the advisability of the Dental Board going on record as requiring a retention timeframe. He suggests that we

make a recommendation as to how long to retain the records rather than making it a regulation. Kristy Shellans stated that record retention does protect the public. Ms. Shellans recommends setting a standard. Dr. Bettinger appointed a subcommittee of Dr. Morrow and Dr. Olinger to look into this matter and bring a recommendation back to the Board at the next Board meeting.

PUBLIC COMMENT

Dr. Earl Johnson, California Association of Orthodontists, stated that he was starting his ninth year coming to these meetings. He's seen the agenda all kinds of different ways. He stated that he'd like to vote to have the Board arrange their schedules so that the Closed Session is the first thing on the first day so that the public who can't go to the Closed Session can use that time to travel. The second thing Dr. Johnson stated was that in all these 8 years he's always had access to one of the books that had all the paperwork for the meeting. He received a letter stating that the materials would be available on the website but the materials would not be mailed out. He printed out the 160 pages from the website but finds them useless. He stated that he was under the impression that no one would get the book but he stated that he thinks everyone in the room got a book except him. He says he talked to the President who will take care of this issue. The third thing Dr. Johnson wanted to say was that he is personally really impressed with Dr. Morrow and what he's done and how he's gotten involved with this Board and has produced good thoughts and good works in a very short period of time.

The meeting adjourned at 12:20 p.m.

AGENDA ITEM 6

President's Report



MEMORANDUM

DATE	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	Agenda Item 6: President's Report

Dr. John Bettinger will give a verbal report.

AGENDA ITEM 7

Executive Officer's Report

DENTAL BOARD OF CALIFORNIA

2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov



MEMORANDUM

DATE	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	Agenda Item 7: Executive Officer's Report

Richard DeCuir, Executive Officer, will give a verbal report.

AGENDA ITEM 8

DCA Director's Report



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

DENTAL BOARD OF CALIFORNIA

2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov



MEMORANDUM

DATE	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	Agenda Item 8: DCA Director's Report

A representative(s) from the Department of Consumer Affairs Executive Office will give a verbal report on behalf of the Director.

AGENDA ITEM 9

DHCC Report



MEMORANDUM

DATE	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	Agenda Item 9: Dental Hygiene Committee of California (DHCC) Activities Update

Lori Hubble, Executive Officer of the Dental Hygiene Committee and Rhona Lee, Committee President will give a verbal report.

AGENDA ITEM 10

Budget Reports

Dental Board of California

2005 Evergreen Street, Suite 1550, Sacramento, California 95815

P 916.263.2300 | F 916.263.2140 | www.dbc.ca.gov



MEMORANDUM

DATE	April 29, 2011
TO	Board Members
FROM	Sharon Langness, Budget Analyst
SUBJECT	Agenda Item 10: Budget Reports: Dental Fund & Dental Assisting Fund

According to the most recent CALSTARS report as of March 1, 2011, the Dental Board has spent approximately 62% of its annual Dentistry budget appropriation (roughly \$6.8 million). Of the Dental Assisting appropriation, the Board has spent approximately 56% (roughly \$945, 000). The maylay at the state capitol continues to cause a domino effect of budget squeeze at every level. The latest issues effecting the Dental Board are highlighted below.

- 1) The Board's highest hurdle comes as a result of Executive Order B-3-11, which implements a mandatory hiring freeze throughout state agencies. The order allows for agencies to submit freeze exemptions for critical positions, and applied a formula for the number of exemptions allowed. Of the Board's 13 vacant positions, we were only allowed to submit an exemption for 4 of those vacancies, the outcome of which is yet undecided.
- 2) With Executive Order B-2-11, came a requirement to reduce home storage of state vehicles by 32%. The emphasis was to not only on cutting costs, but also on reducing pollution by lowering fuel consumption. There is still a debate as to whether those goals are realistically being met, given that staff is using more fuel to bring the vehicles back to the office and drive their personal vehicles home, then back to pick up the vehicle in the morning. At any rate, the Board is working to bring vehicle home storage into compliance with the order.
- 3) Contracts for the Portfolio Examination and RDA Examination have been executed, and consultants for both examinations have begun the work outlined in the contracts. A progress report for each will be forthcoming at the next Board meeting;

I have attached a copy of the current budget projections (based upon the March 2011 CALSTARS report) for your review. Please remember that when reviewing this document, it is only an estimate for a particular point in time. The expenditure projections can fluctuate and funds can be internally redirected for many of the line items listed as needed.

Richard DeCuir will address any questions you have at the Board Meeting.

0741 - Dental Board of California Analysis of Fund Condition

Prepared 4/6/11

(Dollars in Thousands)

Proposed FY 2011-12 Governor's Budget
Includes Repayment of Outstanding GF Loan (\$4.4M)

	Actual 2009-10	CY 2010-11	Governor's Budget BY 2011-12	BY + 1 2012-13	BY + 2 2013-14	BY + 3 2014-15
BEGINNING BALANCE	\$ 7,318	\$ 7,865	\$ 4,941	\$ 2,935	\$ 361	\$ -2,349
Prior Year Adjustment	\$ 180	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 7,498	\$ 7,865	\$ 4,941	\$ 2,935	\$ 361	\$ -2,349
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	\$ 22	\$ 34	\$ 34	\$ 34	\$ 34	\$ 34
125700 Other regulatory licenses and permits	\$ 834	\$ 918	\$ 907	\$ 907	\$ 907	\$ 907
125800 Renewal fees	\$ 6,919	\$ 6,595	\$ 6,688	\$ 6,688	\$ 6,688	\$ 6,688
125900 Delinquent fees	\$ 70	\$ 82	\$ 84	\$ 84	\$ 84	\$ 84
131700 Misc. Revenue from Local Agencies						
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 55	\$ 44	\$ 4	\$ 4	\$ -	\$ -
150500 Interest Income From Interfund Loans	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
160400 Sale of fixed assets	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4	\$ 4
161000 Escheat of unclaimed checks and warrants	\$ 3	\$ 3	\$ 3	\$ 3	\$ 3	\$ 3
161400 Miscellaneous revenues	\$ 13	\$ 13	\$ 13	\$ 13	\$ 13	\$ 13
164300 Penalty Assessments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 7,920	\$ 7,693	\$ 7,737	\$ 7,737	\$ 7,733	\$ 7,733
Transfers from Other Funds						
F00001 Rpymt of GF loans per Item 1250-011-0741, BAs of 2002 & 2003			\$ 1,700	\$ 1,300	\$ 1,400	
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)						
Transfers to Other Funds						
T00001 GF loan per Item 1250-011-0741, BA of 2002	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T00001 GF loan per Item 1250-011-0741, BA of 2003	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
T03039 Transfer to Dentally Underserved Account						
Totals, Revenues and Transfers	\$ 7,920	\$ 7,693	\$ 9,437	\$ 9,037	\$ 9,133	\$ 7,733
Totals, Resources	\$ 15,418	\$ 15,558	\$ 14,378	\$ 11,972	\$ 9,494	\$ 5,384
EXPENDITURES						
Disbursements:						
0840 State Controller (State Operations)	\$ 6	\$ 15	\$ 12			
8880 FISCA		\$ 6	\$ 48			
1110 Program Expenditures (State Operations)	\$ 7,547	\$ 10,610	\$ 11,383	\$ 11,611	\$ 11,843	\$ 12,080
BreEZe Redistribution		\$ -14				
8880 Financial Information System of California (State Operations)						
Total Disbursements	\$ 7,553	\$ 10,617	\$ 11,443	\$ 11,611	\$ 11,843	\$ 12,080
FUND BALANCE						
Reserve for economic uncertainties	\$ 7,865	\$ 4,941	\$ 2,935	\$ 361	\$ -2,349	\$ -6,696
Months in Reserve	8.9	5.2	3.0	0.4	-2.3	-6.5

NOTES:

- ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
- EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2011-12

**DEPARTMENT OF CONSUMER AFFAIRS
Dental Board**

**BUDGET REPORT
FY 2010/11 Expenditure Projection
Month 9 Calstars**

Month(s)	9
Mo. Remaining	3

OBJECT DESCRIPTION	FY 2009/10		FY 2010/11				UNENCUMBERED BALANCE 4/30/2009
	ACTUAL EXPENDITURES (MONTH 13)	PY Expenditures (MONTH 9)	BUDGET ALLOTMENT	CY EXPENDITURES (MONTH 9)	PERCENT SPENT	PROJECTIONS TO YEAR END	
PERSONNEL SERVICES							
Civil Service - Perm	1,979,125	1,412,108	2,970,113	1,918,348	65%	2,558,000	412,113
Temp Help Exper Examiners			40,000				
Phys Fitness Incentive	780	520		1,625		2,000	(2,000)
Temp Help 907	239,932	210,885	222,403	207,974	94%	312,000	(89,597)
Exam Proctor (915)			45,447		0%	0	45,447
Allocated Proctor Cost	1,160	1,160				0	0
Separated Proctor Cost							
Statutory-Exempt	89,587	67,272	103,608	72,124	70%	96,000	7,608
Bd/Commsn (901,920)	15,100	11,300	45,950	13,100	29%	18,000	27,950
Comm Member (911)	5,500	4,600	58,686	3,500		5,000	53,686
Overtime	25,685	19,529	25,208	785	3%	1,000	24,208
Benefits	864,846	688,443	1,629,394	975,721	60%	1,301,000	328,394
Special Adjustments - Personal Services							
Salary Savings			(325,303)		0%		(325,303)
TOTAL PERS SVS	3,221,715	2,415,817	4,815,506	3,193,177	66%	4,293,000	522,506
OPERATING EXPENSES & EQUIPMENT							
Fingerprints	8,849	5,118	25,777	5,613	22%	8,000	17,777
General Expense	175,428	80,076	234,365	79,441	34%	174,000	60,365
Minor Equipment 226	92,349	52,481	107,000	33,639	31%	59,000	48,000
Printing	47,612	27,329	41,502	17,867	43%	31,000	10,502
Communication	55,608	34,602	36,949	42,981	116%	69,000	(32,051)
Postage	62,194	45,076	59,791	42,365	71%	64,000	(4,209)
Insurance	2,033	2,033	6,972	2,016	29%	3,000	3,972
Travel In state	115,643	70,317	100,755	75,598	75%	124,000	(23,245)
Travel Out of state	53					0	0
Training	3,900	2,557	23,148	4,277	18%	7,000	16,148
Facilities Ops	389,619	330,316	351,656	457,511	130%	540,000	(188,344)
Utilities							0
C&P Serv. Internal	52,606	48,997	134,917	53,294	40%	80,000	54,917
Health & Med-Interdept.							0
**C&P Serv. External	201,099	217,309	282,274	217,783	77%	202,000	80,274
Departmental Services (pro rata)	893,709	714,870	1,009,017	746,488	74%	1,009,000	17
Interagency Svcs			881		0%		881
Teale (Data Centers)	38,893	27,000	18,907	27,000	143%	39,000	(20,093)
Data Processing	9,168	8,868	10,366	300	3%	10,000	366
Central Adm. Services (statewide pro rata)	312,553	234,415	373,091	279,818	75%	373,000	91
EXAMS	184,524	114,936	756,298	87,636	12%	141,000	
Other Items of Expense	3,085	788	661	363	55%	1,000	(339)
Vehicle Operations	38,891	25,766	9,055	32,456	358%	49,000	(39,945)
ENFORCEMENT							
Attorney General	1,271,981	847,066	1,778,310	1,086,547	61%	1,449,000	329,310
Off of Admin Hearings	216,972	150,362	406,720	104,610	26%	157,000	249,720
Evidence/Witness	457,841	314,327	243,959	313,151	128%	470,000	(226,041)
Court Reporter Services	27,856	21,674		9,353		12,000	(12,000)
Div of Investigations							0
Major Equipment			32,000			32,000	0
Settlement						675,000	(675,000)
Total OE & E	4,662,464	3,376,283	6,044,371	3,720,107	62%	5,778,000	266,371
Special Items of Expense							
Interest - Settlement							
Tort Payments			0				
Board of Control Claims						0	
Total Special I of E		0	0	0	0%	0	0
TOTAL EXPENDITURES	7,884,179	5,792,100	10,859,877	6,913,284	64%	10,071,000	788,877
Fingerprint Reimb.	(24,397)	(5,406)	(53,000)	(17,599)		(53,000)	
Reimb. Other	(72,103)	(195,360)	(197,000)	(54,639)		(197,000)	
Reimb. Unscheduled	(241,851)	(13,880)		(157,966)			
Total Reimbursements	(338,351)	(214,646)	(250,000)	(230,204)	92%	(250,000)	0
NET APPROPRIATION	7,545,828	5,577,454	10,609,877	6,683,080	63%	9,821,000	788,877

Surplus/Deficit 7.4%

NOTES/ASSUMPTIONS

1. CY expenditures include YTD+ Encumbrances

3142 - Registered Dental Assistant Program

Analysis of Fund Condition

Prepared 3.28.11

(Dollars in Thousands)

Proposed FY 2011-12 Governor's Budget

	Actual 2009-10	CY 2010-11	Governor's Budget BY 2011-12	BY +1 2012-13	BY +2 2013-14
BEGINNING BALANCE	\$ -	\$ 1,931	\$ 1,857	\$ 1,640	\$ 1,390
Prior Year Adjustment	\$ -	\$ -	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ -	\$ 1,931	\$ 1,857	\$ 1,640	\$ 1,390
REVENUES AND TRANSFERS					
Revenues:					
125600 Other regulatory fees	\$ 14	\$ 13	\$ 13	\$ 13	\$ 13
125700 Other regulatory licenses and permits	\$ 243	\$ 308	\$ 310	\$ 310	\$ 310
125800 Renewal fees	\$ 1,225	\$ 1,186	\$ 1,079	\$ 1,079	\$ 1,079
125900 Delinquent fees	\$ 73	\$ 61	\$ 51	\$ 51	\$ 51
141200 Sales of documents	\$ -	\$ -	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 4	\$ 18	\$ 15	\$ 14	\$ 11
160400 Sale of fixed assets	\$ -	\$ -	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ 5	\$ 5	\$ 5	\$ 5	\$ 5
164300 Penalty Assessments	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,564	\$ 1,591	\$ 1,473	\$ 1,472	\$ 1,469
Transfers from Other Funds					
0380 - Committee on Dental Auxiliaries	\$ 1,619	\$ -	\$ -	\$ -	\$ -
Transfers to Other Funds	\$ -	\$ -	\$ -	\$ -	\$ -
	\$ -	\$ -	\$ -	\$ -	\$ -
Totals, Revenues and Transfers	\$ 3,183	\$ 1,591	\$ 1,473	\$ 1,472	\$ 1,469
Totals, Resources	\$ 3,183	\$ 3,522	\$ 3,330	\$ 3,112	\$ 2,859
EXPENDITURES					
Disbursements:					
0840 State Controller (State Operations)	\$ 1	\$ 2	\$ 2	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 1,251	\$ 1,670	\$ 1,688	\$ 1,722	\$ 1,756
BreZE BCP		\$ (7)			
Total Disbursements	\$ 1,252	\$ 1,665	\$ 1,690	\$ 1,722	\$ 1,756
FUND BALANCE					
Reserve for economic uncertainties	\$ 1,931	\$ 1,857	\$ 1,640	\$ 1,390	\$ 1,103
Months in Reserve	13.9	13.2	11.4	9.5	7.4

NOTES:

- ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED
- EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2011-12

**DEPARTMENT OF CONSUMER AFFAIRS
Dental Assistants**

**BUDGET REPORT
FY 2010/11 Expenditure Projection
Month 9 Calstars**

Month(s)	9
Mo. Remaining	3

OBJECT DESCRIPTION	FY 2009/10		FY 2010/11				UNENCUMBERED BALANCE 4/30/2009
	ACTUAL EXPENDITURES (MONTH 13)	PY Expenditures (MONTH 9)	BUDGET ALLOTMENT	CY EXPENDITURES (MONTH 9)	PERCENT SPENT	PROJECTIONS TO YEAR END	
PERSONNEL SERVICES							
Civil Service - Perm	260,909	198,494	330,342	236,793	72%	311,000	19,342
Temp Help Exper Examiners			158			0	0
Temp Help Consultants							0
Phys Fitness Incentive							0
Temp Help 907							0
Exam Proctor (915)							0
Allocated Proctor Cost	1,275	756	4,604	1,794	39%	3,000	1,604
Separated Proctor Cost							0
Statutory-Exempt							(1,000)
Bd/Commsn (901,920)	1,000	500		400		1,000	0
Comm Member (911)							0
Overtime	17,223	12,586	17,023	6,441	38%	10,000	7,023
Benefits	137,523	105,720	165,706	122,425	66%	160,000	25,706
Salary Savings			(32,393)		0%		(32,393)
TOTAL PERS SVS	417,930	318,056	505,440	367,853	73%	485,000	20,440
OPERATING EXPENSES & EQUIPMENT							
Fingerprints	2,056	1,447	7,780	254	3%	500	7,280
General Expense	7,698	3,642	48,276	2,273	5%	5,000	43,276
Minor Equipment 226	4,034	4,034	0			0	0
Printing	15,656	8,180	28,518	5,536	19%	11,000	17,518
Communication	281	264	11,732	22	0%	100	11,632
Postage	17,446	13,682	53,014	11,363	21%	17,000	36,014
Insurance							0
Travel In state	46,842	33,247	39,802	21,209	53%	30,000	9,802
Travel Out of state							0
Training			4,119		0%	0	4,119
Facilities Ops	43,089	42,287	63,950	79,718	125%	81,000	(17,050)
Utilities							0
C&P Serv. Internal			283,755		0%	0	283,755
Health & Med-Interdept.							0
**C&P Serv. External	634	634	532	7,500	1410%	7,500	(6,968)
Departmental Services (pro rata)	218,933	189,210	261,131	224,624	86%	261,131	0
Interagency Svcs			72,554		0%	0	72,554
Teale	4	4	1,576		0%	0	1,576
Data Processing			1,369		0%	0	1,369
Central Adm. Services (statewide pro rata)	62,909	47,182	66,754	50,066	75%	66,754	0
SWCAP							0
EXAMS	200,216	171,002	152,238	95,141	62%	127,000	
Other Items of Expense			285		0%	0	285
Vehicle Operations							0
ENFORCEMENT							
Attorney General	213,125	90,703	67,536	137,535	204%	183,000	(115,464)
Off of Admin Hearings			2,740		0%	0	2,740
Evidence/Witness			87		0%	0	87
Court Reporter Services							0
Div of Investigations							0
Major Equipment			13,000		0%	13,000	0
Special adjustment							0
Total OE & E	832,923	605,518	1,180,748	635,241	54%	802,985	377,763
Special Items of Expense							
Interest - Settlement							
Tort Payments			0				
Board of Control Claims						0	
Total Special I of E		0	0	0	0%	0	0
TOTAL EXPENDITURES	1,250,853	923,574	1,686,188	1,003,094	59%	1,287,985	398,203
Fingerprint Reimb.	(121)		(13,000)	0		(100)	
Reimb. Other	(480)		(3,000)			(500)	
Reimb. Unscheduled							
Total Reimbursements	(601)	0	(16,000)	0	0%	(600)	0
NET APPROPRIATION	1,250,252	923,574	1,670,188	1,003,094	60%	1,287,385	382,803

Surplus/Deficit 22.9%

NOTES/ASSUMPTIONS

1. CY expenditures include YTD+ Encumbrances

AGENDA ITEM 11

Sunset Review



MEMORANDUM

DATE	May 10, 2011
TO	Dental Board of California
FROM	Karen Fischer, Administrative Analyst Dental Board of California
SUBJECT	Agenda Item 11: Update on Dental Board of California's Sunset Review Process and Discussion and Possible Action Regarding SB 540 (Price) Dental Board of California's Sunset Review

Sunset Review Process

The Sunset Review process has been very intense since the last Board meeting in February, 2011. The Senate BP&ED Committee published its initial staff report and recommendations on March 7, 2011. (**Attachment A**) In addition to this report, and in preparation for the oversight hearing schedule for March 14, 2011, Senate BP&ED staff provided additional questions to Board staff and suggested that these questions be addressed at the hearing.

Staff worked with board members to draft testimony to answer the questions the Senate BP&ED staff had provided. The following people presented testimony at the March 14th oversight hearing: Dr. John Bettinger, Board President, Ms. Fran Burton, public member, Ms. Rebecca Downing, public member, Mr. Richard DeCuir, Executive Officer, Ms. Kim Trefry, Enforcement Chief, and Ms. Teri Lane, Supervising Investigator. Also in attendance were Dr. Bruce Witcher, Board Vice President, Dr. Stephen Casagrande, Board member, and Denise Johnson, Assistant Executive Officer. The hearing was webcast.

After the oversight hearing, we continued to respond to follow-up questions from Senator Price, Committee Chair and Senate BP&ED Committee staff. Specifically, Senator Price had additional questions about consumer Tina Gomes' testimony, and our comments about Issue #21(Diversion program) as presented in the Senate Committee recommendations. Mr. DeCuir took this opportunity to request that the Senate BP&ED Committee consider including statutory language in the Board's sunset review legislation that would expand the enforcement units authority to address violations of the Dental Practice Act and asked that the language include time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. (**Attachment B**)

In addition to responding to follow-up questions regarding the oversight hearing, Board staff drafted a written response to the Committee staff's issues and recommendations, with the assistance of Ms. Fran Burton and Dr. Bruce Whitcher. The Board's response was submitted to the Senate BP&ED Committee on April 14, 2011. **(Attachment C)**

In the meantime, Senate Bill 540 (Price), was introduced as the vehicle to address the Dental Board issues identified through the sunset review process. On April 25, 2011, SB 540 was amended to include the Senate BP&ED Committee's recommendations. **(Attachment D)**

When the April 25th amended version of SB 540 appeared in print, Dr. John Bettinger, Board President appointed a two person subcommittee, Ms. Fran Burton and Dr. Bruce Whitcher, to work with Board staff to review the proposed amendments to SB 540 and to draft a response. Because the full Board has not yet met to review the legislation, it was decided that at this time the Board's response would be to ask for further clarification of a number of issues raised in the legislation. The letter was delivered April 29, 2011. **(Attachment E)**

Senate Bill 540

Senate Bill 540, as amended April 25, 2011 prior to the May 2, 2011 Senate BP&ED Committee meeting does the following:

- 1) Does NOT yet include the Board's request for statutory language to expand the enforcement units authority to address violations of the Dental Practice Act.
- 2) Deletes existing law requirements relating to advertising by a dentist of specialization or accreditation in a specialty area of practice unless certain requirements are met.
- 3) Extends the sunset date of the DBC comprised of eight practicing dentists, one registered dental hygienist, one registered dental assistant and five public members to January 1, 2016.
- 4) Establishes, on and after January 1, 2016, a DBC which shall consist of eight practicing dentists and seven public members. States that this provision shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. States that this repeal renders the DBC subject to review by the appropriate policy committees of the Legislature. States that members of the DBC shall be appointed for a term of four years, and that the Governor appoints the 8 dentists and five of the public members, and the Senate Rules Committee and the Speaker of the Assembly each appoint a public member.
- 5) States that on and after January 1, 2016, all members of the DBC, except the public members, shall have been actively and legally engaged in the practice of dentistry, as specified. Provides that the public members shall not be licentiates of the DBC or any other board, as specified.

6) Requires the DBC, by January 1, 2013, to comply with existing statute that requires boards within DCA, including the DBC, to adopt regulations to require licensees to provide notice to clients or customers that the licensee is licensed by the state. Requires the notice to include a provision indicating that the DBC is the entity that regulates dentists and provide the telephone number and Internet address of the DBC. States that the DBC should require the notice to be posted in a conspicuous location accessible to public view.

7) Extends the sunset date of the appointment of the executive officer to January 1, 2018.

8) Requires the DBC to adopt written guidelines on how to make probation assignments, and to ensure that probationary and evaluation reports are conducted consistently and regularly.

9) Requires the DBC to ensure that the law and ethics examination reflect current law and regulations, and to ensure that the examinations are randomized.

10) Provides that if requested by the Legislature through the Joint Legislative Audit Committee in 2012, the Bureau of State Audits shall conduct a thorough performance audit of the DBC's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that licensees participating in the program are appropriately monitored and that the public is protected from licensees who are impaired due to alcohol or drug abuse or mental or physical illness. Requires this audit to be paid for with moneys from the State Dentistry Fund. (Note: the requirement was taken out of the Nursing Board's Diversion Program requirements.)

11) Deletes existing law provision requiring a licentiate to sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the DBC of diversion treatment records in disciplinary or criminal proceedings.

12) Requires that if a licentiate withdraws or is terminated from the diversion program for failure to comply or is determined to be a threat to the public or their own health and safety, all diversion records for that licentiate shall be provided to the DBC's enforcement program and may be used in any disciplinary proceeding.

13) States that if a licentiate in a diversion program tests positive for any banned substance, the board's diversion program manager shall immediately notify the DBC's enforcement program and provide the documentation evidencing the positive test result to the enforcement program. Provides that this documentation may be used in a disciplinary proceeding. (Note: This is not a requirement of the Nursing Board's Diversion Program.)

14) Deletes the requirement that dental assisting fees that relate to licensing and permitting be established by DBC resolution and instead requires these fees to be

established by regulation.

15) Deletes existing intent language for the DBC to create and implement an effective forum for dental assisting matters; as specified.

16) Creates a Dental Assisting Council (Council) of the DBC; which shall consider all matters relating to dental assistants in this state, including matters that relate to standards for approval of dental assisting educational programs and courses, and make appropriate recommendations to the DBC, as specified:

17) Requires that members of the Council to be appointed by the DBC president, and shall consist of two members of DBC, and five members who are either registered dental assistants or registered dental assistants in extended functions. Requires the Council to meet in conjunction with other DBC Committees, and at other times as deemed necessary.

18) Provides that the Council members shall serve a term of four years, except that, of the initial appointments of the nonboard members, one of the members shall serve a term of one year, two members shall serve a term of two years, and two members shall serve a term of three years.

19) Requires the Council to be the sole entity of the DBC that will provide recommendations on dental assisting matters.

20) Extends the California Dental Corps Loan Repayment Program of 2002 until all the moneys in the account are expended.

The Bottom Line

SB 540(Price) was heard in the Senate Business, Professions, and Economic

Development Committee on May 2, 2011. Ms. Fran Burton and Dr. Bruce Whitche, along with Mr. Richard DeCuir and Ms. Kim Trefry attended and testified at the hearing. One important amendment was made by the author at the hearing to move up the date of the Board's re-composition to eight dentists and seven public members, from January 1, 2016 to January 1, 2012.

Subsequent to the May 2nd Committee hearing, SB 540 was amended in the Senate May 9, 2011. The bill has been referred to Senate Appropriations Committee but has not been scheduled for hearing. The last day for fiscal committees to hear and report to the floor bills introduced in their house is May 27, 2011.

SB 540 Amendments Resulting from the May 2nd Hearing:

• Change the composition of the board to eight practicing dentists and seven public members as of January 1, 2012. The RDA member and the RDH member requirements have been repealed as of January 1, 2012.

• Provide that the next sunset date of the Dental Board is January 1, 2016 (all references to the sunset date of January 1, 2018 have been deleted).

The amendments do not include any of the following:

- Provide an amendment to ensure that the Board will be able to continue to collect fees on or after January 1, 2012; but that any increase in fees on or after January 1, 2012 would need to be adopted by regulation rather than resolution. The Board will be unable to collect current dental assisting fees after January 1, 2012 until the regulations become effective.
- Additional enforcement methods that would assist staff in closing minor to moderate violations more quickly (time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment).
- Clarification regarding the Dental Assisting Council assuming disciplinary functions. Conflict of interest language for the qualifications of the Dental Assisting Council appointees. Clarification on the Board's ability to hear dental assisting issues in its other committees such as Enforcement, Examinations, Licensing/Certification/Permits, and Legislation/Regulatory as a result of the establishment of the Dental Assisting Council.
- Delete "mental or physical illness" from Section 1695(b) pertaining to the Diversion Program audit.
- Clarification on the Board's requirement to adopt written guidelines on how to make probation assignments and ensure that probationary evaluation reports are conducted consistently and regularly – to whom the section would apply (applicants, licensees, or both?)

A follow-up meeting is anticipated between the Senate BP&ED Committee staff and Ms. Burton/Dr. Whitcher to discuss further changes to the bill. Ms. Burton and Dr. Whitcher will be providing their respective perspectives of the May 2nd hearing at the Board meeting.

Action Requested

The Board may wish to take a position on SB 540: Support, Support with amendments, Oppose, Watch, no position, etc.

ATTACHMENT A

The Senate Committee on Business,
Professions and Economic Development's
Background Paper for the Dental Board of
California Oversight Hearing
March 14, 2011

Identified Issues, Background and
Recommendations Regarding the Dental
Board of California

BACKGROUND PAPER FOR THE DENTAL BOARD OF CALIFORNIA

**(Oversight Hearing, March 14, 2011, Senate Committee on
Business, Professions and Economic Development)**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE DENTAL BOARD OF CALIFORNIA

BRIEF OVERVIEW OF THE DENTAL BOARD OF CALIFORNIA

The Dental Board of California (DBC) was created by the California Legislature in 1885, and was originally established to regulate dentists. Today, DBC is responsible for regulating the practice of approximately 71,000 licensed dental health professionals in California, including 35,500 dentists, 34,300 registered dental assistants (RDAs), and 1,300 registered dental assistants in extended functions (RDAEFs). In addition, DBC is responsible for setting the duties and functions of approximately 50,000 unlicensed dental assistants. DBC, as a whole, generally meets at least four times throughout the year to address work completed by various committees of DBC and hear disciplinary cases.

The Dental Practice Act provides that the “[p]rotection of the public shall be the highest priority of the Dental Board of California 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.” In concert with this statutory mandate, DBC formally adopted a mission statement in its 2010/2012 Strategic Plan, as follows: “The mission of the Dental Board of California is to protect and promote the health and safety of consumers of the State of California.” The Strategic Plan also included a vision statement which indicated that DBC will be the leader in public protection, promotion of oral health, and access to quality care.

DBC implements regulatory programs and performs a variety of functions to protect consumers. These programs and activities include setting licensure requirements for dentists, and dental assistants, including examination requirements, issue and renew licenses, issue special permits, monitor probationer dentists and RDAs and manage a Diversion Program for dentists and RDAs whose practice may be impaired due to chemical dependency or mental illness.

DBC is composed of 14 members; 8 practicing dentists, 2 dental auxiliaries (RDH and RDA), and 4 public members. The 8 licensed dentists, the registered dental hygienist, the registered dental assistant, and 2 public members are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each get a public member appointment. According to DBC, public membership is 29% of the Board’s composition. Of the 8 practicing dentists, 1 must be a member of a dental school faculty, and one shall be a dentist practicing in a nonprofit clinic.

Members of DBC are appointed for a term of 4 years, and each member may continue to hold office until the appointment and qualification of his or her successor or until 1 year has elapsed since the

expiration of the term, whichever occurs first. Each member may serve no more than 2 full terms. The following is a listing of the current members of the DBC with a brief biography of each member, their current status, appointment and term expiration dates and the appointing authority:

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
John Bettinger, DDS, Board President Dr. Bettinger is a member of the American Dental Association, California Dental Association and Western Los Angeles Dental Society. He is a Life Member with Fellowship status in the Academy of General Dentistry. He served on the Western Los Angeles Dental Society Peer Review Committee for 10 years and on the Diversion Evaluation Committee of DBC for 2 years. Dr. Bettinger has been affiliated with Saint John's Hospital and the UCLA/Santa Monica Hospital and Health Care Center (formally the Santa Monica Hospital).	March 26, 2009	January 1, 2013	Governor
Bruce L. Whitcher, DDS, Board Vice President Dr. Whitcher has maintained a private practice of Oral and Maxillofacial Surgery in San Luis Obispo since 1987. Dr. Whitcher is a member of the Central Coast Dental Society, the California Dental Association, the California Association of Oral and Maxillofacial Surgeons, and the American Association of Oral and Maxillofacial Surgeons. He maintains hospital affiliations with French Hospital Medical Center, Sierra Vista Regional Medical Center, and Twin Cities Hospital Medical Center.	January 2, 2011	January 1, 2015	Governor
Luis Dominicus, DDS, Board Secretary Dr. Dominicus is a general dentist in private practice in the City of Downey, California since 1993. Dr. Dominicus is the President of Los Angeles Dental Society, Past President of the Latin American Dental Association; he has also served in various Councils in the California Dental Association such as Council on Legislative Affairs, Council on Community Health and in the Reference Committee for the House of Delegates. Dr. Dominicus is presently a member of the Dental Forum, which represents the ethnic dental societies in California.	March 26, 2009	January 1, 2012	Governor
Steven Afriat Mr. Afriat is President of the Los Angeles County Business License Commission. He was also the Los Angeles City Councilmember's Chief of Staff. Mr. Afriat has also served as President of the Los Angeles City Animal Services Commission, the LA City Council Redistricting Commission, and on the Boards of the Valley Community Clinic, Equality California, the West Hollywood Chamber of Commerce, and the Valley Industry and Commerce Association. Mr. Afriat owns his own Governmental Relations firm in Burbank.	July 2010	January 1, 2013	Speaker of the Assembly
Fran Burton Ms. Burton served twenty-one years in California in the Legislative and Executive branches of government. She currently consults on health policy issues. She holds a Master of Social Work degree from California State University, Sacramento.	June 2009	January 1, 2013	Senate Rules Committee
Stephen Casagrande, DDS Dr. Casagrande has been a dentist in private practice since 1974. He was previously the director of the Sacramento District Dental Society, a past member of the peer review committee, an advisor to the Sacramento City College Dental Hygiene Program Advisory Board Member to Hi-Tech Institute, a Proprietary School for Dental Assistants. Dr. Casagrande is a member of the American Dental Association, California Dental Association, and Sacramento District Dental Society.	March 27, 2009	January 1, 2012	Governor

Rebecca Downing Ms. Downing was appointed by Governor Schwarzenegger to the Dental Board in March of 2009. She is an attorney and the Chief Legal Officer for Western Health Advantage, a Sacramento-based health plan. Previously, she served as general counsel for Landmark Healthcare, Inc., a chiropractic / acupuncture health care company. In addition, Ms. Downing was the Executive Director of the California Chiropractic Association, and served in various capacities with the California Veterinary Medical Association and the California Dental Association. She received her Juris Doctorate degree from University of Southern California Gould School of Law and her Bachelor's degree from California State University, Sacramento.	March 26, 2009	January 1, 2012	Governor
Judith Forsythe, RDA Judith Forsythe, of Riverside, has been a Registered Dental Assistant in the State of California since 1994. She currently holds the position of director of back office development for Pacific Dental Services, where she has worked since 1998. She is a member of the American Dental Assistant Association.	March 26, 2009	January 1, 2013	Governor
Houng Le, DDS Dr. Le is a member of the American Dental Association, California Dental Association and Alameda County Dental Society. Dr. Le serves as a member on Board of Directors of National Network for Oral Health Access and Secretary for Western Clinicians Network. Additionally, she is President-Elect for Alameda County Dental Society. Dr. Le presently serves as Assistant Clinical Professor at UCSF School of Dentistry, A. T. Still School of Dental and Oral Health in Arizona and Dental Director of Lutheran Medical Center-affiliated AEGD program at Asian Health Services.	January 2, 2011	January 1, 2015	Governor
Suzanne McCormick, DDS Dr. McCormick is an Oral and Maxillofacial surgeon in private practice who is an active staff member at the Department of Oral and Maxillofacial Surgery at Tri-City Medical Center in Oceanside, California. She has been affiliated with many hospitals including, but not limited to, Health North Medical Center, Loma Linda University Medical Center, Riverside Medical Center, Metropolitan Medical Center, St. Vincent's Hospital and Medical Center, and New York University Medical Center. She has served as Trustee from District I, of the Board of Directors, International College of Oral and Maxillofacial Surgeons.	March 26, 2009	January 1, 2013	Governor
Steven Morrow, DDS After sixteen years of endodontic practice, Dr. Morrow returned to the field of dental education, completed a Master of Science Degree in Microbiology and accepted a faculty appointment in the Department of Endodontics at Loma Linda University School of Dentistry. Dr. Morrow is a Life Member of the American Dental Association and the American Association of Endodontists. He is a member of the California State Association of Endodontists, Tri-County Dental Society, Southern California Academy of Endodontics, and the American Dental Education Association. He is a Diplomate of the American Board of Endodontics and a member of the Scientific Advisory Board of the Journal of Endodontics. He is currently a Professor of Endodontics and Director of Patient Care Services and Clinical Quality Assurance at Loma Linda University School of Dentistry.	August 17, 2010	January 1, 2014	Governor
Thomas Olinger, DDS Since 1979, he has owned and operated his private practice. Dr. Olinger has also served as a dental officer in the U.S. Navy Reserve since 1976. He is a member of the California Dental Association, American Dental Association and San Diego County Dental Society. This position does not require Senate confirmation and the compensation is \$100 per diem.	March 26, 2009	January 1, 2013	Governor

DBC currently has active committees dealing with dental assisting, enforcement, examinations, legislation and regulations, and licensing, certification, and permits. The Enforcement Committee reviews complaint and compliance case-aging statistics, citation and fine information, and investigation case-aging statistics in order to identify trends that might require changes in policies, procedures, and/or regulations. This Committee also receives updates on dentists participating in the Diversion Program. The Examination Committee reviews clinical/practical and written examination statistics and receives reports on all examinations conducted by staff. The Legislative/Regulatory Committee actively tracks legislation relating to the field of dentistry that might impact consumers and licensees and makes recommendations to the full Board whether or not to support, oppose, or watch a particular legislation. The Legislative/Regulatory Committee also develops legislative proposals, seeks authors, and attends Legislative hearings. The Licensing, Certification, and Permits Committee reviews dental and dental assistant licensure and permit statistics, and looks for trends that would indicate efficiency and effectiveness or might identify areas in the licensing units that need modifications. Additionally, the Dental Assisting Committee, made up of DBC members, evaluates all issues relating to dental assistants, RDAs, and RDAEFs.

DBC is a special fund agency, and its funding comes from the licensing of dentists and biennial renewal fees of dentists and RDAs. Currently, the license and renewal fee for dentists is \$365 and the renewal fee for RDAs is \$70. DBC also receives revenue through its cite and fine program. The total revenues anticipated by DBC for fiscal year 2010/2011 is \$7,758,000, for FY 2011/2012, it is \$8,929,000, and for FY 2012/2013 it is \$10,021,000. DBC's anticipated expenditures for FY 2010/2011 is \$11,159,000, for FY 2011/2012, it is \$11,386,000, and for FY 2012/2013 it is \$11,641,000. DBC spends approximately 68% of its budget on its enforcement program, with the major portion of these expenditures going to salary and wages followed by Attorney General and Evidence and Witness costs. DBC anticipates it would have approximately 4.7 months in reserve for FY 2010/2011, 2.1 months in reserve for FY 2011/2012, and 1.3 months reserve for 2012-2013.

In 2009, with the implementation of SB 853 (Perata), the State Dental Assistant Fund was established where all funds for the regulation of dental assistants is deposited. According to DBC, the total revenues anticipated for the dental assistant fund for FY 2010/2011, 2011/2012 and 2012/2013 is over \$1.1 million. The total expenditures for each of the fiscal years is over \$1.7million. DBC anticipates a 9.4 months reserve in 2010/2011, 5.1 months reserve in 2011/2012 and .7 months reserve in 2012/2013.

Currently, DBC has 72.8 authorized positions, of which 60.8 are filled and 12 are vacant. The Enforcement Unit is comprised of 35 staff, with 10.5 vacant positions. In 2010, the DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process of healing arts boards. According to DCA, the CPEI is a systematic approach designed to address three specific areas: Legislative Changes, Staffing and Information Technology Resources, and Administrative Improvements. Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline to between 12 -18 months. As part of CPEI, DBC was authorized to hire 12.5 positions. However, because of a hiring freeze ordered by the Governor on August 31, 2010, as well as a 5% staff reduction directive from the Department of Finance on October 26, 2010, DBC has only hired 4 of the 12.5 positions allocated under CPEI.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

DBC was last reviewed by the former Joint Legislative Sunset Review Committee (JLSRC) in 2002. At that time, the JLSRC issued five recommendations. Additionally, prior to this last review, SB 26 (Figueroa), Chapter 615, Statutes of 2001 required the Director of the DCA to appoint an Enforcement Monitor (Monitor) to evaluate DBC's disciplinary system and procedures with specific focus on the quality and consistency of complaint processing and investigation, timeframes needed for complaint handling and investigation, complaint backlogs, and other related managerial, organizational, and operational problems, issues, and concerns. The Monitor submitted his initial report to the Legislature in 2002, and made 40 specific recommendations for improvements. In this initial report, the Monitor indicated that there are numerous significant inconsistencies in the way complaints are processed and investigated, it was taking much too long to resolve or investigate complaints, and as a result of staff turnover and the state's hiring freeze, backlogs have begun to accumulate. The following are actions which DBC took to address the issues raised by the Monitor and the last sunset review. For those which were not addressed and which may still be of concern to the Committee, they are addressed and more fully discussed under "Current Sunset Review Issues."

On October 1, 2010, DBC submitted its required Sunset Report to this Committee. In this report, DBC described actions it has taken since its last sunset review and to address the recommendations of the Monitor. The following are some of the changes and enhancements that DBC had undertaken:

- Augmentation of enforcement unit staff and restructuring of its Complaint Unit has allowed DBC to respond to consumer complaints in a timely manner and has reduced the processing times of complaints.
- In response to concerns raised that DBC is unable to administer an adequate amount of examinations, DBC sponsored AB 1524 (Hayashi), Chapter 446, Statutes of 2010 which repeals the previous clinical and written examination administered by DBC and replaced it with a portfolio examination of an applicant's competence to practice dentistry to be administered while the applicant is enrolled in a dental school program.
- DBC converted limited term peace officer positions to permanent full time positions.
- New licensure, examination and permit requirements were established.
- To address issues raised by the Monitor on the lack of a case tracking system, DBC will be one of the Boards that will benefit from a new, integrated, enterprise-wide enforcement and licensing system, called BreEZe that will support applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management. According to DCA, BreEZe will replace the existing CAS, ATS, and multiple "workaround" systems with an integrated system for use by all DCA organizations. The BreEZe project was approved by the Office of the State Chief Information Officer (OCIO) in November 2009, and the Request For Proposal (RFP) for a solution vendor is currently under development.
- To address the need for tracking investigative case activity, in 2003, DBC tested a version of the Investigation Activity Reporting (IAR) program used by the Medical Board of California (MBC). According to DBC, although this demonstration version of MBC's database was intended to provide a method for managers to track casework on all cases, the system was not

established in protocol and was only used sporadically. DBC's enforcement program has partnered with the MBC to utilize MBC's newest version of the IAR to track casework. This format is intended to provide information for cost recovery purposes and allow managers to better track staff performance and productivity. Transition to the new IAR was anticipated to be completed by the end of 2010.

- The Expert Reviewer rate was increased from \$75 to \$100. However, DBC indicates it continues to struggle to recruit experts.
- Effective August 1, 2010, a new consumer survey procedure has been adopted.
- The Disciplinary Guidelines of DBC were revised and approved by the Office of Administrative Law on December 14, 2010. The regulations became effective January 13, 2011.
- DBC's regulatory authority and responsibility was extended to all dental assisting functions. The duties and functions of unlicensed dental assistants, RDAs, RDAEFs, Dental Sedation Assistants, and Orthodontic Assistants were revised in statute.
- The Board updated its dental assisting educational requirements relating to RDA programs, infection control courses, Orthodontic Assistant Permit Courses, Dental Sedation Assistant Courses, and RDAEF programs, and is moving forward with finalizing the rulemaking process.
- The DBC updated the regulations for the minimum standards for infection control applicable to all DBC licensees and is moving forward with finalizing the rulemaking process.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to DBC, or areas of concern for the Committee to consider, along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. DBC and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

BOARD ADMINISTRATION ISSUES

ISSUE #1: (CHANGE COMPOSITION OF DBC.) Should the composition of DBC be changed to include more public member representation?

Background: DBC's current composition of 8 professionals and 4 public members may not be in the best interest of consumer protection. DBC currently has 14 members: 8 dentists, 1 RDA, 1 RDH and 4 public members. The 8 licensed dentists, 1 RDH, 1 RDA, and 2 public members are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each get 1 public member appointment. According to DBC, public membership is 29% of DBC's composition.

Generally, a public member majority for occupational regulatory boards or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's (including DBC) primary purpose is to protect the public, increasing the public's representation on DBC assures the public that the professions' interests do not outweigh what is in the best interest of the public. Requiring closer parity between public and professional members is also consistent with both this Committee's and the DCA's recommendations regarding other boards that have undergone sunset review over the past 8 years. Additionally, almost all health related consumer boards have no more than a simple majority of professional members.

Staff Recommendation: *To ensure the continued commitment of DBC to protect the public, the composition of DBC should be changed to include more public members. This could be accomplished by replacing one of the dentists appointed by the Governor with a public member and giving the Governor an additional public member appointment. This would bring the total of DBC to 15 members: 7 dentists, 1 RDA, 1 RDH and 6 public members.*

ISSUE #2: (STRATEGIC PLAN UPDATE NEEDED.) Should DBC's Strategic Plan include action items and realistic target dates for how its goals and objectives will be met?

Background: As part of the sunset report, DBC submitted its 2010-2012 Strategic Plan which laid out its mission, vision, values, goals and objectives. The Strategic Plan recognizes that the mission of DBC is to protect and promote the health and safety of consumers in California and lays out objectives in achieving this goal. However, the Strategic Plan lacks depth and specificity as to how the Board will achieve its specific objectives. For example, DBC specifies as goal 3: Ensure the Board's Enforcement and Diversion Programs provide timely and equitable consumer protection. For the objectives, DBC specifies that the Board will implement improved reporting and tracking of enforcement cases; implement short- and long-term IT improvements; maintain optimal staffing by continuing to fill vacant enforcement and diversion staff positions. However, there is no discussion on how the Board will achieve these objectives. The Strategic Plan is transparently lacking on the specifics of how DBC in concrete steps will achieve its objectives.

Staff Recommendation: *DBC should develop and publish a detailed action plan with specific action items and realistic target dates for how each of the objectives will be met. Additionally, the Board should be given a written status report on the action plan at each board meeting.*

ISSUE #3: (LACK OF PERSONNEL EVALUATION.) Should DBC implement annual personnel performance evaluations or appraisals?

Background: According to the 2002 Enforcement Program Monitor's Initial Report, among other issues identified, there was no evidence of management or supervisory analysis of workload or work processes. At that time, the Monitor recommended that specific supervisory responsibilities and requirements should be defined, including conducting case reviews and annual performance appraisals. Additionally, the Monitor suggested that DBC identify all areas requiring documentation of policies and procedures, and schedule the completion of this activity over a phased period of time. The Monitor indicated that improved supervisory practices will be critical to achieving marked improvements in the aging of closed cases. However, the Monitor also recognized that previous

appraisal efforts were met with considerable employee resistance, and the appraisals were never completed.

Additionally, a 2009 Enforcement Process Assessment (Enforcement Assessment) of DBC indicated that the lack of personnel performance evaluations is evident in various areas of the enforcement program. Personnel appraisals, the Enforcement Assessment indicated are especially important in the case review and audit process to effectively track and manage investigations, and concluded that a consideration should be given to monthly reports, training participation and attendance to measure staff productivity and investigative progress, which will also help in conducting annual appraisals with staff.

Staff Recommendation: *DBC should explain to the Committee its system of work performance evaluations and ensure that these evaluations or appraisals are completed by staff on a timely basis.*

ISSUE #4: (CLARIFICATION OF THE AUTHORITY OF DBC OVER THE DENTAL HYGIENE COMMITTEE AND DENTAL ASSISTANTS.) Is there some clarification needed regarding the authority which DBC has over the Dental Hygiene Committee and the Dental Assisting Forum?

Background: In 1974, the Legislature created the Committee on Dental Auxiliaries (COMDA) to provide advice on the functions of and work settings of dental auxiliaries, including dental assistants and dental hygienists. COMDA was vested with the authority to administer dental auxiliary license examinations, issue and renew dental auxiliary licenses, evaluate auxiliary educational programs, and recommend regulatory changes regarding dental auxiliaries. SB 853 (Perata) (Chapter 31, Statutes of 2008) abolished COMDA and transferred the regulation of dental hygienists to the Dental Hygiene Committee, and the regulation of RDAs and RDAEFs to DBC. SB 853 was the result of years of negotiations between stakeholders to create within the jurisdiction of DBC the Dental Hygiene Committee of California (DHCC). It removed dental hygienists from the more restrictive COMDA and provided it with a more autonomous regulatory direction. This was an action consistent with JLSRC's conclusion that the dental hygienists had reached the point where their responsibilities warranted a regulatory body separate from DBC. While the DHCC is proving successful, there have been issues raised regarding its autonomy. It has been argued that the autonomy that was designed and expected with the independent funding and governance of this new Committee has been sometimes limited by the suggestion that their actions, outside of changing the scope of practice for dental hygiene, requires special reporting or some kind of consent from DBC. Dental hygiene advocates claim that the adoption of the regulatory packet that will create the Dental Hygiene Practice Act remains stalled, and the DHCC is still acting under the old regulations that are found only in the Dental Practice Act that is controlled by DBC. However, according to DBC staff, it is unclear as to why the DBC is responsible for the failure to enact DHCC regulations. With new appointments due to occur in January 2012, it is imperative that the DHCC's ability to adopt regulations independent of DBC be clarified. Without clarification, the DHCC members are unclear as to what they can do as a Committee.

Additionally, SB 853 also stated legislative intent that DBC create and implement an effective forum where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full and where all matters relating to dental assistants can be discussed, including matters related to licensure and renewal, duties, standards or conduct and enforcement. In response to SB 853, in 2009, DBC established two groups to deal with dental assisting issues: The Dental Assisting Committee (DAC) composed of DBC members and chaired by the RDA appointee to DBC; and the Dental

Assisting Forum (DAF), composed of RDAs and RDAEFs. According to DBC, "the purpose of the DAF is to be a forum where dental assistants can be heard, and to discuss all matters relating to dental assistants in the State, including requirements for dental assistant licensure and renewal, duties, supervision, appropriate standards of conduct and enforcement for dental assistants." This purpose is essentially similar to the legislative intent specified in SB 853. The DAC meets at every board meeting and the DAF held short meetings in January and April 2010, and met again in January 2011. Advocates for dental assistants have indicated to Committee staff that many items that DAF members have requested be included on agendas but have been removed, requests that meetings be held in conjunction with DBC so that there can be open lines of communication and establish greater efficiency have been denied, and dental assisting issues are placed on the agenda for DBC's DAC, instead of on the DAF agenda. Additionally, Committee staff is unclear as to DBC's policy for referring issues to the DAF and DAC, how recommendations are referred from the DAF and DAC to DBC and what kind of discretion DBC has over deciding dental assisting issues; how often are issues referred to DAF and DAC and how often are they taken up by DBC, and how often are DAF and DAC recommendations accepted. Essentially, the establishment of two groups to deal with dental assisting issues has resulted in very inefficient and ineffective process. It is also unclear why DBC established a bifurcated process for hearing dental assisting issues.

Recommendation: *It would appear as if the intent of the Legislature was that the Dental Hygiene Committee was created so that it could make independent decisions on issues related to the regulation of the hygienist profession unless it involved scope of practice changes which would need to be worked out between both the dentistry and hygienist professions. Clarification may be needed to assure that the Dental Hygiene Committee maintains its independence over that of DBC. Additionally, the Committee should ask DBC to explain the purpose for establishing two groups to deal with dental assisting issues, and consider merging the DAC and DAF into one entity.*

DENTAL WORKFORCE AND DIVERSITY ISSUES

ISSUE #5: (IMPACT OF FEDERAL HEALTH CARE REFORM ON THE DENTAL WORKFORCE?) Will California meet the increased demand for dental services with the enactment of the Federal Health Care Reform, and what can DBC do to assist in the implementation of the Federal Health Care Reform?

Background: A June 2009 Health Policy Fact Sheet (Health Policy Fact Sheet) by the University of California, Los Angeles Center for Health Policy Research indicated that California has about 14% of the total number of dentists nationwide (the largest percentage of any state). The dentist-to-population ratio in California is estimated as 3.5 dentists per 5,000 or a dentist for every 1,440 persons. This ratio is higher than the national estimate of three dentists per 5,000, or a dentist for every 1,660 persons. However, the Health Policy Fact Sheet revealed that although there is a large number of practicing dentists in California, many areas in the state continue to have a shortage of dentists, and these areas are mostly located in rural areas, including Yuba, Alpine, Colusa, Mariposa, Mono and San Benito Counties. The Health Policy Fact Sheet indicated that there are 233 dental health professional shortage areas statewide. These areas generally have a dentist-to-population ratio of one per 5,000 or lower; a high population need with a ratio of at least 1.25 dentists per 5,000 (or 1 per 4,000); and a public or non-profit health center that provides dental services to shortage areas or populations. Additionally, the Health Policy Fact Sheet indicated that the percentage of dentists who may be nearing retirement

age is greater than the percentage of newly licensed dentists. In some counties, far fewer are newly licensed and many more are nearing retirement age.

These shortages could potentially impact the implementation of the recently enacted federal health care reform measure, referred to as the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010. In California, implementation of the PPACA is under way with the enactment last year of AB 1602 (Perez), Chapter 655, Statutes of 2010, and SB 900 (Alquist, Steinberg), Chapter 659, Statutes of 2010, establishing the California Health Benefits Exchange within the California Health and Human Services Agency. According to advocates, an estimated 1.2 million California children will soon gain dental coverage due to the recent enactment of the PPACA. However, advocates argue that California will not be able to fulfill the promise of improving children's dental health if there are not enough dental providers to meet this growing demand. The following provisions are included in the PPACA and will impact dental workforce in California:

- Requires that insurance plans offered under the Exchange to include oral care for children.
- Expands school-based sealant programs.
- Authorizes \$30 million for fiscal year 2010 to train oral health workforce.
- Establishes 5-year, \$4 million demonstration projects to test alternative dental health care providers.
- Establishes a public health workforce track, including funding for scholarships and loan repayment programs for dental students and grants to dental schools.
- Establishes three-year, \$500,000 grants to establish new primary care residency programs, including dental programs.
- Provides funding for new and expanded graduate medical education, including dental education.

Staff Recommendation: *The Committee should ask DBC whether it has assessed the impact of, and planned for, implementation of the PPACA; how DBC is looking at the dental workforce capacity in light of implementation of the PPACA, given that millions of additional Californians, especially children, will gain dental coverage when the PPACA is implemented. Additionally, DBC should continue in its efforts to increase the dental workforce in California, explore approaches and work collaboratively with for-profit and non-profit organizations and other stakeholders to address the increased demand for oral healthcare as a result of the PPACA. Additionally, DBC should be proactive in finding ways to increase access to dental programs especially for socio-economic disadvantaged students.*

ISSUE #6: (IS THERE A LACK OF DIVERSITY IN THE DENTAL PROFESSION?)
Should DBC enhance its efforts to increase diversity in the dental profession?

Background: As indicated by the Center for the Health Professions (Center), it has long been known that certain ethnic and racial groups are underrepresented in the health professions. "The subject of racial and ethnic underrepresentation in California's health professions training programs and workforce has come to occupy a central role in the effort to develop better models of health care practice and better systems for health care delivery," as stated by the Center. The reasons for this are varied, as explained by the Center as follows:

- The practice of linguistically and culturally competent health care of a diverse health professions workforce is critical to addressing health disparities.
- Student experiences in health professions training programs are enriched by the presence of fellow students with diverse social and cultural experiences.
- Economic development in communities is another reason to promote greater diversity in the health professions. The health industry is one of the few economic sectors in California that continues to create jobs and most jobs in health care are well paid, and many of them offer opportunities for professional development.

According to a 2008 report by the Center entitled "*Diversity in California's Health Professions: Dentistry*," a 2005/2006 gender and racial/ethnic composition of dentists shows that although White/Caucasians represent 44.5% of California's labor force, they make up 56.7% of active dentists, Asians account for 32.4% of active dentists while representing a 13.2% of the total labor force, and Latino dentists represent an estimated 7% of the state's active dentists, but roughly 34% of California's general labor workforce. African-American dentists represent an estimated 2.5% of California's dentists, which is roughly half the size of the state's African American general labor force. Native Americans, Native Hawaiians & Pacific Islanders, and multiracial dentists represent just 1.3% of active dentists in the state but almost 3% of California's general labor force. Available data indicates that active dentists are overwhelmingly male, but the gender composition may be expected to shift over time as more women graduates of DDS programs enter the labor force. Trended education data describing first-year enrollments indicate that women are more highly represented in California's five DDS programs by comparison with currently active dentists. In contrast, education data indicate that the racial/ethnic composition of students in California's DDS programs is similar to the active dental labor force. This suggests that the profession will remain largely White/Caucasian and Asian at least in the near term.

Furthermore, the report indicated that there are several factors that contribute to the successful recruitment of minority dental students, including the availability of dental programs that are committed to integrating community-based practice experience that highlight the role of cultural differences in treatment planning as part of the clinical education; the presence of minority clinical faculty; well-designed mentorship programs that foster relationships between students and practicing professionals in the community; increasing recruitment efforts for minorities (establishing dental pipeline programs); financial support and other career development programs.

Staff Recommendation: *DBC should enhance its efforts on diversity issues, and increase its collaboration efforts with dental schools, dental associations, other state and local agencies, and for-profit and non-profit organizations.*

DENTAL PRACTICE ISSUES

ISSUE #7: (DIFFICULT TO DETERMINE SPECIALTY AREAS OF DENTAL PRACTICE.)
Should DBC be responsible for determining and reviewing areas of specialty education and accreditation requirements for those specialized areas of Dentistry?

Background: In 2001, AB 1026 (Oropeza), Chapter 313, Statutes of 2001, enacted Section 651(h)(5)(A) of the B&P Code which prohibits a dentist from holding himself or herself out as a specialist, or advertise in a specialty recognition by an accredited organization, unless the practitioner completed specialty education programs approved by the American Dental Association (ADA), as specified. Additionally, this section prohibits a dentist from representing or advertising himself or herself as accredited in a specialty area of practice unless the dentist is a member of, or credentialed by, an accredited organization recognized by DBC as a bona fide organization for an area of dental practice. This section also specified requirements to be considered a bona fide organization for purposes of credentialing. AB 1026 was sponsored by the California Dental Association (CDA) and was enacted in response to a DBC advertising regulations that were found to violate the First Amendment and were ruled unconstitutional by a federal court. In 2003, DBC was sued by Dr. Potts, a dentist, and a credentialing organization challenging the constitutionality of Section 651(h)(5)(A). See *Potts v. Hamilton*, 334 F.Supp.2d 1206. At issue was the statute's requirement that in order to advertise a post-dental school credential, a dentist must first complete a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school. A federal court ultimately ruled in favor of the dentist and held that the statute (Section 651(h)(5)(A)) was an unconstitutional restriction on commercial speech. Although DBC appealed this decision, it began negotiations with various stakeholder groups associated with or interested in the *Potts* litigation and worked out a dental advertising legislative proposal, but ultimately the proposed legislation did not push through and the appeal proceeded to the Ninth Circuit Court. In 2005, AB 1268 (Oropeza) was sponsored by CDA in an effort to amend Section 651(h)(5)(A) and provide that a disclaimer must be included on all advertising by any non-ADA recognized credential. However, AB 1268 did not move forward. In 2007, the Ninth Circuit Court remanded the case back to the Federal District Court and in 2010, the court reaffirmed its decision that the provision was unconstitutional. According to DBC, to prevent future litigation in this area and to mitigate costs associated with the *Potts* litigation (over \$1.1 million), it is recommending that Section 651(h)(5)(A)(i) through 651(h)(5)(A)(iii) of the B&P Code be deleted from statute. They do not believe this is an area in which DBC needs to be involved.

Staff Recommendation: *Adopt the recommendation of DBC to delete B & P Code Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).*

EXAMINATION ISSUES

ISSUE #8: (LENGTHY PROCESSING TIME FOR EXAMINATION APPLICATIONS.)
Currently DBC is averaging up to five months to process examination applications.

Background: The Dental Practice Act provides that each applicant for dentistry licensure must successfully complete Part I and Part II written examinations of the National Board Dental Examination of the Joint Commission on National Dental Examinations, an examination in California Law and Ethics developed and administered by DBC, and one of the following: A portfolio examination conducted while the applicant is enrolled in a dental school program; or a clinical and written examination administered by the Western Regional Examining Board (WREB).

According to DBC's Sunset Report, the timeframe for processing examination application averages is from 45 to 150 days. In a follow-up discussion, DBC staff reported that statistics for the past 5 months show that dentist applications with no deficiencies are completed within an average of 32 days.

Applications that are deficient may be delayed depending upon how quickly the requirements are submitted by the applicant.

Staff Recommendation: *DBC should explain further the reasons for the delays in processing examination application averages and whether these delays are attributable to DBC.*

ISSUE #9: (RANDOMIZATION OF DENTAL AND RDA LAW AND ETHICS EXAMINATIONS NEEDED.) Are there sufficient safeguards to avoid, if not limit, examination compromises and ensure that testing reflect current laws and regulations? Should the California Law and Ethics examination questions for dentists and RDAs be randomized and reflect current laws and regulations?

Background: As indicated above, as part of the licensure process, an applicant must also pass a California Law and Ethics examination that is developed and administered by DBC. DBC contracts with the DCA's Office of Professional Examination Services (OPES) for its examination development services. According to DBC, in FY 2006/2007 and 2007/2008, the pass rate for the Dental Law and Ethics examination was 96%, and for fiscal years 2008/2009 and 2009/2010, the pass rate increased to 98%. This pass rate is extremely high.

Aside from dentists, RDAs are also required to pass an RDA Law and Ethics Examination. On May 3, 2010, DBC was notified by OPES that information contained within the RDA Law and Ethics examination was posted on an Internet blog. Staff reviewed the information posted and stopped the examination from being administered beginning June 1, 2010. A special examination workshop was held on June 5 and 6, 2010, and the RDA Law and Ethics examination was modified and updated, and DBC resumed testing August 1, 2010. As part of the examination sign-in procedure, applicants are now required to certify that they will not release content information. Additionally, DBC did not grant licensure to the applicant who posted examination information on the blog.

Staff Recommendation: *To avoid examination compromises and ensure that the examination questions reflect current law and regulations, DBC should require that OPES randomize (scramble) California law and ethics examinations for dentists and RDAs. Additionally, dentists should be required to certify that examination content will not be released.*

ISSUE #10: (RDA WRITTEN EXAMINATION PASS RATE IS LOW.) Should DBC explore pathways to improve the pass rates of RDAs taking the written examinations if the low pass rate trend continues?

Background: The pass rate in 2009/2010 (the first fiscal year that the RDA is under DBC) for the RDA written examination is 53%. There was no explanation given by DBC on why the pass rate was low.

Staff Recommendation: *If in fiscal year 2010/2011, the RDA examination pass rate remains low, DBC should explore approaches to improve the passage rate of RDAs.*

CONTINUING COMPETENCY ISSUES

ISSUE #11: (LACK OF CONTINUING EDUCATION AUDITS.) DBC suspended audits of continuing education prior to 2009, and does not audit RDAs.

Background: The Dental Practice Act requires that each dentist and RDA fulfill continuing education (CE) requirements to renew their dental license. Currently, a dentist must fulfill 50 hours of continuing education for each renewal period, whereas RDAs are required to fulfill 25 hours of CE credits for each renewal period. Courses in basic life support, 2 hours of California Infection Control and 2 hours of California Dental Practice Act are required courses for both practitioners. DBC also approves continuing education courses and approves the CE provider. Effective January 1, 2010, all unlicensed dental assistants in California must complete an approved 8-hour infection control course, an approved 2-hour course in the California Dental Practice Act, and a course in basic life support.

There were no random CE audits since the last Sunset Review in 2002. According to DBC, random audits did not begin until the summer of 2009 when staff was redirected to perform the audits. DBC indicates that an average of 98% of dentists who were audited were found to be in compliance with continuing education requirements. Furthermore, DBC points out that when it inherited the dental assisting program and staff, there was no funding or staff to perform CE audits.

Staff Recommendation: *DBC should explain to the Committee its current policy on continuing education audits for dentists and the reasons for suspension of the audits prior to 2009. DBC should also explain why it does not audit CE for RDAs and describe plans, if any, to implement audit for RDA CE.*

ENFORCEMENT ISSUES

ISSUE #12: (DISCIPLINARY CASE MANAGEMENT TIMEFRAME STILL TAKING ON AVERAGE 2 ½ YEARS OR MORE.) Will DBC be able to meet its goal of reducing the average disciplinary case timeframe from 2 ½ years or more, to 12 to 18 months?

Background: DBC is responsible for regulating the practice of approximately 35,000 dentists and 34,000 RDAs. DBC indicates that it receives between 3,000 and 3,800 complaints per year (See table below), and processes and closes about 3,900 complaints a year. Complaints are categorized into 4 distinct groups: complaints received from the public, other governmental agencies, licensee/professional groups and complaints labeled as "other." Complaints classified as "other" include mandatory reports from specific entities; including settlements and malpractice judgments pursuant to Business & Professions Code Section 801 et. seq., and Section 805 reports from peer review bodies, including health care service plans, dental societies, and committees that review quality of care cases if certain actions are taken by or imposed on dentists. The table below summarizes the sources and number of complaints received by DBC from 2006-2010. DBC states that the number of complaints referred to investigation has increased from 14% in 2000 to 25% in 2009. However, the percentage of complaints which ultimately result in the filing of accusations and disciplinary action averages about 3% which has remained stable over time, according to the Board.

Source of Complaint	2006-2007	2007-2008	2008-2009	2009-2010
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Public	1858	2175	2528	2370
Governmental Agencies	454	286	87	67
Licensee/Professional Groups	633	1154	833	639
Other	137	94	79	96
TOTAL	3,082	3,709	3,527	3,712

According to DBC, the average number of days to process a claim from receipt of complaint to final disposition of a case ranged from 836 days in 2008/2009 to 857 days in 2009/2010. More recent statistics provided to the Committee shows that the average cycle time from the date the case was received as a complaint to when the Disciplinary Order was issued for 2010 is 951.7 days. This means that on average it is taking DBC 2 ½ years to pursue a disciplinary action against a problem dentist. It should be noted that DBC is not alone in its problems related to its lengthy disciplinary process; all other health boards under DCA are also affected. The table below shows the average case aging, and often the biggest bottleneck occurs at the investigation and prosecution stages of the process.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECUTE CASES				
	2006/2007	2007/2008	2008/2009	2009/2010
Complaint Processing	238	280	278	180
Investigations	247	211	302	351
Pre-Accusation*	208	283	182	187
Post-Accusation**	341	363	361	335
TOTAL AVERAGE DAYS	668	773	836	857

*From Completed investigation to formal charges being filed				
** From formal charges filed to conclusion of disciplinary case				
***From date complaint received to date of final disciplinary of disciplinary case				

The cycle time is affected by several factors including the length of time it takes to process complaints, conduct investigations, file accusations by the AG's Office and schedule and hold hearings with the Administrative Law Judges. Lastly, the case goes back to DBC for a final decision. As the table above indicates, there has been a vast improvement in the case processing timeframe (from 278 days in 2008/2009 to 180 days in 2009/2010). According to DBC, the recent hiring of additional dental consultants has contributed to improved complaint processing. However, the 6 months average time to process complaints remains lengthy. It should be noted that since the release of the Sunset Report, the DBC has continued to reduce this timeframe, which is now 92 days.

A complaint that has merit is referred to investigation and assigned an investigator. DBC uses its own in-house investigators to conduct investigations. Assignment for investigation is based on a number of criteria including case complexity, investigator experience, companion cases on the same licensee, and caseload. An investigator then evaluates the case and sets priorities based on their own caseload. DBC indicates that over the past four years the average length of time required to complete investigation has risen from 247 in 2006/2007 to 351 days in 2009/2010. DBC points out that factors affecting the investigation timeframe include investigator vacancies, length of time to train new staff, increase in the number of complaints referred to investigation, and mandatory furloughs of last year.

At the conclusion of an investigation, if it is determined that there has been a violation of the Dental Practice Act, the case is referred by the investigator to the Office of Attorney General (AG's Office) for preparation and review of the administrative accusation. According to DBC, in 2009/2010, the average days from the date a case is received to the date a case is assigned to a Deputy Attorney General (DAG) is 44 days (96 days in 2007/2008 and 52 days in 2008/2009). As the table on the prior

page provides, it is taking the AG's Office over 6 months (187 days) in 2009/2010 from the time an investigation is completed to file an accusation. Additionally, the average number of days from when an accusation is served to a settlement is completed is 356 days for 2009/2010 (346 days in 2008/2009 and 379 days in 2007/2008). As such, it is taking the AG's office over 19 months to close cases that are not referred to the Administrative Law Judge for an administrative hearing. As noted above, these statistics were provided to Committee staff by DBC which is generated from DBC's database. The AG's office tracks its own cases with a different database, and was requested to provide the same information but was not made available for purposes of this Paper. Staff anticipates that the AG will provide their own statistics during the hearing. DBC indicates in the Sunset Report that the AG's Office is aware of these timeframes and recognizes that their staffing constraints have contributed to case aging.

On August 17, 2009, this Committee held an informational hearing entitled "*Creating a Seamless Enforcement Program for Consumer Boards.*" This hearing revealed that Deputy AGs within the AG's Licensing Section handle both licensing and health care cases in a similar fashion without any expertise devoted to the prosecution of those cases involving serious health care quality issues. Moreover, the AG's staff often allows respondents to file a notice of defense long after the 15-day time limit has ended, which lengthens the time a case is processed by the AG's Office. The practice of the AG's Office of not requesting a hearing date when notice of defense is received is also contributing to the delays. The AG's Office often waits for settlement negotiations to break down before requesting a hearing date with Office of Administrative Hearings (OAH). It can then take one to two years to prosecute the case and for a disciplinary decision to be reached. Finally, OAH provides services to over 950 different governmental agencies. The DCA's cases are not given a higher priority and are calendared according to available hearing dates and Administrative Law Judges (ALJs) assigned. Cases on average can take up to 12 months or more months to be heard. Also, the DCA's boards and bureaus have over 40 different laws and regulations with which ALJs must be familiar. This lack of specialization and training for the cases referred by the other health care boards creates a situation in which judges are issuing inconsistent decisions. A board is then placed in a position of non-adopting the decision of the ALJ and providing for a hearing of its own to make a different determination regarding the disciplinary action which should be taken against the dentist.

As noted above, cases begin to age tremendously during the investigative phase. DBC points out that there are 10.5 positions currently vacant in the Enforcement Unit. Of these vacancies, 8.5 are CPEI positions. It should be noted that CPEI positions were created to expedite and maximize the efficiency of handling all pending disciplinary actions and are dedicated to tracking of AG cases. However, it is unclear if these positions will be filled and may be in jeopardy because of the recent hiring freeze ordered by the Governor.

The enforcement caseload is expected to rise as DBC implements new fingerprinting requirements for its licensees around April 2011. The new regulations would require a licensee to furnish a full set of fingerprints to the Department of Justice as a condition of renewal with DBC if the licensee was initially licensed prior to 1999 or if an electronic record of the fingerprint submission no longer exists. According to DBC, about 18,000 dentists, 23,500 RDA and RDAEFs will need to be fingerprinted and an additional 5,000 who were manually fingerprinted may need to update their prints. Additionally, licensees must disclose on the renewal form whether the licensee has been convicted of a crime, as defined, or had any disciplinary actions taken against any other license he or she holds.

Staff Recommendation: *In order to improve case processing and case aging, and to meet its goal of reducing the timeframe for the handling of its disciplinary cases, the following recommendations from the Monitor and Assessment Report should be considered by DBC:*

- 1) Continue to reduce the amount of time to process and close complaints.*
- 2) A Guideline for case assignments must be established, taking into consideration the skills or experience level of staff and other factors.*
- 3) Making Case Processing and Aging a major focus of DBC's improvement planning.*
- 4) Prioritize the review of aged cases.*
- 5) Establish reasonable elapsed time objectives for each step of the case processing.*
- 6) Monitor Performance by establishing regular oversight of case progress and staff productivity.*
- 7) A policy or procedures for supervisory staff in performing case reviews should be established.*

Additionally, the Committee should give consideration to auditing both the Investigation Unit of DBC and the Licensing Section of the AG's Office to determine whether improvements could be made to the investigation and prosecution of disciplinary cases.

ISSUE #13: (DISCIPLINARY CASE TRACKING SYSTEM INADEQUATE.) Should DBC continue to monitor the quality of enforcement data and ensure that investigative activities are tracked? Additionally, should DBC adopt guidelines for the completion of specific investigative functions to establish objective expectations?

Background: One of the issues raised by the Monitor was the lack of reliable statistical data system to track disciplinary cases and investigative case activity. DBC currently uses the Consumer Affairs System (CAS) as its complaint, investigation, and discipline tracking database. However, because of constraints associated with the CAS, the DCA recently entered into the Request for Proposal process to identify a vendor and develop an updated applicant and licensing database to better meet the needs of all DCA users. This project is called "BreEZe." Boards and bureaus within DCA will transition into the BreEZe system, and for DBC, the target date is June 2013.

Furthermore, to track investigative activity, DBC transitioned into the Investigator Activity Report (IAR) program utilized by the Medical Board of California (MBC) in 2010. According to DBC, the Dot Net Sequel Server database provided a method for managers to track casework on all cases, provided information for cost recovery purposes and allowed them to better monitor staff performance and productivity. Although DBC had transitioned into the new IAR program used by the MBC, there has always been a resistance to complete the IAR and inconsistency in the use of this tracking tool. The Assessment Report highlighted the importance of the IAR indicating, "If a case is referred to the AG's Office for discipline, the IAR is the source document to recover investigative costs in any eventual settlement, probation terms, or penalty decision. In many cases, if staff had not completed the IAR and received a request for cost recovery, the information that was produced after the fact was based on rough estimates."

Staff Recommendation: *Although all the boards and bureaus within the DCA will transition into the BreEZe system, this process is several years out. In the meantime, DBC should continue to monitor the quality of enforcement data and tracking of investigative services. Moreover, although DBC had transitioned to the IAR utilized by the MBC, DBC should ensure that the IARs are*

consistent and completed. Additionally, as the Enforcement Assessment recommended, guidelines should be established for the completion of specific investigative functions to establish objective expectations. Lastly, DBC should continue in its role to work collaboratively with the DCA's Office of Information Services project staff, as well as with any vendor, to assist in creating an efficient and user-friendly integrated computer system.

ISSUE #14: (PROTRACTED PROCESS TO SUSPEND LICENSE OF A DENTIST.)

DBC must go through a cumbersome process to suspend the license of a licensee who may pose an immediate threat to patients or who have committed a serious crime and may even be incarcerated.

Background: Currently in California, even if a health care provider is thought to be a serious risk to the public, the boards must go through a cumbersome legal process to get permission to stop the provider from practicing, even temporarily. DBC had only obtained immediate suspension of dentists just seven times within five years. Under existing law, the Interim Suspension Order (ISO) process (Section 494 of the B&P Code) provides boards with an avenue for expedited suspension of a license when action must be taken swiftly to protect public health, safety, or welfare. However, the ISO process currently takes weeks to months to achieve, allowing licensees who pose a serious risk to the public to continue to practice for an unacceptable amount of time. Also the timeframes in which a future action against the licensee must be taken, where there is only 15 days to investigate and file an accusation, are unreasonable and prevents most boards from utilizing the ISO process to immediately suspend the license of a health care practitioner. Also, there are no uniform requirements for health care boards to automatically suspend the license of a practitioner who has been incarcerated after the conviction of a felony. Existing law allows for physicians and podiatrists to be suspended while incarcerated but not for other health care professionals, including dentists. Additionally, although existing law allows the DBC to revoke the license of an individual who is required to register as a sex offender, there is no similar requirement for when a licensee is convicted of acts of sexual exploitation of a patient.

Staff Recommendation: *Extend the time constraints placed on the AG to file an accusation thus allowing the AG to utilize the ISO process without having to have their accusation prepared within a very limited time frame (15 days). Pursuant to Section 494 of the B&P Code, DBC does not have to always rely on an ALJ to conduct the ISO hearing, DBC also has authority to conduct the hearing and could do so more expeditiously where serious circumstances exist regarding the suspension of a dentist's license. Provide for automatic suspension of a dental license if the dentist is incarcerated and mandatory revocation of a license if a dentist is convicted of acts of sexual exploitation of a patient.*

ISSUE #15: (DIFFICULTY COLLECTING CITATIONS AND FINES FOR CERTAIN TYPES OF VIOLATIONS AND COST RECOVERY.) Should DBC contract with a collection agency to improve its cost recovery and cite and fine functions?

Background: Section 125.3 of the Business & Professions Code specifies that in any order issued in resolution of a disciplinary proceeding before any board with the DCA, the ALJ may direct the licensee, found to have committed a violation of the licensing act, to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. DBC must make a cost recovery request to the ALJ who

presides over the hearing. The ALJ may award full or partial cost recovery to DBC or may reject the request for cost recovery. In cases where cost recovery has been ordered, licensees may be granted a payment schedule. As the table below indicates for FY 2008/2009, DBC collected approximately 60% of the costs ordered but for 2009/2010, it collected 45% of the costs ordered.

COST RECOVERY DATA	2006/2007	2007/2008	2008/2009	2009/2010
Total Enforcement Expenditures	\$4,832,720	\$5,310,717	\$5,373,274	\$5,351,113
# Potential Cases for Recovery*	86	100	75	132
# Cases Recovery Ordered	46	46	56	97
Amount of Cost Recovery Ordered	\$125,216	\$116,796	\$229,195	\$469,040
Amount Collected	\$90,376	\$160,970	\$148,905	\$211,654

* The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the Dental Practice Act.

Moreover, Section 125.9 of the B & P Code authorizes DBC to issue citations and fines for certain types of violations. The majority of citations are issued for violations of unsafe and unsanitary conditions. Additionally, dentists who fail to produce requested patient records within the mandated 15 day time period are also subject to administrative citations. As is the case with cost recovery, the table below shows that DBC continues to struggle to collect citations and fines.

CITATIONS & FINES	FY 2006/2007	FY 2007/2008	FY 2008/2009	FY 2009/2010
Total Citations	25	16	11	48
Total Citations with Fines	21	16	10	42
Amount Assessed	\$24,497	\$14,300	\$11,500	\$75,100
Reduced, Withdrawn, Dismissed	3	3	2	6
Amount Collected	\$9,140	\$5,000	\$3,500	\$6,700

Staff Recommendation: *In order to improve cost recovery and fine collection efforts, DBC should be allowed to procure a contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts. According to the DCA, most of the boards within DCA are struggling to collect cost recovery amounts, outstanding fees, citations or fines. If this is the case, the DCA may wish to procure a contract with one collection agency for all its boards.*

ISSUE #16: (PROBLEMS WITH PROBATION MONITORING.) Should DBC adopt written guidelines on how to make probation assignments and ensure that probationary and evaluation reports are conducted consistently and regularly as recommended by the Enforcement Assessment?

Background: The Dental Practice Act authorizes DBC to discipline a licensee by placing him or her on probation under various terms and conditions. The terms and conditions could include obtaining additional training or passing an examination upon completion of training; restricting or limiting the extent, scope or type of practice; requiring restitution of fees to patients; or community services. Additionally, dentists on probation are required to pay the monetary costs associated with monitoring the dentists' probation. Generally, DBC recommends five years of probation unless a longer or shorter term is warranted.

According to DBC, probation cases are assigned to inspectors or investigators after taking into consideration the variety of circumstances necessitating probation, combined with the known behavior

of certain licensees. RDAs are generally assigned to inspectors, and difficult or questionable probation subjects are assigned to sworn investigative staff. According to the Enforcement Assessment, there are no written guidelines on how to make probation assignments, and that probationary reports and evaluation reports have not been conducted with regularity. This observation was echoed by the Enforcement Monitor who indicated that probation monitoring practices differ between DBC's Tustin and Sacramento offices.

Staff Recommendation: *As recommended in the Enforcement Assessment, DBC should adopt written guidelines on how to make probation assignments, and ensure that probationary and evaluation reports are conducted consistently and regularly.*

ISSUE #17: (NEED FOR ANNUAL REPORTING REQUIREMENTS.) Should DBC annually report specific licensing and enforcement information to its licensees and the Legislature?

Background: One of the issues raised by the Monitor was the need to improve DBC's statistical reporting capabilities. The Monitor indicated that DBC needs major enhancements to its complaint tracking system, including regular monthly, quarterly, and annual reporting of Enforcement Program workload and performance. The Monitor suggested that reports of this type also should be provided to DBC's governing Board and the Legislature on a periodic basis. Additionally, the Monitor indicated that DBC staff needs to comply with existing Section 806 reporting requirements (number and type of peer review reports received), which has been in effect since 1975.

According to DBC staff, during its quarterly board meetings, board members are given updated licensing and enforcement reports. However, these reports are not submitted to the Legislature. On the other hand, the Medical Board of California (MBC) is statutorily required to submit annual reports to the Legislature on specific information. The annual report is also included in MBC's newsletters that are distributed to physicians and surgeons and is also available on MBC's Website.

Staff Recommendation: *The Dental Practice Act should be amended to require DBC to report annually to the Legislature information required under Business and Professions Code Section 2313 that applies to dentists, including malpractice settlements and judgments, Section 805 reports, the total number of temporary restraining orders or interim suspension orders sought by DBC, and other licensing and enforcement information as specified. Staff recommends that annual reports should also be published in DBC's newsletter and made available on its Website.*

ISSUE #18: (IMPLEMENT 2009 DBC ENFORCEMENT ASSESSMENT CORRECTIVE ACTION PLAN.) Should DBC implement the recommendations of a 2009 Enforcement Assessment of DBC's Enforcement Program?

Background: In the fall of 2009, DBC requested an outside assessment of its internal enforcement processes, to measure progress and determine if there were any new barriers to efficiency and productivity. The areas reviewed included: Complaint Intake & Assignment, Non-Sworn Enforcement Processes, Sworn Investigative Services, Enforcement Tools and Investigative Resources, Administrative Discipline Processes, Enforcement Program Data for Management Oversight, Personnel Resources, Peace Officer Training Requirements, Policies and Procedures, and Customer Satisfaction Surveys. Several of the recommendations contained in the Assessment are included in this background paper. However, there are other issues that need to be addressed, including evidence and

storage, tracking of criminal prosecutions, the need for procedures or policy directing supervisory staff to perform case reviews, and continued training of investigative staff.

Staff Recommendation: *DBC should submit to this Committee a corrective action plan detailing how DBC intends to address and implement the recommendations contained in the 2009 Enforcement Assessment.*

ISSUE #19: (CONTINUED USE OF THE DENTAL LOAN REPAYMENT PROGRAM.)
The California Dental Corps Loan Repayment Program still has funds available to provide to dental students.

Background: The California Dental Corps Loan Repayment Program, administered by DBC, was created in 2002 (AB 982, Chapter 1131, Statutes of 2002) to increase the number of dentists who practice in historically underserved areas by providing grants to help pay for the high cost of attending dental school. DBC selects participants to practice in underserved areas, in practice settings with a majority of underserved patients, and gives priority consideration to applicants who are best suited to the cultural and linguistic needs of those populations and meet other related criteria. After each consecutive year of service completed, participants will receive money for loan repayment (\$25,000 for the 1st year, \$35,000 for the 2nd year, and \$45,000 for the 3rd year) for up to three years. The law states each participant may receive no more than \$105,000 over three years. The program was extended until July 1, 2012 and authorized DBC to distribute funds remaining in the account. However, due to limited participation, DBC points out that the program should be extended until DBC distributes all the remaining money in the fund.

Staff Recommendation: *The California Dental Corps Loan Repayment Program should be extended until DBC distributes all the funds in the account. DBC should indicate to the Committee its efforts to inform students about the availability of the loan repayment program.*

SUBSTANCE ABUSE AND DIVERSION PROGRAM ISSUES

ISSUE #20: (EFFECTIVENESS OF DIVERSION PROGRAM AND IMPLEMENTATION OF SB 1441 STANDARDS.) It is unknown how successful DBC's Diversion Program is in preventing recidivism of dentists who may abuse drugs or alcohol, and if the Diversion Program is effectively monitoring and testing those who participate in the program. Additionally, it is unclear when "Uniform Standards" for their Diversion Programs will be implemented.

Background: DBC administers a Diversion Program intended to identify and rehabilitate dentists whose competence may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety. According to DBC's website, the diversion program offers a means of recovery without the loss of license by providing access to appropriate intervention programs and treatment services. DBC has established DEC's for northern and southern California to assist it in evaluating licensees who may be impaired due to the abuse of alcohol or drugs. DEC's are composed of three dentists, one dental auxiliary, one physician or psychologist, and one public member who all have experience or knowledge in the field of chemical dependency. Entry into the diversion program may be through self-referral but most participants enter the diversion program because they are under

investigation by DBC and were referred by a program manager. Since 1983, the clinical management of the diversion program has been done by MAXIMUS, Inc. After an initial evaluation, individuals accept a participation agreement (diversion program recovery terms and conditions contract) and are regularly monitored in various ways, including random drug testing, to ensure compliance. According to the DBC, a Clinical Assessment (initial evaluation) is conducted in accordance with acceptable practice standards for chemical dependency and mental health assessments. It includes a complete psychosocial and drug history. The intent of the evaluation is to determine whether the licensee has a substance abuse problem, is a threat to himself/herself or others, and will provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. Each chemically impaired professional entering the program is responsible for meeting the requirements of the Diversion program. A Diversion Program Recovery Terms and Conditions Agreement serves to clearly define the monitoring requirements and reports of the Program and obtain the participant's written statement of acceptance. MAXIMUS provides the following services: medical advisors, compliance monitors, case managers, urine testing system, reporting, and record maintenance. The table below summarizes the number of participants and the costs of administering the program.

DIVERSION PROGRAM STATISTICS	2006/2007	2007/2008	2008/2009	2009/2010
Total Program Costs	\$141,060	\$113,026	\$137,452	\$133,471
Total Participants	58	52	61	59
Successful Completions	9	5	4	4
Unsuccessful Completions	2	7	4	1

In 2007 and 2008, this Committee held informational hearings on the Physician Diversion Program (PDP) after an audit of MBC's diversion program revealed that the MBC's program was not sufficiently protecting the public. Although the MBC voted unanimously to end the PDP on June 30, 2008, this Committee recognized the need to strengthen the diversion programs of boards that continue to administer them. As such, in 2008, SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) became law and required the DCA to establish a Substance Abuse Coordination Committee (SACC) to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. The intent of SB 1441 was to establish common and uniform standards to govern the different health care licensing boards' diversion programs so as to maintain public confidence that these programs are truly monitoring and rehabilitating substance abusing licensees. These sixteen standards, at a minimum, include: requirements for clinical diagnostic evaluation of licensees; requirements for the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; all aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license.

On March 3, 2009, the SACC conducted its first public hearing and the discussion included an overview of diversion programs, the importance of addressing substance abuse issues for health care professionals and the impact of allowing health care professionals who are impaired to continue to practice. During this meeting, the SACC members agreed to draft uniform guidelines for each of the standards. During subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. In December 2009, the DCA adopted the uniform guidelines for each of the standards required by SB 1441. Last year, SB 1172 (Negrete McLeod) Chapter 517,

Statutes of 2010, was passed to give boards the statutory authority to implement certain standards that needed statutory authority. Moreover, the DCA had instructed health care boards to begin the process of implementing the SB 1441 standards, including amending disciplinary guidelines through the regulatory process to be consistent with SB 1441.

In 2010, MAXIMUS was audited by the DCA and it was indicated that they were complying with all of the requirements of their contract; however, Committee staff had serious concerns about the completeness of this audit and the serious deficiencies which may still exist with this program. This came to light when it was found that MAXIMUS was recently testing those participants in the health boards' Diversion Programs and using inexact standards (i.e., participants were tested at a higher standard and tested negative when they should have been tested at a lower standard and may have potentially tested positive). The DCA took immediate steps to rectify this problem, but it still raises questions about the effectiveness and efficiency of MAXIMUS and those diversion programs which rely on this contractor.

Staff Recommendation: *The Committee should consider requiring an audit of DBC's Diversion Program in 2012, along with the other health boards which have Diversion Programs to assure that these programs are appropriately monitoring and treating participants and to determine whether these programs are effective in preventing further substance abuse. Additionally, the audit should also determine the value of utilizing DECS in a diversion program. DBC should also indicate to the Committee how the Uniform Standards are being implemented and if all Uniform Standards are being followed, and if not, why not; give a definite timeframe when disciplinary guidelines will be amended to include SB 1441 standards, whether formal training for DECS is necessary to ensure that standards are applied consistently, and the necessity of revising the Maximus diversion program recovery contract signed by a dentist who enters the diversion program to incorporate certain aspects of SB 1441 including the requirement that a dentist must undergo a clinical diagnostic evaluation to participate in the program; the practice restrictions that apply while undergoing a diagnostic evaluation; the requirement to provide the names and contacts of employers or supervisors for participants who continue to work; the frequency of drug testing; that collection of specimens shall be observed; that certain requirements exist for facilitators; what constitutes major or minor violations; and the consequences for major or minor violations.*

ISSUE #21: (DBC CANNOT ACCESS RECORDS OF THE DIVERSION PROGRAM WHEN A DENTIST IS TERMINATED FOR NON-COMPLIANCE.) Should DBC be authorized to access diversion records for dentists who are terminated from the diversion program for non-compliance, which usually involves relapse?

Background: Section 1698 of the B&P Code specifies that except where the licentiate presents a threat to the public's health and safety, all DBC and DEC records and records of proceedings pertaining to the treatment of a licentiate in a diversion program is kept confidential and are not subject to discovery or subpoena. In 2009, AB 456 (Emmerson) was sponsored by DBC to make changes to the current confidentiality of diversion records, and would have allowed for the sharing of diversion information with DBC's enforcement program when a licensee participating in the diversion program is terminated for non-compliance while on probation by DBC. DBC further indicated at that time that the exception when a licensee presents a threat to the public's health and safety, does not allow DBC's diversion program to notify its own enforcement program when a licensee participating in diversion is not in substantial compliance. The diversion program can only provide the name of the terminated licensee and not any specifics as to why the individual was terminated from the program. This

notification, DBC argues, is necessary as the information obtained in the diversion program could be used for subsequent disciplinary action by DBC. At that time, Committee staff, among other issues and recommendations, suggested that AB 456 should be amended to indicate that rules and regulations required by AB 456 shall, at a minimum, be consistent with the uniform standards adopted pursuant to SB 1441. The Author and Sponsor eventually decided not to pursue the bill. However, the confidentiality of diversion records remain a priority for DBC and staff recognizes the need for the enforcement unit to have all available records if a licensee is terminated from the program for non-compliance and disciplinary action ensues.

Staff Recommendation: *Amend the Dental Practice Act to authorize DBC to access any diversion records of a licensee who participates in a diversion program and is terminated for non-compliance, for purposes of investigation and imposition of a disciplinary action.*

CONSUMER NOTICE ISSUE

ISSUE #22: (NOTICE TO CONSUMERS THAT DENTISTS ARE REGULATED BY DBC.) Should DBC promulgate regulations pursuant to a statute enacted in 1999 to require dentists to inform patients that they are licensed by DBC?

Background: Section 138 of the Business & Professions Code requires that DCA board and bureaus, including healing arts boards such as DBC, initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, to provide notice to their clients or customers that the practitioner is licensed by this state. A board is exempt from the requirement to adopt regulations if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The purpose of this statute is to inform consumers the appropriate regulatory body that regulates a particular licensee or practitioner.

Recently, the MBC promulgated regulations pursuant to Section 138 to require physicians and surgeons to inform their patients that they are licensed by the MBC, and includes the board's contact information. In the same manner, DBC should implement Section 138 and adopt regulations to require dentists to inform their patients that they are licensed by the Board.

Staff Recommendation: *Pursuant to Section 138 of the B & P Code, DBC should adopt regulations to require dentists to inform their patients that they are licensed by the DBC.*

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

ISSUE #23: (NEED FOR CONTINUED ENHANCEMENT OF DBC's INTERNET SERVICES.) Should DBC continue to explore ways to enhance its Internet Services and Website to licensees and members of the public?

Background: DBC points out that one of the major changes since its last sunset review has been its increased utilization of the Internet and computer technology to provide services and information to the public and its licensees on its Website. These include:

- A DBC Website, www.dbc.ca.gov, which receives an average of 966 visitors per day.
- Full texts of final enforcement decisions, including accusations are now available on the Website. A consumer may look up a licensee by name and/or license number, and is provided with all information relevant to the final decision.
- An online complaint form is available for filing a complaint, a "Frequently Asked Questions" section, a pamphlet on "Problems with Your Dentist," and general information about DBC's complaint process.
- Licensees may review continuing education requirements, disciplinary guidelines, and access various forms.
- E-News subscription service sign-up is available online to be notified of DBC's activities.

The Board indicated that it has begun modifying its Website to allow for the posting of meeting materials, and allow consumers, stakeholders, and interested parties to download these documents at no charge. Furthermore, DBC plans on publishing an online newsletter beginning 2011, and is exploring the feasibility of providing live webcasts of its board meetings. Additionally, all reports submitted to the Legislature should be posted on DBC Website

Staff Recommendation: *DBC should continue to explore ways to enhance its Internet Services to licensees and members of the public, including posting meeting materials, board policies, and legislative reports on the Internet and webcasting Board meetings.*

BUDGETARY ISSUES

ISSUE #24: (ARE RECENT LICENSING FEES SUFFICIENT TO COVER DBC COSTS?)
Is DBC adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Background: DBC is a self-supporting, special fund agency that obtains its revenues from licensing fees of dentists and RDAs. The collection of fees supports DBC's ability to operate its Enforcement, Licensure, Examination, Renewal/Continuing Competency, Permit Programs and Dental Assisting Programs. DBC's primary source of revenue is the biennial renewal for dentists and RDAs. DBC currently charges dentists a \$365 renewal fee. The statutory maximum is \$450. There have been no fee increases from dental license or renewal since 1998. As DBC explains, it anticipates a significant increase in enforcement costs starting FY 2010/2011 due to the implementation of CPEI. Increased productivity and a higher rate of case closures, in addition to reduction in processing timeframes, is expected to justify the costs. Additionally, the Board will be implementing its new portfolio examination to replace the current dental licensure examination. In FY 2002/2003 and 2003/2004 loans were made from the State Dentistry Fund to the State General Fund in the amount of \$5 million for each fiscal year. Of the \$10 million total loan, \$0.6 million was repaid in FY 2004/2005, \$2.5million was repaid in FY 2005/2006, and another \$2.5 million was repaid in FY 2006/2007. There is an outstanding loan balance of \$4.4 million. In the 2011/2012 Budget Act, the Governor proposed a reimbursement of \$2.5 million but the Legislature recently reduced this to \$1.2 million. The table

below illustrates the fund condition of the Dental Fund if CPEI positions are filled and the remaining \$3.2 million loan to the General Fund is reimbursed by FY 2012/2013. DBC points out that assuming all the loans to the General Fund are reimbursed, it may be looking at fee increases for dentists as soon as FY 2012/2013, because the fund reserve at that time would be at 1.3 months. According to DBC, its objective is to maintain a three-month reserve of funds for economic uncertainties and to operate with a prudent reserve. However, if the CPEI positions are not filled, all the loans to DBC are repaid and the Governor's hiring freeze directive continues, then the fund reserve will be much higher and fee increases may be delayed to a later time.

Dental Board Updated Fund Condition Table

ANALYSIS OF FUND CONDITION	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/2011 (Projected)	FY 2011/2012 (Projected)	FY 2012/2013 (Projected)
Total Reserves, July 1	\$7,053,000	\$7,394,000	\$7,320,000	\$7,865,000	\$4,464,000	\$2,007,000
Total Rev. & Transfers	\$8,037,000	\$7,985,000	\$7,920,000	\$7,758,000	\$8,929,000	\$10,921,000*
Total Resources	\$15,345,000	\$15,548,000	\$15,424,000	\$15,623,000	\$13,393,000	\$12,928,000
Total Expenditures	\$7,948,000	\$8,230,000	\$7,559,000	\$11,159,000	\$11,386,000	\$11,641,000
Unreimbursed Loans to General Fund	\$4,400,000	\$4,400,000	\$4,400,000	\$4,400,000	\$3,200,000	\$0
Accrued Interest	\$0	\$0	\$0	\$0	\$0	\$0
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Reserve, June 30	\$7,394,000	\$7,318,000	\$7,865,000	\$4,464,000	\$2,007,000	\$1,287,000
MONTHS IN RESERVE	10.8	11.6	8.5	4.7	2.1	1.3
NOTES: *This table assumes the repayment of the \$1.9 million balance of GF loan, in FY 12/13. GF loan must be fully reimbursed before a fee increase can be implemented. (Item 1250-011-0741, BAs 2002/2003 and 2003/2004)						

For RDAs, DBC currently charges \$70 for license renewal, with an \$80 statutory maximum. The table below shows that the Dental Assisting Fund will be in a deficit spending situation in FY 2012/2013. DBC points out that it will need to increase, via Board Resolution pursuant to Section 1725 of the B & P Code, the renewal fees for RDA's to the \$80 statutory maximum.

Dental Assisting Fund Condition Table

ANALYSIS OF FUND CONDITION	2007/08	2008/09	2009/10	2010/11 (Projected)	2011/12 (Projected)	2012/13 (Projected)
Total Reserves, July 1	N/A	N/A	\$0	\$1,925,000	\$1,354,000	\$760,000
Total Rev. & Transfers			\$3,183,000	\$1,146,000	\$1,141,000	\$1,134,000
Total Resources			\$3,183,000	\$3,071,000	\$2,495,000	\$1,894,000
Total Expenditures			\$1,258,000	\$1,715,000	\$1,735,000	\$1,787,000
Unreimbursed Loans to General Fund			\$0	\$0	\$0	\$0

Accrued Interest			\$0	\$0	\$0	\$0
Loans to General Fund			\$0	\$0	\$0	\$0
Reserve, June 30			\$1,925,000	\$1,354,000	\$760,000	\$107,000
Months in Reserve			13.5	9.4	5.1	0.7

Staff Recommendation: DBC should assure the Committee that it will have sufficient resources to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas if appropriate staffing and funding is provided. Additionally, the Committee may consider amending Section 1725 of the B & P Code to instead require that any changes in licensing and permitting fees of dental assistants be established by regulations, instead of Board Resolutions as currently required.

ISSUE #25: (LACK OF STAFF CONTINUES TO HAMPER DBC'S ENFORCEMENT PROCESS.) DBC should explain to the Committee the negative impact of enforcement program vacancies to its overall functions.

Background: There are currently 72.8 authorized positions for DBC, wherein 60.8 positions are filled and 12 positions are vacant. The CPEI authorized 12.5 positions for DBC, of which 4 positions are filled and 8.5 remain vacant. The Enforcement Unit is comprised of 35 staff, including peace officers, inspectors and staff managers. The Enforcement Unit currently has 10.5 vacant positions. DBC points out that the enforcement program is allocated 16 peace officer positions to perform criminal and complex quality of care investigations. However, due in part to vacancies within enforcement, up to five positions have been vacant for 6 months or more since July 2006.

Contributing to these lengthy vacancies are required background processes which can take six to nine months, training academies (four months), and the establishment of a new hiring list. More recently, mandatory furloughs have reduced the number of hours staff can legally work by three days per month. As a consequence, case age has increased as less staff hours were available to perform the necessary work.

DBC indicates that during previous reviews, a number of efforts (case reviews, approved overtime) were initiated to focus on closing the oldest cases and reducing the overall number of cases pending investigation. Case reviews have been ongoing with field investigative staff and continue to focus on case progress and closing older cases. Despite these challenges, DBC indicates, the additional positions from the CPEI offer the potential for the enforcement program to show marked improvements in its case statistics. DBC points out that it is still under order to continue with a former Governor's Directive for a hiring freeze that began on August 31, 2010, as well as to continue with a 5% staff reduction. The hiring freeze allows state departments to transfer existing employees within the department, and for DBC, it was able to hire employees away from other DCA boards or bureaus. DBC states that it needs to fill its vacant positions, including the sworn and non-sworn investigative staff it was authorized to hire under CPEI in order to critically improve its enforcement process.

Staff Recommendation: DBC should express to the Committee its frustration in being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program,

and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases.

ISSUE #26: (IMPACT ON DBC OF THE UNPAID LOANS MADE TO THE GENERAL FUND.) Will the unpaid loan to the General Fund have an impact on the ability of DBC to deal with its case aging and case processing?

Background: In FY 2002/2003 and 2003/2004 loans were made from the State Dentistry Fund to the State General Fund in the amount of \$5 million for each fiscal year. Of the \$10 million total loan, \$0.6 million was repaid in FY 2004/2005, \$2.5million was repaid in FY 2005/2006, and another \$2.5 million was repaid in FY 2006/2007. There is an outstanding loan balance of \$4.4 million. In the 2011/2012 Budget Act, the Governor proposed a reimbursement of \$2.5 million but the Legislature recently reduced this to \$1.2 million, and with this reduction the loan balance is \$3.2 million. It is unclear when DBC should anticipate these payments. If the loan balance remains unpaid in FY 2012/2013, DBC will be in deficit spending.

This has been a constant problem for the Committee and the Legislature in regards to the boards and bureaus under the DCA. This Committee along with the Assembly Business and Professions Committee has over the years reviewed all boards (through the process of sunset review) and any anticipated problems in the appropriate funding of their programs has been considered and efforts have been made to either reduce their budget or program requirements, or increase their level of funding through license fee increases. The boards over the years have been placed in a position of not being able to spend the revenue which has been made available to them for purposes of properly running their enforcement programs. They have either been denied spending authority for their increased revenue by denial of BCPs or by other directives, which has had the effect of increasing their reserve funds, and then find that rather than having any chance of using these funds in the future to deal with increased enforcement costs, the money reverts back to the General Fund by way of a "loan." Unless there is a strong mandate that licensing fees should only be used for purposes of properly operating the boards this vicious cycle will continue. One of the outcomes of budget changes and cutbacks to boards has been the slow-down of cases or actual holding off on pursuing cases by the AG's Office because the board(s) ran out of money at some point later in the fiscal year.

Staff Recommendation: *No more loans from the reserve funds of the DBC to the General Fund. DBC should explain to the Committee what the impact will be to its overall Budget and its enforcement process if the outstanding loan is not repaid as soon as possible. This of course is if DBC is granted an exemption from the hiring freeze, otherwise new expenditures will not be necessary.*

**CONTINUED REGULATION OF THE PROFESSION BY THE
CURRENT MEMBERS OF THE DENTAL BOARD OF CALIFORNIA**

ISSUE #27: (CONSUMER SATISFACTION WITH DBC IS LOW.) A 2010/2011 Consumer Satisfaction Survey of DBC shows only about 30% of complainants are satisfied with the service provided by the Board. Additionally, DBC failed to disseminate a consumer satisfaction survey prior to 2010.

Background: In 2002, the Monitor recommended that DBC implement a survey tool to establish measurements of customer satisfaction with the Enforcement Program. Although a document was developed, according to the 2009 Enforcement Assessment, the survey was not used. In its sunset report, DBC indicated that in August 1, 2010, it joined in DCA's effort to develop ongoing performance measures. DBC indicates that consumers are provided with a web address at the bottom of complaint and case closure letters and encouraged to visit the site and provide feedback on their satisfaction with the Board's complaint process. The questions used in the survey and the identifying five-rankings for evaluating the consumers' responses are consistent with the Joint Legislative Sunset Review Committee's recommendations back in 1996 for all DCA boards to conduct a consumer satisfaction survey. DBC indicates that on a monthly basis consumer responses will be compiled and analysis will be provided. Committee staff requested a sample of consumer surveys, and at its early stages, it appears that only about 30% of complainants were satisfied with the way in which DBC handled their complaints. This is a shortcoming of many of the boards under the DCA; most have low satisfaction rates around 50%. The most prominent reason for dissatisfaction with boards is that consumers do not feel as if they are being kept updated about the status of their complaint and case, and the outcome takes so long that they see the board as not really having any real interest in their case as it moves slowly through the process. And the only satisfaction the complainant gets is usually to either see the licensee placed on probation (with conditions) or to have their license revoked. Waiting 2 ½ years or more for some resolution to their case is extremely frustrating for consumers and is probably something they don't clearly understand, and while the final result may be taking the practitioners license or placing them on probation, one wonders whether there could be a better result for the original complainant. The Contractor's Board seems to enjoy a better satisfaction rate in resolving a complaint because it tries under certain circumstances to try and mediate disputes first to hopefully bring quicker resolution to the matter and possibly provide some form of restitution to the consumer who has been harmed by the licensee. If there is an issue of competency or violation of law(s) then the Contractor's Board will still proceed with licensing action against the contractor even though the complainants issue has been settled. This Committee should begin to explore the use of mediation or what is called alternative dispute resolution (ADR) for health boards and whether they could utilize those trained in ADR or current ADR programs to resolve complaints. Consideration could be made of possibly expanding on the current "Complaint Mediation Program" (CMP) of DCA to also include consumers who have problems with health professionals. The CMP under DCA now only deals with difficulties by consumers in purchasing products or services, but there are certainly instances where ADR could be utilized when disputes arise (in the form of a complaint to the board) regarding services provided by health professionals.

Staff Recommendation: *DBC should explain to the Committee why a Consumer Satisfaction Survey was not implemented as recommended by the Monitor, and explain why it believes consumer satisfaction regarding its service is so low, and what other efforts DBC could take to improve its general service to the consumer. Does DBC believe that mediation could be used in certain circumstances to help resolve complaints from the general public regarding health care practitioners?*

ISSUE #28. (CONTINUED REGULATION OF DENTISTS BY DBC.) Should the licensing and regulation of the dental profession be continued, and be regulated by the current board membership?

Background: The health and safety of consumers are protected by a well-regulated dental profession. DBC should be continued with a four-year extension of its sunset date so that the Committee may review it once again if the issues and recommendations in this Paper and others of the Committee have been addressed.

Staff Recommendation: *Recommend that the dental profession should continue to be regulated by the current DBC members in order to protect the interests of consumers and be reviewed once again in four years.*

ATTACHMENT B

**March 24, 2011 Letter to Bill Gage
regarding the inclusion of statutory
language in sunset review legislation that
would expand the enforcement units
authority to address violations of the Dental
Practice Act**



March 24, 2011

Bill Gage, Chief Consultant
Senate Business, Professions and Economic Development Committee
State Capitol
10th & L Streets
Sacramento, CA 95814

RE: Consumer Protection Enforcement Initiative (CPEI) Statutory Amendments and
Regulatory Update

Dear Mr. Gage:

This letter is intended to provide the Senate Business, Professions and Economic Development Committee staff with an update of the regulatory changes to implement provisions of SB 1111. Specifically, the Board has initiated regulations to provide it with the means to expedite the enforcement process by further defining unprofessional conduct, and to authorize the Board to require the examination of an applicant for licensure who may be impaired by a physical or mental illness affecting competency. Additionally, Board staff has identified vital statutory additions which will greatly enhance the Board's enforcement authority to maximize consumer protection.

Consumer Protection Enforcement Initiative Proposed Regulations:

The Department of Consumer Affairs (Department) distributed a list to the healing arts boards consisting of nine goals that were included in SB 1111. The Department requested that the healing arts boards review the goals and determine if they could be accomplished through the regulatory process. Of the nine goals, the Board currently has statutory provisions for three:

1. The denial of an application of a registered sex offender;
2. The failure of a licensee to comply with a court order constitutes unprofessional conduct; and
3. The committing of any act of sexual misconduct constitutes unprofessional conduct.

On November 5, 2010, the Board approved language and the proposed regulation was filed with the Office of Administrative Law on February 8, 2011. The 45-day public comment period began on February 18, 2011 and will end on April 4, 2011. A regulatory hearing will be held the same day. To date, the Board has not received any public comments. Specifically, the proposed regulation adopts new section 1018.05 to define

the term "conviction" for the purposes of the section, and to specify that the following acts constitute unprofessional conduct:

- Failure to provide records requested by the Board within 15 days;
- Failure of a licensee to report an indictment within 30 days;
- Failure of a licensee to report a felony charge within 30 days;
- Failure of a licensee to report a conviction within 30 days; and
- Failure of a licensee to report disciplinary action taken by another professional licensing entity or other specified agency within 30 days.

Furthermore, the proposed regulation amends section 1020 to provide the Board with the authority to require an examination of an applicant by a physician and surgeon or psychologist if it appears the applicant may be unable to safely practice due to a mental illness or a physical illness that affects competency.

Enforcement Tools Requiring Statutory Amendments

Currently, the Board's enforcement program is limited to two methods to address violations of the Dental Practice Act; issuance of a citation and administrative filings with the Office of the Attorney General. The Board has identified additional enforcement methods that will require legislative action. These additional methods include specific time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. The Board will be able to utilize these tools to address minor to moderate violations of the Dental Practice Act.

One of the current methods available is the issuance of an administrative citation. This method is used to address minor violations that do not warrant more severe disciplinary measures. However, because a citation remains on the licensee's record indefinitely, and the information is available to the public via the Internet, licensee's routinely request an informal hearing to challenge the merits of the allegation. In most cases, the licensee questions the fairness of a permanent mark against their license for a minor violation of the Dental Practice Act. The amount of time devoted to the informal hearing process limits the efficiency of the citation as an intermediate disciplinary tool. By comparison, citations issued by other Boards have a statute of limitations placed on the length of time posted for public disclosure (i.e. Medical Board of California, 5 years; Board of Registered Nursing, 3 years). The Board is seeking a comparable statute so that the citation method will be efficiently utilized and reduce the time and expense associated with informal hearings.

In addition, the Letter of Admonishment, as used by the Board of Pharmacy, would be used by the enforcement staff who have already performed an investigation and have identified areas of concern that do **not** rise to the level of filing of a formal accusation. The results of the investigation need to be brought to the attention of the practitioner so that they can take the necessary steps to address the deficiency (i.e. record keeping course, remedial education). This method allows for an additional level of consumer protection without the lengthy administrative hearing process, and would be publically disclosed, including via the Internet.

The final proposed method is the implementation of a Notice of Correction, as also currently used by the Board of Pharmacy. As opposed to the Letter of Admonishment, this would be used as an alternative to the method of citation during an inspection of a

licensee's workplace when an incident does not rise to or warrant a formal citation but should be brought to the practitioner's attention (i.e. name of licensed practitioners not posted in the office, failure to wear a name tag, failure to post auxiliary duties). The notice will serve as documentation for the Board in the event of a repeated violation, but is not publically disclosed.

Board staff has drafted proposed statutory language for the Senate Business, Professions and Economic Development Committee's consideration. The language is currently pending legal review, and will be provided in the near future.

Again, thank you for the opportunity to provide an update regarding the Boards Consumer Protection Enforcement Initiative proposed regulations, as well as our recommended statutory additions. If you have any questions or concerns, please feel free to contact me at your convenience.

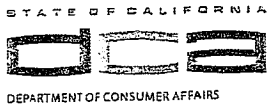
Sincerely,

Richard E. DeCuir
Executive Officer

cc: The Honorable Curren D. Price, Jr.
The Honorable Bill Emmerson
Dental Board of California, Board Members
Brian Stiger, Acting Director, Department of Consumer Affairs
Rosielyn Pulmano, Consultant

ATTACHMENT C

The Board's response to the Senate
Business, Professions and Economic
Development Committee's Issues and
Recommendations



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

Dental Board of California

2005 Evergreen Street, Suite 1550, Sacramento, California 95815
P (916) 263-2300 | F (916) 263-2140 | www.dbc.ca.gov



April 13, 2011

The Honorable Curren D. Price, Jr.
California State Senate
State Capitol Building – Room 2053
10 & L Streets
Sacramento, CA 95814

RE: Response to Senate Business, Professions and Economic Development
(BP&ED) Staff's Issues and Recommendations raised in the Committee's
Background Report for Sunset Review

Dear Senator Price:

Enclosed is the Dental Board of California's response to the issues and
recommendations raised in the Senate BP&ED Committee's Background Paper for
the Oversight Hearing which was held March 14, 2011.

We appreciate the opportunity to respond.

If you have any questions, please feel free to contact me by telephone at (916) 263-
2188 or email: Richard.DeCuir@dca.ca.gov.

Sincerely,

Richard E. DeCuir
Executive Officer

cc: Dental Board Members

**RESPONSE TO SENATE BUSINESS, PROFESSIONS AND
ECONOMIC DEVELOPMENT COMMITTEE'S
BACKGROUND PAPER FOR THE
DENTAL BOARD OF CALIFORNIA
Submitted April 14, 2011**

The Dental Board of California is submitting its response to the Senate Business, Professions and Economic Development Committee's Background Paper which was prepared for the Oversight Hearing which took place March 14, 2011.

BOARD ADMINISTRATION ISSUES

ISSUE #1: (CHANGE COMPOSITION OF DBC.) Should the composition of DBC be changed to include more public member representation?

Staff Recommendation: *To ensure the continued commitment of DBC to protect the public, the composition of DBC should be changed to include more public members. This could be accomplished by replacing one of the dentists appointed by the Governor with a public member and giving the Governor an additional public member appointment. This would bring the total of DBC to 15 members: 7 dentists, 1 RDA, 1 RDH and 6 public members.*

DBC Response: As Senator Price mentioned in the oversight hearing, having the public participate as members of Healing Arts Boards is a relatively new concept in open meetings. The DBC has three very active public members and there is one public member vacancy. The balance assists greatly in assuring that the public perspective is always before the Board. While DBC staff agrees that it is important to have public member perspective on issues relating to dentistry, increasing the number does not ensure that the public will be better served.

ISSUE #2: (STRATEGIC PLAN UPDATE NEEDED.) Should DBC's Strategic Plan include action items and realistic target dates for how its goals and objectives will be met?

Staff Recommendation: *DBC should develop and publish a detailed action plan with specific action items and realistic target dates for how each of the objectives will be met. Additionally, the Board should be given a written status report on the action plan at each board meeting.*

DBC Response: When the Board updated its Strategic Plan (Plan) in May 2010, it was developed as a two year plan without action items or target dates specified because we were anticipating a change in the administration. The Board recognizes that the Plan is dynamic with action items and target dates constantly changing due to unexpected and unforeseen circumstances such as staff shortages, furloughs, and statutory and regulatory mandates. The plan has always been that the Board will review and update the Strategic Plan sometime during 2012, with specific action items and target dates for how each of the objectives can be met. Board members currently receive an update of the objectives in the Plan at each Board meeting, either through the Executive Office Report of Committee Reports.

ISSUE #3: (LACK OF PERSONNEL EVALUATION.) Should DBC implement annual personnel performance evaluations or appraisals?

Staff Recommendation: *DBC should explain to the Committee its system of work performance evaluations and ensure that these evaluations or appraisals are completed by staff on a timely basis.*

DBC Response: We will begin requiring managers to complete evaluations on all staff annually during calendar year 2011.

ISSUE #4: (CLARIFICATION OF THE AUTHORITY OF DBC OVER THE DENTAL HYGIENE COMMITTEE AND DENTAL ASSISTANTS.) Is there some clarification needed regarding the authority which DBC has over the Dental Hygiene Committee and the Dental Assisting Forum?

Recommendation: *It would appear as if the intent of the Legislature was that the Dental Hygiene Committee was created so that it could make independent decisions on issues related to the regulation of the hygienist profession unless it involved scope of practice changes which would need to be worked out between both the dentistry and hygienist professions. Clarification may be needed to assure that the Dental Hygiene Committee maintains its independence over that of DBC. Additionally, the Committee should ask DBC to explain the purpose for establishing two groups to deal with dental assisting issues, and consider merging the DAC and DAF into one entity.*

DBC Response:

Dental Hygiene

The Dental Hygiene Committee of California (DHCC) falls within the jurisdiction of the Board ONLY on issues dealing with scope of practice. All other aspects of the DHCC are independent of the Board, including the DHCC's development of its own practice act and promulgation of regulations relating to dental hygiene. The Board does not believe independence of the DHCC is an issue.

Dental Assisting

In an effort to maximize communication between the dental assisting community and the Board, two forums were established: the Dental Assisting Committee of the Board (Committee) and the Dental Assisting Forum (DAF).

The Dental Assisting Committee is made up of Board members including the Registered Dental Assistant board member who serves as chairperson. The Committee meets at the same time as other board committees, considers issues related to dental assisting, and presents recommendations to the full Board.

The DAF is made up of licensees from the dental assisting community. It operates as a working committee under the Board. The purpose of the DAF is to be a forum where dental assistants can discuss matters related to the dental assisting community and can bring its recommendations for change to the Dental Assisting Committee of the Board for further discussion. Because the Dental Assisting Committee is comprised of Board members and the DAF is not, the staff recommendation to merge the two is not feasible. The Board will be discussing how to better implement an effective forum

where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full during the 2011 calendar year.

DENTAL WORKFORCE AND DIVERSITY ISSUES

ISSUE #5: (IMPACT OF FEDERAL HEALTH CARE REFORM ON THE DENTAL WORKFORCE?) Will California meet the increased demand for dental services with the enactment of the Federal Health Care Reform, and what can DBC do to assist in the implementation of the Federal Health Care Reform?

Staff Recommendation: *The Committee should ask DBC whether it has assessed the impact of, and planned for, implementation of the PPACA; how DBC is looking at the dental workforce capacity in light of implementation of the PPACA, given that millions of additional Californians, especially children, will gain dental coverage when the PPACA is implemented. Additionally, DBC should continue in its efforts to increase the dental workforce in California, explore approaches and work collaboratively with for-profit and non-profit organizations and other stakeholders to address the increased demand for oral healthcare as a result of the PPACA. Additionally, DBC should be proactive in finding ways to increase access to dental programs especially for socio-economic disadvantaged students.*

DBC Response: The board has had some preliminary discussions relative to increasing workforce capacity in the light of Federal Healthcare Reform. Those discussions always include the need to increase capacity in underserved and rural areas because those are the places where there is consistently a need. Last year we revised the Board's Strategic Plan and did two things: (1) highlighted access to quality care in our vision statement and (2) included diversity in our values.

We want our vision and values to be reflective of the consumers and professionals in the state and as such they are always a work in progress. We left our strategic plan open-ended so that we could revisit and expand on it. That work will be accomplished in future meetings.

Additionally, Health Care reform provides opportunities to increase capacity and through our strategic goals of being proactive about legislative solutions and conducting outreach programs where public policy issues on health care are discussed we see an opportunity.

To that end, the Board has worked with interested parties on workforce issues such as the Healthcare Manpower Pilot Project; and has developed new pathways to licensure such as licensure by residency and licensure by credential. Most recently the Board sponsored legislation that will allow students attending a California dental school an alternate pathway to licensure, referred to as the portfolio pathway. The board recently implemented new regulations that allow for greater utilization of dental assistants. The Board would like to work closely with the Select Committee on Health Workforce and the various legislative caucuses as well as other interested parties, for-profit, non-profit and stakeholder organizations to find solutions and reach the goal of a workforce that reflects our state.

ISSUE #6: (IS THERE A LACK OF DIVERSITY IN THE DENTAL PROFESSION?)
Should DBC enhance its efforts to increase diversity in the dental profession?

Staff Recommendation: *DBC should enhance its efforts on diversity issues, and increase its collaboration efforts with dental schools, dental associations, other state and local agencies, and for-profit and non-profit organizations.*

DBC Response: The DBC believes it can enhance its efforts on diversity issues in part through the collaboration it will seek to assist in the implementation of the Federal Health Care Reform. We believe that the collaboration with the Select Committee on Health Workforce and the various legislative caucuses as well as other interested parties, for-profit, non-profit and stakeholder organizations can bring increased diversity in the dental profession.

DENTAL PRACTICE ISSUES

ISSUE #7: (DIFFICULT TO DETERMINE SPECIALTY AREAS OF DENTAL PRACTICE.)
Should DBC be responsible for determining and reviewing areas of specialty education and accreditation requirements for those specialized areas of Dentistry?

Staff Recommendation: *Adopt the recommendation of DBC to delete B & P Code Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).*

DBC Response: The Board has historically taken the view that it is a licensing body, and does not have the authority, or staff to determine and review areas of specialty education and accreditation requirements for those specialized areas of Dentistry. The Board supports legislation that deletes Business & Professions Code, Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).

EXAMINATION ISSUES

ISSUE #8: (LENGTHY PROCESSING TIME FOR EXAMINATION APPLICATIONS.)
Currently DBC is averaging up to five months to process examination applications.

Staff Recommendation: *DBC should explain further the reasons for the delays in processing examination application averages and whether these delays are attributable to DBC.*

DBC Response: Since the Board's initial Sunset Review Report was submitted October 1, 2010, staff has re-evaluated the Licensing & Examination unit application processing times. Statistics over the past 5 months show that dentist applications with no deficiencies are being processed in under 30 days. Applications that are deficient may be delayed depending upon how quickly the requirements are submitted by the applicant.

ISSUE #9: (RANDOMIZATION OF DENTAL AND RDA LAW AND ETHICS EXAMINATIONS NEEDED.) Are there sufficient safeguards to avoid, if not limit, examination compromises and ensure that testing reflect current laws and regulations? Should the California Law and Ethics examination questions for dentists and RDAs be randomized and reflect current laws and regulations?

Staff Recommendation: *To avoid examination compromises and ensure that the examination questions reflect current law and regulations, DBC should require that OPES randomize (scramble) California law and ethics examinations for dentists and RDAs. Additionally, dentists should be required to certify that examination content will not be released.*

DBC Response: Both of the examinations (dentists and RDAs) are randomized and have been since implementation. The board is also working with OPES to enhance the number and type of questions to be used on the exam. Effective May 2, 2011, the Law and Ethics Examination for dentists will be computer based and administered by PSI. All applicants will be required to certify that the contents of the examination will not be released.

ISSUE #10: (RDA WRITTEN EXAMINATION PASS RATE IS LOW.) Should DBC explore pathways to improve the pass rates of RDAs taking the written examinations if the low pass rate trend continues?

Staff Recommendation: *If in fiscal year 2010/2011, the RDA examination pass rate remains low, DBC should explore approaches to improve the passage rate of RDAs.*

DBC Response: When the Board assumed responsibility for the Dental Assisting Program on July 1, 2009, the examination pass rate was 53%. Since implementation of the new RDA examination on January 1, 2010, the pass rate is fluctuating between 62% and 70% depending on the candidate pool. The candidates graduating from board-approved dental assisting programs appear to be passing the examination at a higher rate. The Board is currently working with a vendor to review the current examination and enhance the test item bank used for the examination.

CONTINUING COMPETENCY ISSUES

ISSUE #11: (LACK OF CONTINUING EDUCATION AUDITS.) DBC suspended audits of continuing education prior to 2009, and does not audit RDAs.

Staff Recommendation: *DBC should explain to the Committee its current policy on continuing education audits for dentists and the reasons for suspension of the audits prior to 2009. DBC should also explain why it does not audit CE for RDAs and describe plans, if any, to implement audit for RDA CE.*

DBC Response: Random Continuing Education audits for dentists were temporarily suspended in July 2009 due to workload in other areas of the Board and the need to redirect staff. The random audit program resumed with the February 2011 renewals. Audits for Registered Dental Assistants cannot take place until additional staff is hired to assume those duties.

ENFORCEMENT ISSUES

ISSUE #12: (DISCIPLINARY CASE MANAGEMENT TIMEFRAME STILL TAKING ON AVERAGE 2 ½ YEARS OR MORE.) Will DBC be able to meet its goal of reducing the average disciplinary case timeframe from 2 ½ years or more, to 12 to 18 months?

Staff Recommendation: *In order to improve case processing and case aging, and to meet its goal of reducing the timeframe for the handling of its disciplinary cases, the following recommendations from the Monitor and Assessment Report should be considered by DBC:*

- 1) *Continue to reduce the amount of time to process and close complaints.*
- 2) *A Guideline for case assignments must be established, taking into consideration the skills or experience level of staff and other factors.*
- 3) *Making Case Processing and Aging a major focus of DBC's improvement planning.*
- 4) *Prioritize the review of aged cases.*
- 5) *Establish reasonable elapsed time objectives for each step of the case processing.*
- 6) *Monitor Performance by establishing regular oversight of case progress and staff productivity.*
- 7) *A policy or procedures for supervisory staff in performing case reviews should be established.*

Additionally, the Committee should give consideration to auditing both the Investigation Unit of DBC and the Licensing Section of the AG's Office to determine whether improvements could be made to the investigation and prosecution of disciplinary cases.

DBC Response: The Board's Enforcement program is committed to process improvement and has established several policies and procedures in response to the Enforcement Assessment 2009 and the committee's recommendations. With the additional staffing provided by the Consumer Protection Enforcement Initiative (CPEI), the Board has already begun to make improvements to processing times. Since April 2008, the Complaint Unit has reduced the average number of days to close a complaint from 435 days to 100 days (a 77% decrease). The implementation of quarterly case reviews has focused on case closures and closing the oldest investigations. These efforts have reduced the number of cases over two years old from 19% to 14% in the last five months.

With the implementation of the Investigator Activity Report (IAR) system, the Board is gathering data associated with specific investigative functions to be able to establish time objectives for various case types. This data combined with the case reviews is being used by managers to monitor case progress and staff productivity.

Case review procedures along with case assignment guidelines have been developed and are included in the recently updated Enforcement Program manual.

ISSUE #13: (DISCIPLINARY CASE TRACKING SYSTEM INADEQUATE.) Should DBC continue to monitor the quality of enforcement data and ensure that investigative activities are tracked? Additionally, should DBC adopt guidelines for the completion of specific investigative functions to establish objective expectations?

Staff Recommendation: *Although all the boards and bureaus within the DCA will transition into the BreZE system, this process is several years out. In the meantime, DBC should continue to*

monitor the quality of enforcement data and tracking of investigative services. Moreover, although DBC had transitioned to the IAR utilized by the MBC, DBC should ensure that the IARs are consistent and completed. Additionally, as the Enforcement Assessment recommended, guidelines should be established for the completion of specific investigative functions to establish objective expectations. Lastly, DBC should continue in its role to work collaboratively with the DCA's Office of Information Services project staff, as well as with any vendor, to assist in creating an efficient and user-friendly integrated computer system.

DBC Response: The Board agrees with the staff recommendations. Beginning in November 2010, the enforcement program began gathering and reporting investigative and disciplinary statistics and benchmarks to more closely monitor our progress towards department goals. The ongoing utilization of IAR is an additional component for tracking staff productivity and establishing investigative case measures.

The Board also recognizes that DCA's current case management system is not suited to track the case once it has been forwarded to the Attorney General's office. Quarterly reports from the AG's Office are also insufficient to follow case progress on a regular basis. Cases are taking an average of 180 days (6 months) from the time the AG's office receives a case until the accusation is served. The Board is currently partnering with the CSLB to adapt their Disciplinary tracking system to provide the enforcement program with the ability to more closely monitor accusations and case progression.

ISSUE #14: (PROTRACTED PROCESS TO SUSPEND LICENSE OF A DENTIST.)

DBC must go through a cumbersome process to suspend the license of a licensee who may pose an immediate threat to patients or who have committed a serious crime and may even be incarcerated.

Staff Recommendation: *Extend the time constraints placed on the AG to file an accusation thus allowing the AG to utilize the ISO process without having to have their accusation prepared within a very limited time frame (15 days). Pursuant to Section 494 of the B&P Code, DBC does not have to always rely on an ALJ to conduct the ISO hearing, DBC also has authority to conduct the hearing and could do so more expeditiously where serious circumstances exist regarding the suspension of a dentist's license. Provide for automatic suspension of a dental license if the dentist is incarcerated and mandatory revocation of a license if a dentist is convicted of acts of sexual exploitation of a patient.*

DBC Response: The board is utilizing a number of tools to suspend a practitioner's license when necessary, including Penal Code Section 23 motions to temporarily suspend practice on criminal allegations which have the potential for public harm, and Business and Professions Code Section 1687 on convicted sexual offenders. In addition, effective January 1, 2011, the Board was authorized to order a licensee to cease practice per Section 315.2 of the Business and Professions Code if a licensee tests positive for any substance that is prohibited under the terms of the licensee's probation. The Board has requested the inclusion of additional statutory language to enhance its enforcement program. These additional provisions are: Letter of Admonishment, Modified Citation and Fine, and Notice of Correction.

ISSUE #15: (DIFFICULTY COLLECTING CITATIONS AND FINES FOR CERTAIN TYPES OF VIOLATIONS AND COST RECOVERY.) Should DBC contract with a collection agency to improve its cost recovery and cite and fine functions?

Staff Recommendation: *In order to improve cost recovery and fine collection efforts, DBC should be allowed to procure a contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts. According to the DCA, most of the boards within DCA are struggling to collect cost recovery amounts, outstanding fees, citations or fines. If this is the case, the DCA may wish to procure a contract with one collection agency for all its boards.*

DBC Response: The Board believes that the Senator Price has already introduced legislation related to this issue.

ISSUE #16: (PROBLEMS WITH PROBATION MONITORING.) Should DBC adopt written guidelines on how to make probation assignments and ensure that probationary and evaluation reports are conducted consistently and regularly as recommended by the Enforcement Assessment?

Staff Recommendation: *As recommended in the Enforcement Assessment, DBC should adopt written guidelines on how to make probation assignments, and ensure that probationary and evaluation reports are conducted consistently and regularly.*

DBC Response: The Board's Enforcement Program is currently in the process of revising its written guidelines for probation monitoring, using a model in use by the Medical Board. In addition, modifications to the Investigator Activity Report System are being made to track and account for time spent on probation monitoring functions in addition to investigative tasks. It is anticipated that this information will assist us in identifying and capturing realistic recovery costs.

ISSUE #17: (NEED FOR ANNUAL REPORTING REQUIREMENTS.) Should DBC annually report specific licensing and enforcement information to its licensees and the Legislature?

Staff Recommendation: *The Dental Practice Act should be amended to require DBC to report annually to the Legislature information required under Business and Professions Code Section 2313 that applies to dentists, including malpractice settlements and judgments, Section 805 reports, the total number of temporary restraining orders or interim suspension orders sought by DBC, and other licensing and enforcement information as specified. Staff recommends that annual reports should also be published in DBC's newsletter and made available on its Website.*

DBC Response: The Board annually reports malpractice settlements and judgment information collected pursuant to Business and Professions Code Section 806. In addition, the Board currently reports annually to the Department in a number of categories consistent with the intent of Business and Professions Code Section 2313; including complaint totals and timeframes, arrest and conviction filings, cite and fine results, and disciplinary totals and benchmarks. This information is posted on the Department's website for public review. Additional statutory language is unnecessary.

ISSUE #18: (IMPLEMENT 2009 DBC ENFORCEMENT ASSESSMENT CORRECTIVE ACTION PLAN.) Should DBC implement the recommendations of a 2009 Enforcement Assessment of DBC's Enforcement Program?

Staff Recommendation: *DBC should submit to this Committee a corrective action plan detailing how DBC intends to address and implement the recommendations contained in the 2009 Enforcement Assessment.*

DBC Response: The Enforcement Program has established several policies and procedures in response to the Enforcement Assessment of 2009 and the committee's recommendations. Case assignment guidelines have been developed and are included in the recently updated Enforcement Program manual.

With the implementation of the Investigator Activity Report (IAR), the DBC is gathering data associated with specific Investigative Functions to be able to establish time objectives for various case types. It is estimated that the DBC will need at least 12 months to gather sufficient data to establish these timeframes.

Written Guidelines for Probation Monitoring, similar to those in use by the Medical Board, are included in the DBC's Probation Manual.

We have also been asked to submit a Corrective Action Plan in response to the 2009 Enforcement Assessment. Although many of the recommendations have already been implemented, an action plan with benchmarks of completion dates will be produced by the end of 2011.

ISSUE #19: (CONTINUED USE OF THE DENTAL LOAN REPAYMENT PROGRAM.) The California Dental Corps Loan Repayment Program still has funds available to provide to dental students.

Staff Recommendation: *The California Dental Corps Loan Repayment Program should be extended until DBC distributes all the funds in the account. DBC should indicate to the Committee its efforts to inform students about the availability of the loan repayment program.*

DBC Response: The Board agrees that the California Dental Corps Loan Repayment Program should be extended until all the funds in the account have been distributed. The Program will expire June 30, 2012. The Board will continue to inform dental students about the availability of the loan repayment program through the website and will work with stakeholders and professional associations to put a notice in their publications.

SUBSTANCE ABUSE AND DIVERSION PROGRAM ISSUES

ISSUE #20: (EFFECTIVENESS OF DIVERSION PROGRAM AND IMPLEMENTATION OF SB 1441 STANDARDS.) It is unknown how successful DBC's Diversion Program is in preventing recidivism of dentists who may abuse drugs or alcohol, and if the Diversion Program

is effectively monitoring and testing those who participate in the program. Additionally, it is unclear when "Uniform Standards" for their Diversion Programs will be implemented.

Staff Recommendation: *The Committee should consider requiring an audit of DBC's Diversion Program in 2012, along with the other health boards which have Diversion Programs to assure that these programs are appropriately monitoring and treating participants and to determine whether these programs are effective in preventing further substance abuse. Additionally, the audit should also determine the value of utilizing DECS in a diversion program. DBC should also indicate to the Committee how the Uniform Standards are being implemented and if all Uniform Standards are being followed, and if not, why not; give a definite timeframe when disciplinary guidelines will be amended to include SB 1441 standards, whether formal training for DECS is necessary to ensure that standards are applied consistently, and the necessity of revising the Maximus diversion program recovery contract signed by a dentist who enters the diversion program to incorporate certain aspects of SB 1441 including the requirement that a dentist must undergo a clinical diagnostic evaluation to participate in the program; the practice restrictions that apply while undergoing a diagnostic evaluation; the requirement to provide the names and contacts of employers or supervisors for participants who continue to work; the frequency of drug testing; that collection of specimens shall be observed; that certain requirements exist for facilitators; what constitutes major or minor violations; and the consequences for major or minor violations.*

DBC Response: Audits of the DBC Diversion Program have been performed by DCA in 2009 & 2010 with no findings of public risk or harm, yet the committee staff is proposing another round of audits by the Bureau of State Audits for 2012. We believe an additional audit is not necessary. The Background Report doesn't take issue with the Board's Diversion Evaluation Committees yet the Committee's report contains a recommendation to assess the continued need for these Diversion Evaluation Committees and the need to train Diversion Evaluation Committee members. With respect to the SB 1441 requirements, the Board filed regulations with the Office of Administrative Law on Friday, March 11th to amend the Board's Disciplinary Guidelines to use the uniform standards developed by the SACC and to specify that it is the Diversion Evaluation Committee's duty and responsibility to consider the uniform standards contained within the Disciplinary Guidelines in creating treatment rehabilitation plans for licensees entering the Diversion Program. The amended Disciplinary Guidelines use the uniform standards that should be used in all cases in which a license is placed on probation due to a substance abuse problem. The uniform standards would include (1) Clinical Diagnostic Evaluation; (2) Clinical Diagnostic Evaluation Report; (3) Facilitated Group Support Meetings; (4) Supervised Practice (Work Site Monitor Requirements); (5) Major and Minor Violations; and (6) Drug Testing Standards. Once the proposed language has gone through the regulatory process and is approved by the Office of Administrative Law, the Board will have the regulatory authority to implement the drug testing standards. The Board should be authorized to implement the drug testing standards within the next 12 to 18 months. Those SB 1441 mandates that can be included without regulation will be accomplished through a contract amendment.

ISSUE #21: (DBC CANNOT ACCESS RECORDS OF THE DIVERSION PROGRAM WHEN A DENTIST IS TERMINATED FOR NON-COMPLIANCE.) Should DBC be authorized to access diversion records for dentists who are terminated from the diversion program for non-compliance, which usually involves relapse?

Staff Recommendation: *Amend the Dental Practice Act to authorize DBC to access any diversion records of a licensee who participates in a diversion program and is terminated for non-compliance, for purposes of investigation and imposition of a disciplinary action.*

DBC Response: The Board is in agreement with the staff recommendation to amend the Dental Practice Act to include the original language in AB456 (Emerson) from the 2010 legislative session which authorizes the board's enforcement program access to diversion records for, "licensees who are terminated for noncompliance." The bill's language also authorized the board's enforcement program to use "licensees' records for purposes of discipline." It is essential to the success of the diversion program, that access to these records only be granted in these exceptions.

CONSUMER NOTICE ISSUE

ISSUE #22: (NOTICE TO CONSUMERS THAT DENTISTS ARE REGULATED BY DBC.) Should DBC promulgate regulations pursuant to a statute enacted in 1999 to require dentists to inform patients that they are licensed by DBC?

Staff Recommendation: *Pursuant to Section 138 of the B & P Code, DBC should adopt regulations to require dentists to inform their patients that they are licensed by the DBC.*

DBC Response: This recommendation is unnecessary. Existing law already requires the board's licensees to provide written notice of their license status per BPC sections 680 and 680.5.

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

ISSUE #23: (NEED FOR CONTINUED ENHANCEMENT OF DBC's INTERNET SERVICES.) Should DBC continue to explore ways to enhance its Internet Services and Website to licensees and members of the public?

Staff Recommendation: *DBC should continue to explore ways to enhance its Internet Services to licensees and members of the public, including posting meeting materials, board policies, and legislative reports on the Internet and webcasting Board meetings.*

DBC Response: Improving the web site is a board priority. The Board will continue to post meeting notices and materials, board policies, legislative and regulatory information, newsletters, and other information; and will continue to webcast our Board meetings when possible.

BUDGETARY ISSUES

ISSUE #24: (ARE RECENT LICENSING FEES SUFFICIENT TO COVER DBC COSTS?) Is DBC adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Staff Recommendation: DBC should assure the Committee that it will have sufficient resources to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas if appropriate staffing and funding is provided. Additionally, the Committee may consider amending Section 1725 of the B & P Code to instead require that any changes in licensing and permitting fees of dental assistants be established by regulations, instead of Board Resolutions as currently required.

DBC Response: Staff will be seeking a \$10 increase in licensing fees for Registered Dental Assistants during the 2011 calendar year. Additionally, licensing fees for dentists will be adjusted through the regulatory process during either FY 12/13 or FY 13/14.

ISSUE #25: (LACK OF STAFF CONTINUES TO HAMPER DBC'S ENFORCEMENT PROCESS.) DBC should explain to the Committee the negative impact of enforcement program vacancies to its overall functions.

Staff Recommendation: DBC should express to the Committee its frustration in being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program, and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases.

DBC Response: Of the 12.5 approved CPEI positions, the DBC has been able to hire 4 fulltime employees to investigate quality of care cases. Since that time, the DBC's Enforcement Program has been able to achieve the following:

- Decreased the amount of unassigned cases from 428 in October 2010 to 249 as of March 2011 (41% decrease).
- Increased case closures from 49 in November 2010 to 108 in March 2011 (an increase of 120%)

Sworn peace officers currently work the most complex and egregious investigations. The Board is currently asking for a freeze exemption to fill our remaining four (4) sworn positions. Without being able to fill these mission critical positions, as well as the remaining non-sworn CPEI positions, less serious quality of care cases will wait for assignment and will age – resulting in the potential for further consumer harm from practitioners whose practice issues have not been addressed. In addition, retroactive fingerprinting legislation is anticipated to increase the number of new cases which will contribute to the existing workload. Using historical data, it is estimated that of the 41,500 licensees who have not been fingerprinted, 3% (1,395) to 23% (10,695) new cases could be generated.

It is imperative that the Board be able to fill positions in order to address the backlog in a timely manner, meet its goal to complete investigations within 12 to 18 months, maintain the quality of these investigations, and continue to protect the public.

ISSUE #26: (IMPACT ON DBC OF THE UNPAID LOANS MADE TO THE GENERAL FUND.) Will the unpaid loan to the General Fund have an impact on the ability of DBC to deal with its case aging and case processing?

Staff Recommendation: *No more loans from the reserve funds of the DBC to the General Fund. DBC should explain to the Committee what the impact will be to its overall Budget and its enforcement process if the outstanding loan is not repaid as soon as possible. This of course is if DBC is granted an exemption from the hiring freeze, otherwise new expenditures will not be necessary.*

DBC Response: The Board agrees that there should be no more loans from the reserve funds of the Dental Board to the General Fund. There is still an outstanding General Fund Loan balance of \$4.4 million which must be paid back to the board before a fee increase can become implemented.

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT MEMBERS OF THE DENTAL BOARD OF CALIFORNIA

ISSUE #27: (CONSUMER SATISFACTION WITH DBC IS LOW.) A 2010/2011 Consumer Satisfaction Survey of DBC shows only about 30% of complainants are satisfied with the service provided by the Board. Additionally, DBC failed to disseminate a consumer satisfaction survey prior to 2010.

Staff Recommendation: *DBC should explain to the Committee why a Consumer Satisfaction Survey was not implemented as recommended by the Monitor, and explain why it believes consumer satisfaction regarding its service is so low, and what other efforts DBC could take to improve its general service to the consumer. Does DBC believe that mediation could be used in certain circumstances to help resolve complaints from the general public regarding health care practitioners?*

DBC Response: There was a survey sent out in August 2010, which connected to a Survey Monkey sent to the 1900 consumers who filed complaints which were subsequently resolved by the Board. The Board received 35 responses. Though 35 responses is hardly a trend, we see two areas where consumer satisfaction can be improved: 1. Case aging and, 2. Exploring ways to assist consumers with pursuing financial restitution where additional costs are incurred for corrective work. An area of dissatisfaction was with case outcome relative to discipline, something we cannot address because these cases took proper administrative course. Managers are looking at a different survey instruments and will explore the use of a separate document to see if it provides better results.

ISSUE #28: (CONTINUED REGULATION OF DENTISTS BY DBC.) Should the licensing and regulation of the dental profession be continued, and be regulated by the current board membership?

Staff Recommendation: *Recommend that the dental profession should continue to be regulated by the current DBC members in order to protect the interests of consumers and be reviewed once again in four years.*

DBC Response: The Board agrees.

ATTACHMENT D

- Senate BP&ED Committee
Analysis of SB 540(Price)
- Senate Bill 540

hearing Date: May 2, 2011

Bill No: SB 540

**SENATE COMMITTEE ON BUSINESS, PROFESSIONS
AND ECONOMIC DEVELOPMENT**
Senator Curren D. Price, Jr., Chair

Bill No: SB 540 Author: Price
As Amended: April 25, 2011 Fiscal: Yes

SUBJECT: Dentistry.

SUMMARY: Extends the sunset date of the Dental Board of California to January 1, 2018, and makes other programmatic changes.

Existing law:

- 1) Establishes the Dental Board of California (DBC) to license and regulate the practice of dentistry.
- 2) Specifies that the DBC shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. States that this provision shall remain in effect only until January 1, 2012, and after that date, is repealed unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date. (Business & Professions Code (BPC) § 1601.1)
- 3) Provides that every board within the Department of Consumer Affairs, as specified, shall initiate the process of adopting regulations on or before January 1, 1999, to require its licentiates, as defined, to provide notice to their clients or customers that the practitioner is licensed by this state. (BPC § 138)
- 4) States that for purposes of advertising, a dentist may not hold himself or herself out as a specialist, as specified, unless the dentist satisfies specific specialization requirements. (BPC § 651(h)(5)(A)(i) et seq)
- 5) Allows DBC to issue a probationary license to an applicant for licensure as a dentist or dental auxiliary. Allows the DBC to require a licensee, as a term or condition of issuing a probationary license, to comply with certain requirements, as specified. (BPC § 1628.7)
- 6) Requires licensees of the DBC to fulfill continuing education requirements.
- 7) Specifies the intent of the Legislature to seek ways and means to identify and rehabilitate licentiates whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licentiate so afflicted may be treated and returned to the practice of dentistry in a manner which will not endanger the public health and safety. (BPC § 1695)

- 8) Requires the DBC to establish criteria for the acceptance denial or termination of licentiates in a diversion program. States that licentiates shall sign an agreement of understanding that withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization of the DBC of diversion treatment records in disciplinary or criminal proceedings. (BPC § 1695.5)
- 9) States that the amount of fees that relate to the licensing and permitting of dental assistants shall be established by DBC resolution. (BPC § 1725)
- 10) Finds and declares that dental assistants provide a dental care services that is vital to good health. It is the intent of the Legislature that the DBC create and implement an effective forum where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full and where all matters relating to dental assistants in this state can be discussed, as specified.
- 11) Establishes the Dental Corps Loan Repayment Program of 2002 to provide loan repayment assistance to dentists who commit to a minimum of three years of services in a dentally underserved area, as defined. (BPC § 1970 et.seq.)

This bill:

- 1) Deletes existing law requirements relating to advertising by a dentist of specialization or accreditation in a specialty area of practice unless certain requirements are met.
- 2) Extends the sunset date of the DBC comprised of eight practicing dentists, one registered dental hygienist, one registered dental assistant and five public members to January 1, 2016.
- 3) Establishes, on and after January 1, 2016, a DBC which shall consist of eight practicing dentists and seven public members. States that this provision shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. States that this repeal renders the DBC subject to review by the appropriate policy committees of the Legislature. States that members of the DBC shall be appointed for a term of four years, and that the Governor appoints the 8 dentists and five of the public members, and the Senate Rules Committee and the Speaker of the Assembly each appoint a public member.
- 4) States that on and after January 1, 2016, all members of the DBC, except the public members, shall have been actively and legally engaged in the practice of dentistry, as specified. Provides that the public members shall not be licentiates of the DBC or any other board, as specified.
- 5) Requires the DBC, by January 1, 2013, to comply with existing statute that requires boards within DCA, including the DBC, to adopt regulations to require licensees to provide notice to clients or customers that the licensee is licensed by the state. Requires the notice to include a provision indicating that the DBC is the entity that regulates dentists and provide the telephone number and Internet address of the DBC. States that the DBC should require the notice to be posted in a conspicuous location accessible to public view.

- 6) Extends the sunset date of the appointment of the executive officer to January 1, 2018.
- 7) Requires the DBC to adopt written guidelines on how to make probation assignments, and to ensure that probationary and evaluation reports are conducted consistently and regularly.
- 8) Requires the DBC to ensure that the law and ethics examination reflect current law and regulations, and to ensure that the examinations are randomized.
- 9) Provides that if requested by the Legislature through the Joint Legislative Audit Committee in 2012, the Bureau of State Audits shall conduct a thorough performance audit of the DBC's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that licensees participating in the program are appropriately monitored and that the public is protected from licensees who are impaired due to alcohol or drug abuse or mental or physical illness. Requires this audit to be paid for with moneys from the State Dentistry Fund.
- 10) Deletes existing law provision requiring a licentiate to sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the DBC of diversion treatment records in disciplinary or criminal proceedings.
- 11) Requires that if a licentiate withdraws or is terminated from the diversion program for failure to comply or is determined to be a threat to the public or their own health and safety, all diversion records for that licentiate shall be provided to the DBC's enforcement program and may be used in any disciplinary proceeding. States that if a licentiate in a diversion program tests positive for any banned substance, the board's diversion program manager shall immediately notify the DBC's enforcement program and provide the documentation evidencing the positive test result to the enforcement program. Provides that this documentation may be used in a disciplinary proceeding.
- 12) Deletes the requirement that dental assisting fees that relate to licensing and permitting be established by DBC resolution and instead requires these fees to be established by regulation.
- 13) Deletes existing intent language for the DBC to create and implement an effective forum for dental assisting matters, as specified.
- 14) Creates a Dental Assisting Council (Council) of the DBC, which shall consider all matters relating to dental assistants in this state, including matters that relate to standards for approval of dental assisting educational programs and courses, and make appropriate recommendations to the DBC, as specified.
- 15) Requires that members of the Council to be appointed by the DBC president, and shall consist of two members of DBC, and five members who are either registered dental assistants or registered dental assistants in extended functions. Requires the Council to meet in conjunction with other DBC Committees, and at other times as deemed necessary.

- 16) Provides that the Council members shall serve a term of four years, except that, of the initial appointments of the nonboard members, one of the members shall serve a term of one year, two members shall serve a term of two years, and two members shall serve a term of three years.
- 17) Requires the Council to be the sole entity of the DBC that will provide recommendations on dental assisting matters.
- 18) Extends the California Dental Corps Loan Repayment Program of 2002 until all the moneys in the account are expended.
- 19) Makes other technical, non-substantive, and conforming changes.

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

COMMENTS:

1. **Purpose.** The Author is the Sponsor of this measure. According to the Author, in 2011, this Committee conducted oversight hearings to review 7 boards: the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the Dental Board of California, the Board of Accountancy, the Contractors State License Board, the Board for Professional Engineers, Land Surveyors and Geologists, the California Architects Board (and the Landscape Architects Committee). The Committee also reviewed the Athletic Commission and the Professional Fiduciaries Bureau and conducted oversight hearings of the Department of Real Estate and the Office of Real Estate Appraisers. The Committee began its review of these licensing agencies in March and conducted three days of hearings. This bill, and the accompanying sunset bills, is intended to implement legislative changes as recommended in the Committee's Background/Issue Papers for all of the agencies reviewed by the Committee this year.

This bill is one of the seven "sunset bills" authored by the Chair of this Committee. According to the Author, this bill is necessary to extend the sunset date of the DBC and continue the regulation of dentists and other dental practitioners in California and continue with the DBC's mission to protect the public. Additionally, the Author points out that there is a need to increase the public membership within the DBC to assure the public that the professions' interests do not outweigh what is in the best interest of the public. Additionally, there is a need to ensure the programs administered by the DBC, including its Diversion Program, continue to protect the public while rehabilitating licensees.

2. **Background.** The DBC was created by the California Legislature in 1885, and was originally established to regulate dentists. Today, the DBC is responsible for regulating the practice of approximately 71,000 licensed dental health professionals in California, including 35,500 dentists, 34,300 registered dental assistants (RDAs), and 1,300 registered dental assistants in extended functions (RDAEFs). In addition, DBC is responsible for setting the duties and functions of approximately 50,000 unlicensed dental assistants. The Dental Practice Act provides that the "[p]rotection of the public shall be the highest priority of the Dental Board of California 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." DBC implements regulatory programs and

performs a variety of functions to protect consumers. These programs and activities include setting licensure requirements for dentists, and dental assistants, including examination requirements, issue and renew licenses, issue special permits, monitor probationer dentists and RDAs and manage a Diversion Program for dentists and RDAs whose practice may be impaired due to chemical dependency or mental illness. DBC is composed of 14 members; 8 practicing dentists, 2 dental auxiliaries (RDH and RDA), and 4 public members. The 8 licensed dentists, the registered dental hygienist, the RDA, and 2 public members are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each get a public member appointment. According to DBC, public membership is 29% of the Board's composition.

Existing law allows the Legislature to conduct policy review of regulatory boards within DCA. This review includes an evaluation of a board's regulatory programs, including staffing, enforcement, budgetary, examination, and practice issues to ensure that consumer protection remains the priority of these boards. This year, the DBC was reviewed by this Committee and an oversight hearing was held on March 14, 2011. As part of this hearing, Committee staff prepared an extensive background paper detailing various issues and recommendations for the DBC.

3. **Former Sunset Review of the DBC.** DBC was last reviewed by the former Joint Legislative Sunset Review Committee (JLSRC) in 2002. At that time, the JLSRC issued five recommendations. Additionally, prior to this last review, SB 26 (Figueroa), Chapter 615, Statutes of 2001 required the Director of the DCA to appoint an Enforcement Monitor (Monitor) to evaluate DBC's disciplinary system and procedures with specific focus on the quality and consistency of complaint processing and investigation, timeframes needed for complaint handling and investigation, complaint backlogs, and other related managerial, organizational, and operational problems, issues, and concerns. The Monitor submitted his initial report to the Legislature in 2002, and made 40 specific recommendations for improvements. In this initial report, the Monitor indicated that there are numerous significant inconsistencies in the way complaints are processed and investigated, it was taking much too long to resolve or investigate complaints, and as a result of staff turnover and the state's hiring freeze, backlogs have begun to accumulate. On October 1, 2010, DBC submitted its required Sunset Report to this Committee. In this report, DBC described actions it has taken since its last sunset review and to address the recommendations of the Monitor. The following are some of the changes and enhancements that DBC had undertaken:

- Augmentation of enforcement unit staff and restructuring of its Complaint Unit has allowed DBC to respond to consumer complaints in a timely manner and has reduced the processing times of complaints.
- In response to concerns raised that DBC is unable to administer an adequate amount of examinations, DBC sponsored AB 1524 (Hayashi), Chapter 446, Statutes of 2010 which repeals the previous clinical and written examination administered by DBC and replaced it with a portfolio examination of an applicant's competence to practice dentistry to be administered while the applicant is enrolled in a dental school program.
- DBC converted limited term peace officer positions to permanent full time positions.
- New licensure, examination and permit requirements were established.

- To address issues raised by the Monitor on the lack of a case tracking system, DBC will be one of the Boards that will benefit from a new, integrated, enterprise-wide enforcement and licensing system, called BreEZe that will support applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management. According to DCA, BreEZe will replace the existing CAS, ATS, and multiple "workaround" systems with an integrated system for use by all DCA organizations. The BreEZe project was approved by the Office of the State Chief Information Officer (OCIO) in November 2009, and the Request For Proposal (RFP) for a solution vendor is currently under development.
- To address the need for tracking investigative case activity, in 2003, DBC tested a version of the Investigation Activity Reporting (IAR) program used by the Medical Board of California (MBC). According to DBC, although this demonstration version of MBC's database was intended to provide a method for managers to track casework on all cases, the system was not established in protocol and was only used sporadically. DBC's enforcement program has partnered with the MBC to utilize MBC's newest version of the IAR to track casework. This format is intended to provide information for cost recovery purposes and allow managers to better track staff performance and productivity. Transition to the new IAR was anticipated to be completed by the end of 2010.
- The Expert Reviewer rate was increased from \$75 to \$100. However, DBC indicates it continues to struggle to recruit experts.
- Effective August 1, 2010, a new consumer survey procedure has been adopted.
- The Disciplinary Guidelines of DBC were revised and approved by the Office of Administrative Law on December 14, 2010. The regulations became effective January 13, 2011.
- DBC's regulatory authority and responsibility was extended to all dental assisting functions. The duties and functions of unlicensed dental assistants, RDAs, RDAEFs, Dental Sedation Assistants, and Orthodontic Assistants were revised in statute.
- The Board updated its dental assisting educational requirements relating to RDA programs, infection control courses, Orthodontic Assistant Permit Courses, Dental Sedation Assistant Courses, and RDAEF programs, and is moving forward with finalizing the rulemaking process.
- The DBC updated the regulations for the minimum standards for infection control applicable to all DBC licensees and is moving forward with finalizing the rulemaking process.

4. This Measure Includes the Following Statutory Changes as Identified by This Committee During Its Oversight Hearings of March, 2011:

- a) **Increases Public Membership of the DBC.** DBC's current composition of 8 professionals and 4 public members may not be in the best interest of consumer protection. DBC currently has 14 members: 8 dentists, 1 RDA, 1 RDH and 4 public members. The 8 licensed dentists, 1 RDH, 1 RDA, and 2 public members are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each

get 1 public member appointment. According to DBC, public membership is 29% of DBC's composition. Generally, a public member majority for occupational regulatory boards or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's (including DBC) primary purpose is to protect the public, increasing the public's representation on DBC assures the public that the professions' interests do not outweigh what is in the best interest of the public. Requiring closer parity between public and professional members is also consistent with both this Committee's and the DCA's recommendations regarding other boards that have undergone sunset review over the past 8 years. Additionally, all other health related consumer boards have no more than a simple majority of professional members or a public majority. This bill, effective January 1, 2012, would increase the membership of the DBC to 15 by adding one public member. Effective January 1, 2016, the registered dental hygienist and registered dental assistant would be replaced by public members, changing the composition of the DBC to 8 dentists and 7 public members.

- b) **Deletes Existing Law Requirements on Advertising of Specialty Education and Accreditation Requirements for Specialized Areas of Dentistry.** Existing law prohibits a dentist from holding himself or herself out as a specialist, or advertising in a specialty recognition by an accredited organization, unless the practitioner completed specialty education programs approved by the American Dental Association, as specified. Additionally, existing law prohibits a dentist from representing or advertising himself or herself as accredited in a specialty area of practice unless the dentist is a member of, or credentialed by, an accredited organization recognized by DBC as a bona fide organization for an area of dental practice. This law was recently the subject of litigation in the case of *Potts v. Hamilton*, 334 F.Supp.2d 1206, and was ruled by a federal court as an unconstitutional restriction on commercial speech. According to the DBC, to prevent future litigation in this area and to mitigate costs associated with the Potts litigation (over \$1.1 million), DBC is recommending that Section 651(h)(5)(A)(i) through 651(h)(5)(A)(iii) of the B&P Code be deleted from statute. DBC does not believe this is an area in which DBC needs to be involved.
- c) **Requires Dentist to Post a Notice Accessible to Patients to Indicate that Dentists are Regulated by DBC.** Section 138 of the Business & Professions Code requires that DCA board and bureaus, including healing arts boards such as DBC, initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, to provide notice to their clients or customers that the practitioner is licensed by this state. A board is exempt from the requirement to adopt regulations if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The purpose of this statute is to inform consumers the appropriate regulatory body that regulates a particular licensee or practitioner. Recently, the MBC promulgated regulations pursuant to Section 138 to require physicians and surgeons to inform their patients that they are licensed by the MBC, and includes the board's contact information. In the same manner, DBC should implement Section 138 and adopt regulations to require dentists to inform their patients that they are licensed by the Board.
- d) **Requires Written Guidelines for Probation Assignments.** Probation cases within DBC are assigned to inspectors or investigators after taking into consideration the variety of circumstances necessitating probation, combined with the known behavior of certain

licensees. RDAs are generally assigned to inspectors, and difficult or questionable probation subjects are assigned to sworn investigative staff. According to a recent Enforcement Assessment of the DBC, there are no written guidelines on how to make probation assignments, and that probationary reports and evaluation reports have not been conducted with regularity.

- e) **Ensures that the Law and Ethics Examination for Dentists Reflects Current Law and Regulation.** As part of the licensure process, a dentist must pass a California Law and Ethics examination that is developed and administered by DBC. DBC contracts with the DCA's Office of Professional Examination Services (OPES) for its examination development services. According to DBC, in FY 2006/2007 and 2007/2008, the pass rate for the Dental Law and Ethics examination was 96%, and for fiscal years 2008/2009 and 2009/2010, the pass rate increased to 98%. This pass rate is extremely high. To ensure that examination questions reflect current law and regulations, DBC should require that OPES randomize (scramble) California law and ethics examinations for dentists.
- f) **Requires an Audit of DBC's Diversion Program.** DBC administers a Diversion Program intended to identify and rehabilitate dentists whose competence may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety. Entry into the diversion program may be through self-referral but most participants enter the diversion program because they are under investigation by DBC and were referred by a program manager. Since 1983, the clinical management of the diversion program has been done by MAXIMUS, Inc. MAXIMUS provides the following services: medical advisors, compliance monitors, case managers, urine testing system, reporting, and record maintenance. In 2007 and 2008, this Committee held informational hearings on the Physician Diversion Program (PDP) after an audit of MBC's diversion program revealed that the MBC's program was not sufficiently protecting the public. Although the MBC voted unanimously to end the PDP on June 30, 2008, this Committee recognized the need to strengthen the diversion programs of boards that continue to administer them. As such, in 2008, SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) became law and required the DCA to establish a Substance Abuse Coordination Committee (SACC) to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. The intent of SB 1441 was to establish common and uniform standards to govern the different health care licensing boards' diversion programs so as to maintain public confidence that these programs are truly monitoring and rehabilitating substance abusing licensees. In 2010, MAXIMUS was audited by the DCA and it was indicated that they were complying with all of the requirements of their contract; however, Committee staff had serious concerns about the completeness of this audit and the serious deficiencies which may still exist with this program. This came to light when it was found that MAXIMUS was recently testing those participants in the health boards' Diversion Programs and using inexact standards (i.e., participants were tested at a higher standard and tested negative when they should have been tested at a lower standard and may have potentially tested positive). The DCA took immediate steps to rectify this problem, but it still raises questions about the effectiveness and efficiency of MAXIMUS and those diversion programs which rely on this contractor. The DBC's Diversion Program has never been audited in its entirety since its inception. The intent of this audit is to assure that the Diversion Program is appropriately monitoring and treating participants, and determine whether it is effective in preventing

further substance abuse, and ensure that the uniform standards that were adopted pursuant to SB 1441 are being implemented.

- g) **Requires all Diversion Records to be Provided to the DBC's Enforcement Program if a Licentiate Withdraws, is Terminated from the Diversion Program for Failure to Comply, or is Determined to be a Threat.** Section 1698 of the Dental Practice Act specifies that except where the licentiate presents a threat to the public's health and safety, all DBC and diversion evaluation committee records and records of proceedings pertaining to the treatment of a licentiate in a diversion program is kept confidential and are not subject to discovery or subpoena. According to DBC, current law does not allow DBC's diversion program to notify its own enforcement program when a licensee participating in diversion is not in substantial compliance. The diversion program can only provide the name of the terminated licensee and not any specifics as to why the individual was terminated from the program. This notification, DBC argues, is necessary as the information obtained in the diversion program could be used for subsequent disciplinary action by DBC.
- h) **Requires Licensing and Permitting Fees of Dental Assistants to be Established by Regulation.** Current law allows the DBC to increase the fees for RDAs by board resolution. However, most licensing fees, including those of dentists, are generally increased through regulation, if the increase is within the statutory maximum.
- i) **Establishes a Dental Assisting Council Provide Recommendations on Dental Assisting Matters.** Current law states legislative intent for the DBC to create and implement an effective forum where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full and where all matters relating to dental assistants can be discussed, including matters related to licensure and renewal, duties, standards or conduct and enforcement. In 2009, DBC established two groups to deal with dental assisting issues: The Dental Assisting Committee (DAC) composed of DBC members and chaired by the RDA appointee to DBC; and the Dental Assisting Forum (DAF), composed of RDAs and RDAEFs. The DAC meets at every board meeting and the DAF held short meetings in January and April 2010, and met again in January 2011. Advocates for dental assistants have indicated to Committee staff that many items that DAF members have requested be included on agendas but have been removed, requests that meetings be held in conjunction with DBC so that there can be open lines of communication and establish greater efficiency have been denied, and dental assisting issues are placed on the agenda for DBC's DAC, instead of on the DAF agenda. Additionally, it is unclear what is the DBC's policy for referring issues to the DAF and DAC, how recommendations are referred from the DAF and DAC to DBC and what kind of discretion DBC has over deciding dental assisting issues; how often are issues referred to DAF and DAC and how often are they taken up by DBC, and how often are DAF and DAC recommendations accepted. Essentially, the establishment of two groups to deal with dental assisting issues has resulted in very inefficient and ineffective process. It is also unclear why DBC established a bifurcated process for hearing dental assisting issues.
- j) **Extend the Dental Corps Loan Repayment Program.** The California Dental Corps Loan Repayment Program, administered by DBC, was created in 2002 (AB 982, Chapter 1131, Statutes of 2002) to increase the number of dentists who practice in historically underserved areas by providing grants to help pay for the high cost of attending dental

school. DBC selects participants to practice in underserved areas, in practice settings with a majority of underserved patients, and gives priority consideration to applicants who are best suited to the cultural and linguistic needs of those populations and meet other related criteria. After each consecutive year of service completed, participants will receive money for loan repayment (\$25,000 for the 1st year, \$35,000 for the 2nd year, and \$45,000 for the 3rd year) for up to three years. The law states each participant may receive no more than \$105,000 over three years. The program was extended until July 1, 2012 and authorized DBC to distribute funds remaining in the account. However, due to limited participation, DBC points out that the program should be extended until DBC distributes all the remaining money in the fund.

- k) **Extends the Sunset Date of the DBC.** The health and safety of consumers are protected by a well-regulated dental profession. DBC should be continued with a six-year extension of its sunset date so that this Committee may review it once again.

5. **Related Legislation.** Other sunset review bills to be presented before the Senate Business and Professions Committee include:

- a) SB 538 which deals with the Board of Registered Nursing
- b) SB 539 which deals with the Board of Vocational Nurses and Psychiatric Technicians.
- c) SB 541 which deal with the DCA and the contracting for expert consultants by the boards.
- d) SB 542 which deals with California Board of Accountancy and the Professional Fiduciaries Bureau.
- e) SB 543 which deals with the California Architects Board , Contractors State License Board, Landscape Architects Technical Committee, Board for Professional Engineers, Land Surveyors, and Geologists, State Board of Guide Dogs for the Blind, State Athletic Commission.
- f) SB 706 which deals with the Department of Real Estate and the Office of Real Estate Appraisers.

6. **Arguments in Support.** The Dental Assisting Alliance (Alliance) states that it supports replacing the Dental Assisting Forum with a Dental Assisting Council that meets in conjunction with other Board committees, and establishes the Council as the sole entity making dental assisting recommendations to the DBC. As a result, the Alliance points out, dental assisting matters will be much more efficiently and effectively integrated into the DBC's deliberations. The Alliance states that it also supports requiring dental assisting fees to be set by regulation rather than DBC resolution, so that the fee levels will be fully scrutinized during a regulatory process.

SUPPORT AND OPPOSITION:

Support: Dental Assisting Alliance

Opposition: None on file as of April 27, 2011

Consultant: Rosielyn Pulmano

AMENDED IN SENATE MAY 9, 2011
AMENDED IN SENATE APRIL 25, 2011

SENATE BILL

No. 540

Introduced by Senator Price

February 17, 2011

An act to amend Sections 651, 1602, 1603, 1628.7, 1632, 1695, 1695.5, 1725, 1752.3, 1753.4; and 1973 of, to amend, repeal, and add Sections 1602 and 1603 of, to add Section 1611.3 to, to repeal and amend Section 1616.5 Sections 1601.1 and 1616.5 of, to repeal, amend, and add Section 1601.1 of, and to repeal and add Section 1742 of, the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as amended, Price. Dentistry.

Existing law, until January 1, 2012, provides for the Dental Board of California within the Department of Consumer Affairs. Existing law requires the membership of the board to consist of 8 practicing dentists, a registered dental hygienist, a registered dental assistant, and 4 public members. Existing law requires the Governor to appoint all of the members of the board, except that the Senate Committee on Rules and the Speaker of the Assembly each appoint a public member. Existing law, until January 1, 2012, allows the board, with the approval of the Director of Consumer Affairs, to appoint a person exempt from civil service as the executive officer of the board. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, 2018 2016, and instead specify that the board would be subject to review by the appropriate policy committees of the Legislature. The

bill would change the membership of the board to ~~include a new public member to be appointed by the Governor, and, on and after January 1, 2016, would delete the dental hygienist member and the dental assistant member and add 2~~ 3 additional public members to the board, to be appointed by the Governor. The bill would make technical, conforming changes to related provisions. The bill would also create a Dental Assisting Council of the board to consider matters relating to dental assistants and make recommendations to the board, as specified.

Existing law makes it unlawful for a healing arts practitioner to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. Existing law prohibits a dentist from making certain advertisements or holding himself or herself out as a specialist unless he or she meets specified criteria.

This bill would delete the advertising prohibitions described above that apply only to dentists.

Existing law requires every board in the Department of Consumer Affairs to initiate the process of adopting regulations on or before June 30, 1999, to require its licensees to provide notice to their clients or customers that the practitioner is licensed in this state, except as specified.

This bill would require the board to comply with that provision by January 1, 2013, and would set forth requirements for the notice to be adopted by the board.

Existing law authorizes the board to, upon an applicant's successful completion of the board examination, issue a probationary license to an applicant for licensure as a dentist or dental auxiliary. Existing law authorizes the board to require the applicant to comply with specified terms or conditions of a probationary license.

This bill would require the board to adopt written guidelines on how to make probation assignments and to ensure that probationary and evaluation reports are conducted consistently and regularly.

Existing law requires an applicant for licensure as a dentist to successfully complete an examination in California law and ethics developed and administered by the board.

This bill would require the board to ensure that the law and ethics examination reflects current law and regulations and that the examinations are randomized.

Existing law requires the board to establish criteria for the acceptance, denial, or termination of licentiates in a diversion program for the rehabilitation of licensees.

This bill would require the Bureau of State Audits to audit the diversion program of the board, upon a specified request by the Legislature, to be funded by moneys from the State Dentistry Fund. The bill would also make changes to the provisions that apply to a licensee who withdraws or terminates from the diversion program. The bill would provide that all diversion records for that licensee shall be provided to the board's enforcement program and may be used in any disciplinary proceeding, including if the licensee tests positive for banned substances, as specified.

Existing law provides that the amount of the fees under the Dental Practice Act that relate to the licensing and permitting of dental assistants shall be established by resolution.

This bill would instead require those fees to be established by regulation.

Existing law requires the board to extend the California Dental Corps Loan Repayment Program of 2002 and distribute the money remaining in the account only until a specified date.

This bill would instead require the moneys to be distributed until all of the moneys are expended.

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 651 of the Business and Professions Code
- 2 is amended to read:
- 3 651. (a) It is unlawful for any person licensed under this
- 4 division or under any initiative act referred to in this division to
- 5 disseminate or cause to be disseminated any form of public
- 6 communication containing a false, fraudulent, misleading, or
- 7 deceptive statement, claim, or image for the purpose of or likely
- 8 to induce, directly or indirectly, the rendering of professional
- 9 services or furnishing of products in connection with the
- 10 professional practice or business for which he or she is licensed.

1 A "public communication" as used in this section includes, but is
2 not limited to, communication by means of mail, television, radio,
3 motion picture, newspaper, book, list or directory of healing arts
4 practitioners, Internet, or other electronic communication.

5 (b) A false, fraudulent, misleading, or deceptive statement,
6 claim, or image includes a statement or claim that does any of the
7 following:

8 (1) Contains a misrepresentation of fact.

9 (2) Is likely to mislead or deceive because of a failure to disclose
10 material facts.

11 (3) (A) Is intended or is likely to create false or unjustified
12 expectations of favorable results, including the use of any
13 photograph or other image that does not accurately depict the
14 results of the procedure being advertised or that has been altered
15 in any manner from the image of the actual subject depicted in the
16 photograph or image.

17 (B) Use of any photograph or other image of a model without
18 clearly stating in a prominent location in easily readable type the
19 fact that the photograph or image is of a model is a violation of
20 subdivision (a). For purposes of this paragraph, a model is anyone
21 other than an actual patient, who has undergone the procedure
22 being advertised, of the licensee who is advertising for his or her
23 services.

24 (C) Use of any photograph or other image of an actual patient
25 that depicts or purports to depict the results of any procedure, or
26 presents "before" and "after" views of a patient, without specifying
27 in a prominent location in easily readable type size what procedures
28 were performed on that patient is a violation of subdivision (a).
29 Any "before" and "after" views (i) shall be comparable in
30 presentation so that the results are not distorted by favorable poses,
31 lighting, or other features of presentation, and (ii) shall contain a
32 statement that the same "before" and "after" results may not occur
33 for all patients.

34 (4) Relates to fees, other than a standard consultation fee or a
35 range of fees for specific types of services, without fully and
36 specifically disclosing all variables and other material factors.

37 (5) Contains other representations or implications that in
38 reasonable probability will cause an ordinarily prudent person to
39 misunderstand or be deceived.

1 (6) Makes a claim either of professional superiority or of
2 performing services in a superior manner, unless that claim is
3 relevant to the service being performed and can be substantiated
4 with objective scientific evidence.

5 (7) Makes a scientific claim that cannot be substantiated by
6 reliable, peer reviewed, published scientific studies.

7 (8) Includes any statement, endorsement, or testimonial that is
8 likely to mislead or deceive because of a failure to disclose material
9 facts.

10 (c) Any price advertisement shall be exact, without the use of
11 phrases, including, but not limited to, "as low as," "and up,"
12 "lowest prices," or words or phrases of similar import. Any
13 advertisement that refers to services, or costs for services, and that
14 uses words of comparison shall be based on verifiable data
15 substantiating the comparison. Any person so advertising shall be
16 prepared to provide information sufficient to establish the accuracy
17 of that comparison. Price advertising shall not be fraudulent,
18 deceitful, or misleading, including statements or advertisements
19 of bait, discount, premiums, gifts, or any statements of a similar
20 nature. In connection with price advertising, the price for each
21 product or service shall be clearly identifiable. The price advertised
22 for products shall include charges for any related professional
23 services, including dispensing and fitting services, unless the
24 advertisement specifically and clearly indicates otherwise.

25 (d) Any person so licensed shall not compensate or give anything
26 of value to a representative of the press, radio, television, or other
27 communication medium in anticipation of, or in return for,
28 professional publicity unless the fact of compensation is made
29 known in that publicity.

30 (e) Any person so licensed may not use any professional card,
31 professional announcement card, office sign, letterhead, telephone
32 directory listing, medical list, medical directory listing, or a similar
33 professional notice or device if it includes a statement or claim
34 that is false, fraudulent, misleading, or deceptive within the
35 meaning of subdivision (b).

36 (f) Any person so licensed who violates this section is guilty of
37 a misdemeanor. A bona fide mistake of fact shall be a defense to
38 this subdivision, but only to this subdivision.

1 (g) Any violation of this section by a person so licensed shall
2 constitute good cause for revocation or suspension of his or her
3 license or other disciplinary action.

4 (h) Advertising by any person so licensed may include the
5 following:

6 (1) A statement of the name of the practitioner.

7 (2) A statement of addresses and telephone numbers of the
8 offices maintained by the practitioner.

9 (3) A statement of office hours regularly maintained by the
10 practitioner.

11 (4) A statement of languages, other than English, fluently spoken
12 by the practitioner or a person in the practitioner's office.

13 (5) (A) A statement that the practitioner is certified by a private
14 or public board or agency or a statement that the practitioner limits
15 his or her practice to specific fields.

16 (B) A statement of certification by a practitioner licensed under
17 Chapter 7 (commencing with Section 3000) shall only include a
18 statement that he or she is certified or eligible for certification by
19 a private or public board or parent association recognized by that
20 practitioner's licensing board.

21 (C) A physician and surgeon licensed under Chapter 5
22 (commencing with Section 2000) by the Medical Board of
23 California may include a statement that he or she limits his or her
24 practice to specific fields, but shall not include a statement that he
25 or she is certified or eligible for certification by a private or public
26 board or parent association, including, but not limited to, a
27 multidisciplinary board or association, unless that board or
28 association is (i) an American Board of Medical Specialties
29 member board, (ii) a board or association with equivalent
30 requirements approved by that physician and surgeon's licensing
31 board, or (iii) a board or association with an Accreditation Council
32 for Graduate Medical Education approved postgraduate training
33 program that provides complete training in that specialty or
34 subspecialty. A physician and surgeon licensed under Chapter 5
35 (commencing with Section 2000) by the Medical Board of
36 California who is certified by an organization other than a board
37 or association referred to in clause (i), (ii), or (iii) shall not use the
38 term "board certified" in reference to that certification, unless the
39 physician and surgeon is also licensed under Chapter 4
40 (commencing with Section 1600) and the use of the term "board

1 certified" in reference to that certification is in accordance with
2 subparagraph (A). A physician and surgeon licensed under Chapter
3 5 (commencing with Section 2000) by the Medical Board of
4 California who is certified by a board or association referred to in
5 clause (i), (ii), or (iii) shall not use the term "board certified" unless
6 the full name of the certifying board is also used and given
7 comparable prominence with the term "board certified" in the
8 statement.

9 For purposes of this subparagraph, a "multidisciplinary board
10 or association" means an educational certifying body that has a
11 psychometrically valid testing process, as determined by the
12 Medical Board of California, for certifying medical doctors and
13 other health care professionals that is based on the applicant's
14 education, training, and experience.

15 For purposes of the term "board certified," as used in this
16 subparagraph, the terms "board" and "association" mean an
17 organization that is an American Board of Medical Specialties
18 member board, an organization with equivalent requirements
19 approved by a physician and surgeon's licensing board, or an
20 organization with an Accreditation Council for Graduate Medical
21 Education approved postgraduate training program that provides
22 complete training in a specialty or subspecialty.

23 The Medical Board of California shall adopt regulations to
24 establish and collect a reasonable fee from each board or
25 association applying for recognition pursuant to this subparagraph.
26 The fee shall not exceed the cost of administering this
27 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the
28 Statutes of 1990, this subparagraph shall become operative July
29 1, 1993. However, an administrative agency or accrediting
30 organization may take any action contemplated by this
31 subparagraph relating to the establishment or approval of specialist
32 requirements on and after January 1, 1991.

33 (D) A doctor of podiatric medicine licensed under Chapter 5
34 (commencing with Section 2000) by the Medical Board of
35 California may include a statement that he or she is certified or
36 eligible or qualified for certification by a private or public board
37 or parent association, including, but not limited to, a
38 multidisciplinary board or association, if that board or association
39 meets one of the following requirements: (i) is approved by the
40 Council on Podiatric Medical Education, (ii) is a board or

1 association with equivalent requirements approved by the
2 California Board of Podiatric Medicine, or (iii) is a board or
3 association with the Council on Podiatric Medical Education
4 approved postgraduate training programs that provide training in
5 podiatric medicine and podiatric surgery. A doctor of podiatric
6 medicine licensed under Chapter 5 (commencing with Section
7 2000) by the Medical Board of California who is certified by a
8 board or association referred to in clause (i), (ii), or (iii) shall not
9 use the term "board certified" unless the full name of the certifying
10 board is also used and given comparable prominence with the term
11 "board certified" in the statement. A doctor of podiatric medicine
12 licensed under Chapter 5 (commencing with Section 2000) by the
13 Medical Board of California who is certified by an organization
14 other than a board or association referred to in clause (i), (ii), or
15 (iii) shall not use the term "board certified" in reference to that
16 certification.

17 For purposes of this subparagraph, a "multidisciplinary board
18 or association" means an educational certifying body that has a
19 psychometrically valid testing process, as determined by the
20 California Board of Podiatric Medicine, for certifying doctors of
21 podiatric medicine that is based on the applicant's education,
22 training, and experience. For purposes of the term "board certified,"
23 as used in this subparagraph, the terms "board" and "association"
24 mean an organization that is a Council on Podiatric Medical
25 Education approved board, an organization with equivalent
26 requirements approved by the California Board of Podiatric
27 Medicine, or an organization with a Council on Podiatric Medical
28 Education approved postgraduate training program that provides
29 training in podiatric medicine and podiatric surgery.

30 The California Board of Podiatric Medicine shall adopt
31 regulations to establish and collect a reasonable fee from each
32 board or association applying for recognition pursuant to this
33 subparagraph, to be deposited in the State Treasury in the Podiatry
34 Fund, pursuant to Section 2499. The fee shall not exceed the cost
35 of administering this subparagraph.

36 (6) A statement that the practitioner provides services under a
37 specified private or public insurance plan or health care plan.

38 (7) A statement of names of schools and postgraduate clinical
39 training programs from which the practitioner has graduated,
40 together with the degrees received.

- 1 (8) A statement of publications authored by the practitioner.
- 2 (9) A statement of teaching positions currently or formerly held
- 3 by the practitioner, together with pertinent dates.
- 4 (10) A statement of his or her affiliations with hospitals or
- 5 clinics.
- 6 (11) A statement of the charges or fees for services or
- 7 commodities offered by the practitioner.
- 8 (12) A statement that the practitioner regularly accepts
- 9 installment payments of fees.
- 10 (13) Otherwise lawful images of a practitioner, his or her
- 11 physical facilities, or of a commodity to be advertised.
- 12 (14) A statement of the manufacturer, designer, style, make,
- 13 trade name, brand name, color, size, or type of commodities
- 14 advertised.
- 15 (15) An advertisement of a registered dispensing optician may
- 16 include statements in addition to those specified in paragraphs (1)
- 17 to (14), inclusive, provided that any statement shall not violate
- 18 subdivision (a), (b), (c), or (e) or any other section of this code.
- 19 (16) A statement, or statements, providing public health
- 20 information encouraging preventative or corrective care.
- 21 (17) Any other item of factual information that is not false,
- 22 fraudulent, misleading, or likely to deceive.
- 23 (i) Each of the healing arts boards and examining committees
- 24 within Division 2 shall adopt appropriate regulations to enforce
- 25 this section in accordance with Chapter 3.5 (commencing with
- 26 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
- 27 Code.
- 28 Each of the healing arts boards and committees and examining
- 29 committees within Division 2 shall, by regulation, define those
- 30 efficacious services to be advertised by businesses or professions
- 31 under their jurisdiction for the purpose of determining whether
- 32 advertisements are false or misleading. Until a definition for that
- 33 service has been issued, no advertisement for that service shall be
- 34 disseminated. However, if a definition of a service has not been
- 35 issued by a board or committee within 120 days of receipt of a
- 36 request from a licensee, all those holding the license may advertise
- 37 the service. Those boards and committees shall adopt or modify
- 38 regulations defining what services may be advertised, the manner
- 39 in which defined services may be advertised, and restricting
- 40 advertising that would promote the inappropriate or excessive use

1 of health services or commodities. A board or committee shall not,
2 by regulation, unreasonably prevent truthful, nondeceptive price
3 or otherwise lawful forms of advertising of services or
4 commodities, by either outright prohibition or imposition of
5 onerous disclosure requirements. However, any member of a board
6 or committee acting in good faith in the adoption or enforcement
7 of any regulation shall be deemed to be acting as an agent of the
8 state.

9 (j) The Attorney General shall commence legal proceedings in
10 the appropriate forum to enjoin advertisements disseminated or
11 about to be disseminated in violation of this section and seek other
12 appropriate relief to enforce this section. Notwithstanding any
13 other provision of law, the costs of enforcing this section to the
14 respective licensing boards or committees may be awarded against
15 any licensee found to be in violation of any provision of this
16 section. This shall not diminish the power of district attorneys,
17 county counsels, or city attorneys pursuant to existing law to seek
18 appropriate relief.

19 (k) A physician and surgeon or doctor of podiatric medicine
20 licensed pursuant to Chapter 5 (commencing with Section 2000)
21 by the Medical Board of California who knowingly and
22 intentionally violates this section may be cited and assessed an
23 administrative fine not to exceed ten thousand dollars (\$10,000)
24 per event. Section 125.9 shall govern the issuance of this citation
25 and fine except that the fine limitations prescribed in paragraph
26 (3) of subdivision (b) of Section 125.9 shall not apply to a fine
27 under this subdivision.

28 SEC. 2. Section 1601.1 of the Business and Professions Code,
29 as added by Section 3 of Chapter 31 of the Statutes of 2008, is
30 repealed.

31 SEC. 3. Section 1601.1 of the Business and Professions Code,
32 as added by Section 1 of Chapter 35 of the Statutes of 2008, is
33 amended to read:

34 1601.1. (a) There shall be in the Department of Consumer
35 Affairs the Dental Board of California in which the administration
36 of this chapter is vested. The board shall consist of eight practicing
37 dentists, ~~one registered dental hygienist, one registered dental~~
38 ~~assistant, and five~~ *and seven* public members. Of the eight
39 practicing dentists, one shall be a member of a faculty of any
40 California dental college, and one shall be a dentist practicing in

1 a nonprofit community clinic. The appointing powers, described
2 in Section 1603, may appoint to the board a person who was a
3 member of the prior board. The board shall be organized into
4 standing committees dealing with examinations, enforcement, and
5 other subjects as the board deems appropriate.

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

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

12 (d) This section shall remain in effect only until January 1, 2016,
13 and as of that date is repealed, unless a later enacted statute, that
14 is enacted before January 1, 2016, deletes or extends that date.
15 *Notwithstanding any other provision of law, the repeal of this*
16 *section renders the board subject to review by the appropriate*
17 *policy committees of the Legislature.*

18 ~~SEC. 4. Section 1601.1 is added to the Business and Professions~~
19 ~~Code, to read:~~

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

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

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

37 ~~(d) This section shall become operative on January 1, 2016.~~

38 ~~(e) This section shall remain in effect only until January 1, 2018,~~
39 ~~and as of that date is repealed, unless a later enacted statute, that~~
40 ~~is enacted before January 1, 2018, deletes or extends that date.~~

1 ~~(f) Notwithstanding any other provision of law, the repeal of~~
2 ~~this section renders the board subject to review by the appropriate~~
3 ~~policy committees of the Legislature.~~

4 ~~SEC. 5.~~

5 ~~SEC. 4.~~ Section 1602 of the Business and Professions Code is
6 amended to read:

7 1602. (a) All of the members of the board, except the public
8 members, shall have been actively and legally engaged in the
9 practice of dentistry in the State of California, for at least five years
10 next preceding the date of their appointment. ~~The dental hygienist~~
11 ~~member shall have been a registered dental hygienist, and the~~
12 ~~dental assistant member shall have been a registered dental~~
13 ~~assistant, in the State of California for at least five years next~~
14 ~~preceding the date of their appointment.~~ The public members shall
15 not be licentiates of the board or of any other board under this
16 division or of any board referred to in Sections 1000 and 3600.
17 No more than one member of the board shall be a member of the
18 faculty of any dental college or dental department of any medical
19 college in the State of California. None of the members, including
20 the public members, shall have any financial interest in any such
21 college.

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

25 ~~SEC. 6.~~ Section 1602 is added to the Business and Professions
26 Code, to read:

27 1602. (a) All of the members of the board, except the public
28 members, shall have been actively and legally engaged in the
29 practice of dentistry in the State of California for at least five years
30 next preceding the date of their appointment. The public members
31 shall not be licentiates of the board or of any other board under
32 this division or of any board referred to in Sections 1000 and 3600.
33 No more than one member of the board shall be a member of the
34 faculty of any dental college or dental department of any medical
35 college in the State of California. None of the members, including
36 the public members, shall have any financial interest in any such
37 college.

38 (b) This section shall become operative on January 1, 2016.

1 ~~SEC. 7.~~

2 ~~SEC. 5.~~ Section 1603 of the Business and Professions Code is
3 amended to read:

4 1603. Except for the initial appointments, members of the board
5 shall be appointed for a term of four years, and each member shall
6 hold office until the appointment and qualification of his or her
7 successor or until one year shall have elapsed since the expiration
8 of the term for which he or she was appointed, whichever first
9 occurs.

10 A vacancy occurring during a term shall be filled by appointment
11 for the unexpired term, within 30 days after it occurs.

12 No person shall serve as a member of the board for more than
13 two terms.

14 The Governor shall appoint ~~three~~ *five* of the public members;
15 ~~the dental hygienist member, the dental assistant member,~~ and the
16 eight licensed dentist members of the board. The Senate Committee
17 on Rules and the Speaker of the Assembly shall each appoint a
18 public member.

19 Of the initial appointments, one of the dentist members and one
20 of the public members appointed by the Governor shall serve for
21 a term of one year. Two of the dentist members *and two of the*
22 *public members* appointed by the Governor shall each serve for a
23 term of two years. ~~One~~ *Two* of the public members and two of the
24 dentist members appointed by the Governor shall each serve a
25 term of three years. ~~The dental hygienist member, the dental~~
26 ~~assistant member, and the remaining three dentists~~ *remaining three*
27 *dentist* members appointed by the Governor shall each serve for
28 a term of four years. The public members appointed by the Senate
29 Committee on Rules and the Speaker of the Assembly shall each
30 serve for a term of four years.

31 This section shall remain in effect only until January 1, 2016,
32 and as of that date is repealed, unless a later enacted statute, that
33 is enacted before January 1, 2016, deletes or extends that date.

34 ~~SEC. 8.~~ Section 1603 is added to the Business and Professions
35 Code, to read:

36 ~~1603. (a) Members of the board shall be appointed for a term~~
37 ~~of four years, and each member shall hold office until the~~
38 ~~appointment and qualification of his or her successor or until one~~
39 ~~year shall have elapsed since the expiration of the term for which~~
40 ~~he or she was appointed, whichever first occurs.~~

1 ~~(b) A vacancy occurring during a term shall be filled by~~
2 ~~appointment for the unexpired term, within 30 days after it occurs.~~

3 ~~(c) No person shall serve as a member of the board for more~~
4 ~~than two terms.~~

5 ~~(d) The Governor shall appoint five of the public members and~~
6 ~~the eight licensed dentist members of the board. The Senate~~
7 ~~Committee on Rules and the Speaker of the Assembly shall each~~
8 ~~appoint a public member.~~

9 ~~(e) This section shall become operative on January 1, 2016.~~

10 ~~(f) This section shall remain in effect only until January 1, 2018,~~
11 ~~and as of that date is repealed, unless a later enacted statute, that~~
12 ~~is enacted before January 1, 2018, deletes or extends that date.~~

13 ~~SEC. 9.~~

14 ~~SEC. 6.~~ Section 1611.3 is added to the Business and Professions
15 Code, to read:

16 1611.3. The board shall comply with the requirements of
17 Section 138 by January 1, 2013. The board shall require that the
18 notice under that section include a provision that the board is the
19 entity that regulates dentists and provide the telephone number
20 and Internet address of the board. The board shall require the notice
21 to be posted in a conspicuous location accessible to public view.

22 ~~SEC. 10.~~

23 ~~SEC. 7.~~ Section 1616.5 of the Business and Professions Code,
24 as added by Section 5 of Chapter 31 of the Statutes of 2008, is
25 repealed.

26 ~~SEC. 11.~~

27 ~~SEC. 8.~~ Section 1616.5 of the Business and Professions Code,
28 as amended by Section 3 of Chapter 33 of the Statutes of 2008, is
29 repealed.

30 ~~SEC. 12.~~

31 ~~SEC. 9.~~ Section 1616.5 of the Business and Professions Code,
32 as added by Section 2 of Chapter 35 of the Statutes of 2008, is
33 amended to read:

34 1616.5. (a) The board, by and with the approval of the director,
35 may appoint a person exempt from civil service who shall be
36 designated as an executive officer and who shall exercise the
37 powers and perform the duties delegated by the board and vested
38 in him or her by this chapter.

39 (b) This section shall remain in effect only until January 1, 2018
40 2016, and as of that date is repealed, unless a later enacted statute,

1 that is enacted before January 1, ~~2018~~ 2016, deletes or extends
2 that date.

3 ~~SEC. 13.~~

4 *SEC. 10.* Section 1628.7 of the Business and Professions Code
5 is amended to read:

6 1628.7. (a) The board may, upon an applicant's successful
7 completion of the board examination, in its sole discretion, issue
8 a probationary license to an applicant for licensure as a dentist or
9 dental auxiliary. The board may require, as a term or condition of
10 issuing the probationary license, the applicant to do any of the
11 following, including, but not limited to:

12 (1) Successfully complete a professional competency
13 examination.

14 (2) Submit to a medical or psychological evaluation.

15 (3) Submit to continuing medical or psychological treatment.

16 (4) Abstain from the use of alcohol or drugs.

17 (5) Submit to random fluid testing for alcohol or controlled
18 substance abuse.

19 (6) Submit to continuing participation in a board approved
20 rehabilitation program.

21 (7) Restrict the type or circumstances of practice.

22 (8) Submit to continuing education and coursework.

23 (9) Comply with requirements regarding notification to employer
24 and changes of employment.

25 (10) Comply with probation monitoring.

26 (11) Comply with all laws and regulations governing the practice
27 of dentistry.

28 (12) Limit practice to a supervised structured environment in
29 which the licensee's activities shall be supervised by another
30 dentist.

31 (13) Submit to total or partial restrictions on drug prescribing
32 privileges.

33 (b) The probation shall be for three years and the licensee may
34 petition the board for early termination, or modification of a
35 condition of, the probation in accordance with subdivision (b) of
36 Section 1686.

37 (c) The proceeding under this section shall be conducted in
38 accordance with the provisions of Chapter 5 (commencing with
39 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
40 Code, and the board shall have all the powers granted therein.

1 (d) The board shall adopt written guidelines on how to make
2 probation assignments and shall ensure that probationary and
3 evaluation reports are conducted consistently and regularly.

4 ~~SEC. 14.~~

5 *SEC. 11.* Section 1632 of the Business and Professions Code
6 is amended to read:

7 1632. (a) The board shall require each applicant to successfully
8 complete the Part I and Part II written examinations of the National
9 Board Dental Examination of the Joint Commission on National
10 Dental Examinations.

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

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

32 (1) A portfolio examination of the applicant's competence to
33 enter the practice of dentistry. This examination shall be conducted
34 while the applicant is enrolled in a dental school program at a
35 board-approved school located in California. This examination
36 shall utilize uniform standards of clinical experiences and
37 competencies, as approved by the board pursuant to Section 1632.1.
38 The applicant shall pass a final assessment of the submitted
39 portfolio at the end of his or her dental school program. Before
40 any portfolio assessment may be submitted to the board, the

1 applicant shall remit to the board a three hundred fifty dollar (\$350)
2 fee, to be deposited into the State Dentistry Fund, and a letter of
3 good standing signed by the dean of his or her dental school or his
4 or her delegate stating that the applicant has graduated or will
5 graduate with no pending ethical issues.

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

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

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

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

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

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

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

29 ~~SEC. 15.~~

30 ~~SEC. 12.~~ Section 1695 of the Business and Professions Code
31 is amended to read:

32 1695. (a) It is the intent of the Legislature that the Board of
33 Dental Examiners of California seek ways and means to identify
34 and rehabilitate licentiates whose competency may be impaired
35 due to abuse of dangerous drugs or alcohol, so that licentiates so
36 afflicted may be treated and returned to the practice of dentistry
37 in a manner which will not endanger the public health and safety.
38 It is also the intent of the Legislature that the Board of Dental
39 Examiners of California shall implement this legislation in part

1 by establishing a diversion program as a voluntary alternative
2 approach to traditional disciplinary actions.

3 (b) If requested by the Legislature through the Joint Legislative
4 Audit Committee in 2012, the Bureau of State Audits shall conduct
5 a thorough performance audit of the board's diversion program to
6 evaluate the effectiveness and efficiency of the program, and make
7 recommendations regarding the continuation of the program and
8 any changes or reforms required to ensure that licensees
9 participating in the program are appropriately monitored and that
10 the public is protected from licensees who are impaired due to
11 alcohol or drug abuse or mental or physical illness. The audit shall
12 be completed by January 1, 2013. The board and its staff shall
13 cooperate with the audit, and the board shall provide data,
14 information, and case files as requested by the auditor to perform
15 all of its duties. The provision of confidential data, information,
16 and case files by the board to the auditor shall not constitute a
17 waiver of any exemption from disclosure or discovery or of any
18 confidentiality protection or privilege otherwise provided by law
19 that is applicable to the data, information, or case files.

20 (c) The audit performed in subdivision (b) shall be paid for with
21 moneys from the State Dentistry Fund.

22 ~~SEC. 16.~~

23 ~~SEC. 13.~~ Section 1695.5 of the Business and Professions Code
24 is amended to read:

25 1695.5. (a) The board shall establish criteria for the acceptance,
26 denial, or termination of licentiates in a diversion program. Unless
27 ordered by the board as a condition of licentiate disciplinary
28 probation, only those licentiates who have voluntarily requested
29 diversion treatment and supervision by a committee shall
30 participate in a diversion program.

31 (b) A licentiate who is not the subject of a current investigation
32 may self-refer to the diversion program on a confidential basis,
33 except as provided in subdivision (f).

34 (c) A licentiate under current investigation by the board may
35 also request entry into the diversion program by contacting the
36 board's Diversion Program Manager. The Diversion Program
37 Manager may refer the licentiate requesting participation in the
38 program to a diversion evaluation committee for evaluation of
39 eligibility. Prior to authorizing a licentiate to enter into the
40 diversion program, the Diversion Program Manager may require

1 the licentiate, while under current investigation for any violations
2 of the Dental Practice Act or other violations, to execute a
3 statement of understanding that states that the licentiate understands
4 that his or her violations of the Dental Practice Act or other statutes
5 that would otherwise be the basis for discipline, may still be
6 investigated and the subject of disciplinary action.

7 (d) If the reasons for a current investigation of a licentiate are
8 based primarily on the self-administration of any controlled
9 substance or dangerous drugs or alcohol under Section 1681 of
10 the Business and Professions Code, or the illegal possession,
11 prescription, or nonviolent procurement of any controlled substance
12 or dangerous drugs for self-administration that does not involve
13 actual, direct harm to the public, the board shall close the
14 investigation without further action if the licentiate is accepted
15 into the board's diversion program and successfully completes the
16 requirements of the program. If the licentiate withdraws or is
17 terminated from the program by a diversion evaluation committee,
18 and the termination is approved by the program manager, the
19 investigation shall be reopened and disciplinary action imposed,
20 if warranted, as determined by the board.

21 (e) Neither acceptance nor participation in the diversion program
22 shall preclude the board from investigating or continuing to
23 investigate, or taking disciplinary action or continuing to take
24 disciplinary action against, any licentiate for any unprofessional
25 conduct committed before, during, or after participation in the
26 diversion program.

27 (f) If a licentiate withdraws or is terminated from the diversion
28 program for failure to comply or is determined to be a threat to
29 the public or his or her own health and safety, all diversion records
30 for that licentiate shall be provided to the board's enforcement
31 program and may be used in any disciplinary proceeding. If a
32 licentiate in a diversion program tests positive for any banned
33 substance, the board's diversion program manager shall
34 immediately notify the board's enforcement program and provide
35 the documentation evidencing the positive test result to the
36 enforcement program. This documentation may be used in a
37 disciplinary proceeding.

38 (g) Any licentiate terminated from the diversion program for
39 failure to comply with program requirements is subject to
40 disciplinary action by the board for acts committed before, during,

1 and after participation in the diversion program. A licensee who
2 has been under investigation by the board and has been terminated
3 from the diversion program by a diversion evaluation committee
4 shall be reported by the diversion evaluation committee to the
5 board.

6 ~~SEC. 17.~~

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

9 1725. The amount of the fees prescribed by this chapter that
10 relate to the licensing and permitting of dental assistants shall be
11 established by regulation and subject to the following limitations:

12 (a) The application fee for an original license shall not exceed
13 twenty dollars (\$20). On and after January 1, 2010, the application
14 fee for an original license shall not exceed fifty dollars (\$50).

15 (b) The fee for examination for licensure as a registered dental
16 assistant shall not exceed fifty dollars (\$50) for the written
17 examination and shall not exceed sixty dollars (\$60) for the
18 practical examination.

19 (c) The fee for application and for the issuance of an orthodontic
20 assistant permit or a dental sedation assistant permit shall not
21 exceed fifty dollars (\$50).

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

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

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

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

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

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

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

4 (k) The biennial renewal fee for a registered dental assistant
5 whose license expires on or after January 1, 1991, shall not exceed
6 sixty dollars (\$60). On or after January 1, 1992, the board may set
7 the renewal fee for a registered dental assistant license, registered
8 dental assistant in extended functions license, dental sedation
9 assistant permit, or orthodontic assistant permit in an amount not
10 to exceed eighty dollars (\$80).

11 (l) The delinquency fee shall not exceed twenty-five dollars
12 (\$25) or one-half of the renewal fee, whichever is greater. Any
13 delinquent license or permit may be restored only upon payment
14 of all fees, including the delinquency fee.

15 (m) The fee for issuance of a duplicate registration, license,
16 permit, or certificate to replace one that is lost or destroyed, or in
17 the event of a name change, shall not exceed twenty-five dollars
18 (\$25).

19 (n) The fee for each curriculum review and site evaluation for
20 educational programs for registered dental assistants that are not
21 accredited by a board-approved agency, or the Chancellor's office
22 of the California Community Colleges shall not exceed one
23 thousand four hundred dollars (\$1,400).

24 (o) The fee for review of each approval application for a course
25 that is not accredited by a board-approved agency, or the
26 Chancellor's office of the California Community Colleges shall
27 not exceed three hundred dollars (\$300).

28 (p) No fees or charges other than those listed in subdivisions
29 (a) to (o), inclusive, above shall be levied by the board in
30 connection with the licensure or permitting of dental assistants,
31 registered dental assistant educational program site evaluations
32 and course evaluations pursuant to this chapter.

33 (q) Fees fixed by the board pursuant to this section shall not be
34 subject to the approval of the Office of Administrative Law.

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

37 ~~SEC. 18.~~

38 ~~SEC. 15.~~ Section 1742 of the Business and Professions Code
39 is repealed.

1 ~~SEC. 19:~~

2 ~~SEC. 16.~~ Section 1742 is added to the Business and Professions
3 Code, to read:

4 1742. (a) There is hereby created a Dental Assisting Council
5 of the Dental Board of California, which shall consider all matters
6 relating to dental assistants in this state and make appropriate
7 recommendations to the board, including, but not limited to, the
8 following areas:

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

11 (2) Standards for approval of dental assisting educational
12 programs and courses.

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

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

17 (b) The members of the council shall be appointed by the board
18 president, and shall consist of two members of the board and five
19 members who are either registered dental assistants or registered
20 dental assistants in extended functions. Each member shall meet
21 the qualifications specified in Section 1602.

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

24 (d) Each member shall serve for a term of four years, except
25 that, of the initial appointments of the nonboard members, one of
26 the members shall serve a term of one year, two members shall
27 serve a term of two years, and two members serve a term of three
28 years.

29 (e) The council shall be the sole entity of the board that will
30 provide recommendations to the board on dental assisting matters.

31 ~~SEC. 20:~~

32 ~~SEC. 17.~~ Section 1752.3 of the Business and Professions Code
33 is amended to read:

34 1752.3. (a) On and after January 1, 2010, the written
35 examination for registered dental assistant licensure required by
36 Section 1752.1 shall comply with Section 139.

37 (b) On and after January 1, 2010, the practical examination for
38 registered dental assistant licensure required by Section 1752.1
39 shall consist of three of the procedures described in paragraphs
40 (1) to (4), inclusive. The specific procedures shall be assigned by

1 the board, after considering recommendations of its Dental
2 Assisting Council, and shall be graded by examiners appointed by
3 the board. The procedures shall be performed on a fully articulated
4 maxillary and mandibular typodont secured with a bench clamp.
5 Each applicant shall furnish the required materials necessary to
6 complete the examination.

- 7 (1) Place a base or liner.
- 8 (2) Place, adjust, and finish a direct provisional restoration.
- 9 (3) Fabricate and adjust an indirect provisional restoration.
- 10 (4) Cement an indirect provisional restoration.

11 ~~SEC. 21.~~

12 *SEC. 18.* Section 1753.4 of the Business and Professions Code
13 is amended to read:

14 1753.4. On and after January 1, 2010, each applicant for
15 licensure as a registered dental assistant in extended functions shall
16 successfully complete an examination consisting of the procedures
17 described in subdivisions (a) and (b). On and after January 1, 2010,
18 each person who holds a current and active registered dental
19 assistant in extended functions license issued prior to January 1,
20 2010, who wishes to perform the duties specified in paragraphs
21 (1), (2), (5), and (7) to (11), inclusive, of subdivision (b) of Section
22 1753.5, shall successfully complete an examination consisting of
23 the procedures described in subdivision (b). The specific procedures
24 shall be assigned by the board, after considering recommendations
25 of its Dental Assisting Council, and shall be graded by examiners
26 appointed by the board. Each applicant shall furnish the required
27 materials necessary to complete the examination.

28 (a) Successful completion of the following two procedures on
29 a patient provided by the applicant. The prepared tooth, prior to
30 preparation, shall have had mesial and distal contact. The
31 preparation performed shall have margins at or below the free
32 gingival crest and shall be one of the following: $\frac{7}{8}$ crown, $\frac{3}{4}$
33 crown, or full crown, including porcelain fused to metal. Alginate
34 impression materials alone shall not be acceptable:

- 35 (1) Cord retraction of gingiva for impression procedures.
- 36 (2) Take a final impression for a permanent indirect restoration.
- 37 (b) Successful completion of two of the following procedures
38 on a simulated patient head mounted in appropriate position and
39 accommodating an articulated typodont in an enclosed intraoral
40 environment, or mounted on a dental chair in a dental operatory:

- 1 (1) Place, condense, and carve an amalgam restoration.
- 2 (2) Place and contour a nonmetallic direct restoration.
- 3 (3) Polish and contour an existing amalgam restoration.
- 4 ~~SEC. 22.~~
- 5 *SEC. 19.* Section 1973 of the Business and Professions Code
- 6 is amended to read:
- 7 1973. (a) The Dentally Underserved Account is hereby created
- 8 in the State Dentistry Fund.
- 9 (b) The sum of three million dollars (\$3,000,000) is hereby
- 10 authorized to be expended from the State Dentistry Fund on this
- 11 program. These moneys are appropriated as follows:
- 12 (1) One million dollars (\$1,000,000) shall be transferred from
- 13 the State Dentistry Fund to the Dentally Underserved Account on
- 14 July 1, 2003. Of this amount, sixty-five thousand dollars (\$65,000)
- 15 shall be used by the Dental Board of California in the 2003-04
- 16 fiscal year for operating expenses necessary to manage this
- 17 program.
- 18 (2) One million dollars (\$1,000,000) shall be transferred from
- 19 the State Dentistry Fund to the Dentally Underserved Account on
- 20 July 1, 2004. Of this amount, sixty-five thousand dollars (\$65,000)
- 21 shall be used by the Dental Board of California in the 2004-05
- 22 fiscal year for operating expenses necessary to manage this
- 23 program.
- 24 (3) One million dollars (\$1,000,000) shall be transferred from
- 25 the State Dentistry Fund to the Dentally Underserved Account on
- 26 July 1, 2005. Of this amount, sixty-five thousand dollars (\$65,000)
- 27 shall be used by the Dental Board of California in the 2005-06
- 28 fiscal year for operating expenses necessary to manage this
- 29 program.
- 30 (c) Funds placed into the Dentally Underserved Account shall
- 31 be used by the board to repay the loans per agreements made with
- 32 dentists.
- 33 (1) Funds paid out for loan repayment may have a funding match
- 34 from foundation or other private sources.
- 35 (2) Loan repayments may not exceed one hundred five thousand
- 36 dollars (\$105,000) per individual licensed dentist.
- 37 (3) Loan repayments may not exceed the amount of the
- 38 educational loans incurred by the dentist applicant.
- 39 (d) Notwithstanding Section 11005 of the Government Code,
- 40 the board may seek and receive matching funds from foundations

1 and private sources to be placed into the Dentally Underserved
2 Account. The board also may contract with an exempt foundation
3 for the receipt of matching funds to be transferred to the Dentally
4 Underserved Account for use by this program.

5 (e) Funds in the Dentally Underserved Account appropriated
6 in subdivision (b) or received pursuant to subdivision (d) are
7 continuously appropriated for the repayment of loans per
8 agreements made between the board and the dentists.

9 (f) On or after July 1, 2010, the board shall extend the California
10 Dental Corps Loan Repayment Program of 2002 and distribute
11 the money remaining in the account until all the moneys in the
12 account are expended. Regulations that were adopted by the board
13 for the purposes of the program shall apply.

ATTACHMENT E

April 28, 2011 Letter to Senator Price
regarding SB 540



The Honorable Curren D. Price, Jr.
Chair, Business, Professions and Economic Development Committee
California State Senate
State Capitol, Room 2053
Sacramento, CA 95814

Subject: Senate Bill 540 (Price), Amended April 25, 2011

Dear Senator Price:

Thank you for the opportunity to respond to amendments proposed April 25, 2011 to Senate Bill 540 relating to Dentistry. The Dental Board understands that this bill was introduced and amended to provide clarity to issues affecting the Board identified through the Sunset Review process. During that process, the Board had asked the Senate Business, Professions & Economic Development (BP&ED) Committee staff to consider deleting section 651(h) (5)(A)(i-iii) of the Business and Professions Code relating to specialty advertising. The Board has been involved in lengthy litigation over an issue relating to this section and the deletion of it will hopefully prevent future litigation. Thank you for considering our request and including this language in SB 540.

The Board will be meeting May 19-20, 2011 in San Francisco and will be discussing SB 540 in full. In the meantime, a subcommittee consisting of the Board's Vice President and Legislative/Regulatory Committee Chair, along with staff, have reviewed the bill in its current form and have identified areas that may require further clarification.

1. SEC 13. Section 1628.7(d) requires the Board to adopt written guidelines on how to make probation assignments and ensure that probationary evaluation reports are conducted consistently and regularly. To whom does this section apply – applicants, licensees, or both?
2. SEC 15. Section 1695(b), line 9 and 10 refer to protecting the public from licensees who are impaired due to alcohol or drug abuse or mental and physical illness. Currently, Business & Professions code section 1695 states that the legislative intent of the Board's diversion program is to seek ways and means to identify and rehabilitate licensees whose competency may be impaired due to abuse of dangerous drugs or alcohol and does not reference mental and physical illness. We suggest that the reference to mental and physical illness be removed from the language.
3. SEC 17. Section 1725, line 13 refers to establishing licensing and permitting fees of dental assistants by regulations rather than resolution. Is it your intent to take away the Board's authority to collect current fees until the regulations become effective? We respectfully request that you include language to ensure that the Board will be able to continue to collect fees on or after January 1, 2012; but that any increase in fees on or after January 1, 2012 would need to be adopted by regulation rather than resolution.

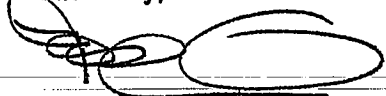
We applaud your effort to clarify issues relating to dental assisting and the establishment of an effective committee to address all issues relating to the dental assisting community. The Dental Assisting Council concept and its membership is a new issue on which the Board has not taken a position. We would appreciate further clarification of the following issues:

4. SEC 19. Section 1742(e), refers to the council as the "sole entity" of the board that will provide recommendations to the board on dental assisting matters. While we recognize that this proposed language was introduced to clarify the confusion about the relationship between the Dental Assisting Forum and the Dental Assisting Committee of the Board as noted in the background paper for the Oversight hearing, is it your intent to limit the Board's ability to hear dental assisting issues in its other committees such as Enforcement, Examinations, Licensing/Certification/Permits, and Legislation/Regulatory? Does this language prohibit the Board from seeking input from other entities outside the council on issues relating to dental assisting?
5. SEC 19. Section 1742(a)(4), line 29 refers to the council's consideration of all matters relating to appropriate standards of conduct and enforcement for dental assistants. Is it the intent of this section that the council assume disciplinary functions?
6. SEC 19. Section 1742(b), lines 34-35 refer to the qualifications of the council members. We strongly encourage the addition of conflict of interest language for council appointees.

Lastly, we have requested consideration of statutory amendments that would allow for additional enforcement methods that would assist staff in closing minor to moderate violation cases more quickly. These additional methods included specific time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. We believe that these amendments will make the Board's enforcement program more efficient and effective in addressing consumer needs. While SB 540 does not currently include this language, it is my understanding that Committee staff is aware that these enforcement alternatives have been left out of the bill, and is continuing to evaluate our request. Board staff is willing to assist in answering any questions you may have regarding the language.

Thank you for the opportunity to comment on SB 540. If you have any questions, please feel free to contact me.

Sincerely,



Richard E. DeCuir, Executive Officer

cc: Members of the Senate Business, Professions, and Economic Development Committee
Bill Gage, Chief Consultant, Senate Business, Professions, and Economic Development Committee
Members of the Dental Board of California
Brian Stiger, Senior Chief Deputy Director and Acting Director, Department of Consumer Affairs
Richard Woonacott, Deputy Director, Division of Legislative and Policy Review, Department of Consumer Affairs

AGENDA ITEM 12

SB 544: Prof. & Voc.



MEMORANDUM

DATE	May 11, 2011
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	Agenda Item 12: Discussion and Possible Action Regarding SB 544 (Price), Professions and Vocations: Regulatory Boards Relating to the Consumer Health Protection Enforcement Act

Background:

As a result of concerns expressed regarding the length of time it takes healing arts boards to take disciplinary action on complaints of egregious misconduct, the Department of Consumer Affairs (Department) held an informational hearing to further investigate the allegations. The Department developed a report (*Department of Consumer Affairs "Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010"*) regarding the existing enforcement problems and made recommendations for improving the enforcement programs of the healing arts boards. The Department also sponsored legislation, Senate Bill 1111 (Negrete McLeod), during the 2009-2010 Legislative Session to codify many of the recommendations contained within the report. However, the bill failed to pass out of Committee.

When the bill died, the Department encouraged the healing arts boards to pursue regulatory action to assist them with investigating and prosecuting complaints in a more timely manner, and to provide the boards with tools to improve the enforcement process and strengthen patient safety. As a result the Dental Board of California (Board) began promulgating regulations to further define unprofessional conduct and to permit the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency.

Staff from the Senate Business, Professions, and Economic Development Committee (Committee) contacted the Executive Officers of all the healing arts boards to set up meetings to discuss their respective proposed regulations. Richard DeCuir and Karen Fischer attended the first meeting between Committee staff and the healing arts boards on March 24, 2011 along with Department Legal Counsel. During the meeting, Committee staff provided a document containing an outline of thirty-one (31) proposed enforcement changes applicable to all healing arts boards (**Attachment A**). Mr. DeCuir

and Ms. Fischer were advised that these proposed changes would be included in Senate Bill 544.

Senate Bill 544 (Price) Professions and vocations: regulatory boards was amended on April 14, 2011 and contains enforcement changes similar to that of Senate Bill 1111 (Negrete McLeod, 2009-2010 Legislative Session). Some of the provisions in the bill are applicable to all healing arts boards and some of the provisions are pertinent to specified healing arts boards (**Attachment B**). Committee staff completed an analysis of the April 14, 2011 amended version of the bill (**Attachment C**).

With the assistance of the Board's subcommittee, Dr. Bruce Whitchee and Ms. Fran Burton, Richard DeCuir, Executive Officer, prepared a letter addressed to the author, Senator Price (**Attachment D**). The letter (1) requested additional clarification, (2) identified duplication within the proposed statutes, (3) identified fiscal impact, (4) identified previous positions taken by the Board on provisions contained within the bill, and (5) respectfully requested the ability to respond to issues regarding mandatory revocation for a sex offense and prohibition of gag orders in settlements in civil litigation at a later date. The letter was delivered to the Committee Office, as well as all of the members of the Committee on April 29, 2011.

The bill was heard in the Committee hearing on May 2, 2011 at the State Capitol. At the hearing, the Board was represented by Dr. Bruce Whitchee, Ms. Fran Burton, Richard DeCuir, and Kim Trefry. During the hearing, the bill was identified as a two-year bill and will be carried over to next year.

Attachment A:

Enforcement Changes For Healing Arts Boards

**Provided by Senate Business,
Professions, and Economic
Development Committee Staff**

Enforcement Changes for Healing Arts Boards

1. **Title and Intent – Consumer Health Protection Enforcement Act**
2. **Bureau of State Audits Review of Diversion Programs of Healing Arts Boards in 2012.**

Justification. To ensure full implementation of SB 1441 standards and address problems encountered with the Maximus audit and drug testing requirements, this audit ensures that diversion programs are protecting the public and rehabilitating licensees.

3. **(GC) Information Provided on the Internet.** Requires healing arts boards to disclose the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the healing arts board or by the board of another state or jurisdiction. Prohibits the disclosure of personal information, including home telephone number, date of birth, or social security number.

Justification. Although a number of boards, including healing arts boards, are required to post the aforementioned information regarding a licensee, there are other healing arts boards that do not. One of the issues raised by the *LA Times* is that the public is unaware of problem licensees, whether they have had prior disciplinary action taken against them, or whether their license is currently in good standing. There were instances in which the *LA Times* looked up on the Internet or on the BRN's Website and never saw prior disciplinary or criminal convictions of nurses. This provision ensures the uniformity of information about the status of licensees that are posted on the Internet.

4. **(GC) Director's Authority to Audit Enforcement Programs of Health Boards.** Existing law authorizes the Director of DCA to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California (MBC) and the California Board of Podiatric Medicine. This bill allows the Director to audit and review the aforementioned activities for any of the healing arts boards. The Director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

Justification. There does not appear to be any reason why the Director should only be limited to auditing and taking specific actions on behalf of consumers for the MBC and the Podiatric Board. The Director should be authorized to audit and review any healing arts boards as necessary, and allow the Director to make recommendations for changes to the board's disciplinary or enforcement system.

5. **(GC) Determination of Reasonable Costs by an ALJ and Payment of Costs.** Existing law allows an administrative law judge to direct a licensee who has committed a violation to pay healing arts boards a sum not to exceed the reasonable costs of the

investigation and enforcement of the case. This provision requires that in determining reasonable costs, an ALJ consider only the public resources expended pursuant to the investigation, prosecution and enforcement of the case. Requires an ALJ to provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs were not ordered. Allows a licensee and board to agree to a payment plan.

Justification. All boards are subject to cost recovery provisions. Healing arts boards have indicated to committee staff that there has been inconsistency in the manner ALJ's calculate cost recovery. These provisions will give direction to the ALJs in their determination of costs.

6. **(GC) Allow Boards to Contract with Collection Agency.** Allows a board to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts. Specifies requirements to ensure privacy of information.

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

7. **(GC) Allow Health Boards to Contract for Investigative Services provided by the Department of Justice.** Allows a healing arts board to contract with the Department of Justice to provide investigative services as determined necessary by the Executive Officer.

Justification. Healing arts boards should be provided with the greatest flexibility in obtaining investigative services and in completing cases in a timely manner. By allowing healing arts boards to contract with the Department of Justice, or to utilize the investigative services of the DOI, they will be provided with the broadest opportunity to move cases forward in a more expeditious manner. The AG's Office made this recommendation since it also believes that more difficult criminal-type cases could be investigated and prosecuted by their Office.

8. **(GC) Create Within the Division of Investigation (DOI) a Health Quality Enforcement Unit.** Creates within DOI a special unit titled the "Health Quality Enforcement Unit" to focus on health care quality cases and to work closely with the AG's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

Justification. Creating a Health Quality Enforcement Unit to focus on health care quality cases will create expertise in the investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

9. **(PA) Allow Executive Officers (EO) to Adopt Default Decisions and Stipulated Settlements.** Allows a healing arts board to delegate to the executive officer the authority to adopt a proposed default decision in an administrative action to revoke a license if a licensee fails to file a notice of defense, appear at the hearing, or has agreed to surrender his or her license. Require the EO to report to the board the number of default decisions and stipulated settlements adopted. Requires that a stipulated settlement give notice to licensees, to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. Allows a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

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

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

10. **(PA) Automatic Suspension of License While Incarcerated.** Provides that the license of a healing arts licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed, and requires the board to notify the licensee of the suspension and of his or her right to a specified (due process) hearing.

Justification. Existing law allows physicians and surgeons and podiatrists to be suspended while incarcerated and there is no reason why other healing arts professionals should not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent a healing arts licensee from practicing while in prison or while released pending appeal of a conviction. Years may pass before a convicted licensee's license can be revoked. According to the *LA Times*, "in some cases, nurses with felony records continue to have spotless licenses even while serving time behind bars." The *LA Times* gave examples of at least five nurses who had felony convictions and yet continued to have a license in good standing.

11. **(PA) Mandatory Revocation for Acts of Sexual Exploitation and Registration as Sex Offender.** States that a decision issued by an administrative law judge that contains a finding that a healing arts practitioner engaged in any act of sexual exploitation, as defined, or has committed an act or been convicted of a sex offense, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. Also, adds a new section that would require the board to deny a license to an applicant or revoke the license of a licensee who has been required to register as a sex offender.

Justification. Mandatory revocation of a license for acts of sexual exploitation currently applies to physician and surgeons, psychologists, respiratory care therapists, marriage and family therapists, and clinical social workers. Additionally, there is a mandatory revocation for any physician and surgeon, dentist, physical therapist, or psychologist who registers as a sex offender. There is no reason why these provisions should not apply to other healing arts licensees.

12. **(PA) Prohibition of Gag Clauses in Civil Dispute Settlement Agreements.** Prohibits a healing arts licensee from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with or filing a complaint with a board based on any action arising from his or her practice.

Justification. Currently, physicians and surgeons are prohibited from including gag clauses in civil dispute settlements. AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. There is no reason why other healing arts professionals should not be subject to the same prohibition which would prevent them from including a "gag clause" in a malpractice settlement and thus prevent a board from receiving information about a practitioner who may have violated the law. The use of gag clauses still persists. Gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses can cause delays and thwart a board's effort to investigate possible cases of misconduct, thereby preventing the board from performing its most basic function – protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as a healing arts professional.

13. **(PA) Access to Medical Records/Documents Pursuant to Board Investigations.** Authorizes the AG and his or her investigative agents and healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. Provides that any document relevant to an investigation may be inspected, and copies may be obtained where patient written authorization is given. Imposes civil and criminal penalties for licensees or health facilities for failure to comply with a patient's medical record request or with a court order mandating release of record.

Justification. Provisions authorizing the AG and its investigative agents and boards to

inquire into any alleged violations of the laws under the board's jurisdiction and to inspect documents subject to specified procedures currently exists for physicians and surgeons. Furthermore, existing law requires physicians and surgeons, dentists, and psychologists to produce medical records accompanied by a patient's written authorization and pursuant to a court order (subpoena), and prescribes penalties for failure to produce the records. When a board or the AG is trying to obtain important documents and medical records pursuant to a disciplinary action of a licensee, requirements for obtaining these documents and records should be consistent with those of other health care practitioners. Language has been included which protects those licensees who may not be responsible for medical records or have no access or control over these records. Also, medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to a board; and, (2) the board or the AG has sought a court order and the court has issued a subpoena mandating the release of records. Under both circumstances penalties would apply if the records are not supplied by those who have both possession and control over the records. There is no reason why the requirement for obtaining important medical records and documents pursuant to an investigation by a board should not uniformly apply to all healing arts boards.

14. **(PA) Access to Records/Documents from Governmental Agencies.** Requires a state agency, upon receiving a request from a board, to provide all records in the custody of the agency including but not limited to confidential reports, medical records and records related to closed or open investigations. Requires a healing arts board to maintain the confidentiality of any personal identifying information.

Justification. When a regulatory program conducts an investigation on one of its licensees, there can be significant delays caused by the amount of time it takes to secure records from various state agencies. This proposal would solve this problem by requiring these agencies to release information relevant to investigations, upon the request of a board.

15. **(PA) Payment to Agencies for Record/Documents Received.** Requires all local and state law enforcement agencies, state and local governments, state agencies and licensed health care facilities, and employers of any licensee of a board to provide records requested prior to receiving payment from the board.

Justification. Only a small number of external governmental agencies charges boards for producing records (i.e., Federal courts, several Los Angeles county agencies). However, under current practices, procedures involved in receiving approval for and completing the payment can delay delivery of the requested records.

16. **(PA) Employer of Health Care Practitioner Reporting Requirements.** Requires any employer of a healing arts licensee to report to the respective board the suspension or termination for cause, as defined (serious violations of professional practice), or resignation in lieu of suspension or termination, of any healing arts licensee in its employ. Requires the information reported to be confidential and not subject to discovery in civil cases, and to include the facts and circumstances of the suspension, termination or resignation. Requires a healing arts board to investigate the

circumstances underlying the report within 30 days to determine if an interim suspension order or temporary restraining order should be issued.

Justification. Currently employers of vocational nurses, psychiatric technicians and respiratory care therapists are required to report to the respective boards the suspension or termination for cause of these health care practitioners. The MBC, the Board of Podiatric Medicine, Board of Behavioral Sciences, Board of Psychology and the Dental Board also have more extensive reporting requirements for peer review bodies and hospitals which are specified in Section 805 of the B&P Code. There is no reason why the remaining healing arts boards should not have similar reporting requirements for those licensees who have been suspended or terminated from employment for serious disciplinary reasons.

17. (GC) Annual Enforcement Reports by Boards to the Department and Legislature.

Requires healing arts boards to report annually, by October 1, to the DCA and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation for alcohol or drug abuse.

Justification. Currently, the MBC reports annually to the DCA and the Legislature certain enforcement actions taken against physicians and surgeons. There is no reason why other healing arts boards should not be subject to the same requirements in submitting an annual enforcement report both to the DCA and the Legislature.

18. (GC) Enforcement Timeframes for the Attorney General's Office. Requires the AG's Office to serve an accusation within 60-calendar days after receipt of a request for accusation from a board; serve a default decision within 5 days following the time period allowed for the filing of a Notice of Defense and to set a hearing date within three days of receiving a Notice of Defense, unless instructed otherwise by the board.

Justification. There are delays in the prosecution of cases at the AG's Office that are contributing to the lengthy enforcement and disciplinary process that can take on average up to 2 to 3 years. According to statistics provided by the AG's Office, the average time for the AG to file an accusation for a board is taking from 5 to 8 months, and to complete prosecution can take on average about 400 days. Concerns have also been raised about the time it takes the AG to prepare a proposed default decision. The filing of a default decision is made once a licensee has failed to file a "notice of defense" when an accusation has been served on him or her. If the licensee fails to file a notice of defense within a specified timeframe, he or she is subject to a default judgment because of a failure to appear or make a defense of the disciplinary case. In 2004-2005 it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. However, the filing of a proposed default decision is "not rocket science" and should only take a matter of days.

19. (GC) Limited License for Mental Illness/Chemical Dependency. Grants healing arts boards the authority to provide a limited license, certificate or permit to an applicant who may be unable to practice his or her profession safely because of mental or

physical illness. Specifies requirements for the provision of limited license.

Justification. Boards lack the authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the applicant's fitness to practice is compromised based on suspected mental illness or chemical dependency. Boards have the authority to deny an applicant a license for criminal convictions, dishonesty, fraud or deceit, or any act if committed by a licensee would be grounds for disciplinary action. This proposed language would solidify the Board's authority to protect the public, given the potential harm/damage to public safety of a substance abusing licensee or one with mental illness or other physical illness.

20. **(PA) Report Licensing Actions and Checking Information Maintained by the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).** Requires healing arts boards to check the NPDB and the HIPDB prior to renewing the license, certificate or permit. Allows a healing arts board to charge a fee to cover the actual costs to conduct the search. Codifies federal requirements of healing arts boards to report specific enforcement actions taken against health care practitioners.

Justification. There is no reason for boards not to check the NPDB or other national professional or council databases to find out whether applicants or licensees have been sanctioned or disciplined by other states prior to granting or renewing of a license.

For background purposes, the NPDB and HIPDB, managed by the Health Resources and Services Administration of the U.S. Department of Health and Human Services, serves as an electronic repository of information on adverse licensure actions, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists, and other practitioners. The legislation that led to the creation of the NPDB was enacted because the U.S. Congress believed that the increasing occurrence of medical malpractice litigation and the need to improve the quality of medical care had become nationwide problems that warranted greater efforts than any individual State could undertake. The intent is to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. The information reported to these databanks is not public information.

One of the articles published by the *LA Times* pointed out that these databanks were missing critical cases, including those who have harmed patients in California. The *LA Times* asserted that there has been sporadic reporting to these databanks, and state boards, hospitals and other entities could be missing information necessary to ensure the protection of the public.

21. **(PA) Conviction of Sexual Misconduct – Substantially Related Crime.** Provides that a conviction of sexual misconduct or a felony requiring registration as a registered sex offender shall be considered a crime substantially related to the qualifications, functions, or duties of a board license.

Justification. Existing law provides that for physicians and surgeons, dentists and other health professionals, a conviction of sexual misconduct or a felony requiring registration as a registered sex offender is considered a crime substantially related to the qualifications, functions, or duties of a board licensee. There is no reason why other health professionals who have been convicted of sexual misconduct, or have been required to register as a sex offender pursuant to a felony conviction, should not be subject to the same standard and finding that such a crime is substantially related to the qualifications, functions, or duties of a board licensee.

22. **(PA) Unprofessional Conduct for Drug Related Offense.** Specifies that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct.

Justification. The Medical Practice Act provides that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct. There is no reason why other health professionals should not be subject to the same requirements regarding certain drug related offenses which would be considered as unprofessional conduct on the part of the practitioner.

23. **(PA) Unprofessional Conduct for Failure to Cooperate With Investigation of Board.** Specifies that failure to furnish information in a timely manner to the board or cooperate in any disciplinary investigation constitutes unprofessional conduct.

Justification. This requirement was recommended by the AG's Office. According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the board. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required their licensees to cooperate with investigations being conducted by disciplinary authorities. The AG argues that the enactment of a statutory requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

24. **(GC) Reporting by Licensee of Conviction or Disciplinary Action.** Requires a healing arts licensee to submit a written report for the following reasons: (1) the bringing of an indictment or information charging a felony against the licensee; (2) conviction of the licensee of any felony or misdemeanor; and, (3) any disciplinary action taken by another healing arts board of this state or of another state or an agency of the

federal government.

Justification. Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she been convicted of a felony or misdemeanor. There is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

25. **(GC) Report of Crime or Personal Injury Judgment by Clerk of Court.** Requires that the clerk of the court provide notice to a healing arts boards for which the licensee is licensed, if there is a judgment for a crime committed or for any death or personal injury in excess of \$30,000, for which the licensee is responsible due to their negligence, error or omission in practice, or his or her rendering unauthorized professional services.

Justification. There is no reason the clerk of the court should not report a judgment for a crime or for personal injury to any of the other healing arts boards. Most healing arts boards are currently covered under this provision.

26. **(GC) Report of Felony Charges by DA, City Attorney, or Clerk of Court.** Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Justification. There is no reason why all the other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

27. **(GC) Report of Preliminary Hearing Transcript of Felony by Clerk of Court.** Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Justification. There is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

28. **(GC) Notification of Future Arrests or Convictions from DOJ.** Requires the Department of Justice to provide reports within 30 days of subsequent arrests, convictions or other updates of licensees.

Justification. While all new fingerprints are performed electronically, not all records at the DOJ are kept electronically for licensees who were fingerprinted in the past. Retrieving non-electronic records adds unnecessary time to investigations. The DCA is not in a position to recommend how exactly the DOJ can reduce the amount of time it takes to complete subsequent arrest and conviction notices, but believes that a benchmark should be set. This would speed up the time it takes to receive some arrest and conviction notices and will allow boards to take action against licensees sooner.

29. **(GC) Unlicensed Practice – Public Crime.** Specifies that it is a public offense, punishable by a fine not to exceed \$100,000 or imprisonment, to engage in any practice, including healing arts practice, without a current and valid license.

Justification. Unlicensed practice presents a serious threat to public health and safety. However, it can be difficult for a board to get a district attorney to prosecute these cases criminally because the penalties are often significantly less than the cost to prosecute the case. While district attorneys do prosecute the most egregious cases, the inconsistent prosecution of these cases diminishes the deterrent effect. If the penalty for unlicensed practice is substantially increased, the deterrent will be increased two-fold; not only will the punishment be more severe, but district attorneys will be more likely to prosecute these cases.

30. **(Gov't Code) Allow Healing Arts Boards to Utilize the Vertical Enforcement and Prosecution Model.** Expands the use of the vertical enforcement and prosecution model for cases handled by all other health boards.

Justification. Allowing healing arts boards to utilize the vertical enforcement and prosecution model that currently applies to physicians and surgeons could be beneficial especially for complex types of actions.

31. **Intent Language for a New Information Technology System.** Provides that it is the intent of the Legislature that the DCA shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees.

Justification. DCA's current licensing and enforcement database systems are antiquated and impede the boards' abilities to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. Implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. The Governor's 2011-2012 Budget appropriated funds for the implementation of this system.

Attachment B:

Senate Bill 544 (Price) Professions and Vocations: Regulatory Boards

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 544

Introduced by Senator Price

February 17, 2011

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

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would prohibit a licensee regulated by a board within the department from including certain provisions in an agreement to settle a civil litigation action arising from his or her practice, as specified.

(2) Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

This bill would authorize healing arts boards to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

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

The bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

This bill would expand that requirement to a licensee of any healing arts board, as specified, and would further require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government.

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licensee has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licensee.

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

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

This bill would make it a crime to engage in the practice of healing arts without a current and valid license, except as specified; or to fraudulently buy, sell, or obtain a license to practice healing arts. By creating new crimes, the bill would impose a state-mandated local program.

(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. These boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a board to appoint an executive officer to, among other things, perform duties delegated by the board.

This bill would authorize a healing arts board to delegate to its executive officer, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.

The bill would also provide that the license of a licensee of a healing arts board shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a healing arts licensee. The bill would impose requirements on boards with respect to individuals required to register as a sex offender.

This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards' jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care facility that fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.

The bill would require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.

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

The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

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

(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants

within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

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

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

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (e)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 This

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (c) Placing the licentiate on probation.

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

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

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

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

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

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

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

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

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

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

32

33

Article 16. Unlicensed Practice

34

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (b) The information to be reported by the employer shall include
2 the name and license number of the licensee involved, a
3 description of the facts and circumstances of the suspension or
4 termination for cause, any resignation in lieu of suspension or
5 termination for cause, and any other relevant information deemed
6 appropriate by the employer.
- 7 (c) The board shall be entitled to inspect and copy the following
8 documents in the record for any suspension or termination for
9 cause, or any resignation in lieu of suspension or termination for
10 cause, resulting in action that is required to be reported pursuant
11 to this section:
- 12 (1) Any statement for suspension or termination of the licensee.
13 (2) Any document or exhibits relevant to the suspension or
14 termination.
- 15 (d) If, during the investigation by the board of the cause for the
16 termination or suspension or resignation of the licensee, it is found
17 that there has been a violation of existing state or federal law, the
18 board shall report the violation to the appropriate agency.
- 19 (e) For purposes of this section, "suspension or termination for
20 cause" or "resignation in lieu of suspension or termination for
21 cause" is defined as resignation, suspension, or termination from
22 employment for any of the following reasons:
- 23 (1) Use of controlled substances or alcohol to the extent that it
24 impairs the licensee's ability to safely practice.
25 (2) Unlawful sale of a controlled substance or other prescription
26 items.
- 27 (3) Patient or client abuse, neglect, physical harm, or sexual
28 contact with a patient or client.
- 29 (4) Gross negligence or incompetence.
- 30 (5) Theft from a patient or client, any other employee, or the
31 employer.
- 32 (f) As used in this section, the following definitions apply:
- 33 (1) "Gross negligence" means a substantial departure from the
34 standard of care, which, under similar circumstances, would have
35 ordinarily been exercised by a competent licensee, and which has
36 or could have resulted in harm to the consumer. An exercise of so
37 slight a degree of care as to justify the belief that there was a
38 conscious disregard or indifference for the health, safety, or
39 welfare of the consumer shall be considered a substantial departure
40 from the standard of care.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (4) Gross negligence or incompetence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SEC. 55. Section 2570.43 is added to the Business and
28 Professions Code, to read:

29 2570.43. (a) Notwithstanding any other provision of law
30 making a communication between a licensee and his or her patients
31 a privileged communication, those provisions shall not apply to
32 investigations or proceedings conducted by the board. Members
33 of the board, deputies, employees, agents, the office of the Attorney
34 General, and representatives of the board shall keep in confidence
35 during the course of investigations the names of any patients whose
36 records are reviewed and may not disclose or reveal those names,
37 except as is necessary during the course of an investigation, unless
38 and until proceedings are instituted. The authority under this
39 subdivision to examine records of patients in the office of a licensee

1 *is limited to records of patients who have complained to the board*
2 *about that licensee.*

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

11 *(1) Any document relevant to an investigation may be inspected,*
12 *and copies may be obtained, where a patient provides written*
13 *authorization.*

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

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

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

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

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

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

9 SEC. 56. Section 2570.44 is added to the Business and
10 Professions Code, to read:

11 2570.44. (a) (1) Notwithstanding any other provision of law,
12 a licensee who fails or refuses to comply with a request for the
13 certified medical records of a patient that is accompanied by that
14 patient's written authorization for release of records to a board
15 together with a notice citing this section and describing the
16 penalties for failure to comply with this section shall be required
17 to pay to the board a civil penalty of up to one thousand dollars
18 (\$1,000) per day for each day that the documents have not been
19 produced after the 15th day, up to ten thousand dollars (\$10,000),
20 unless the licensee is unable to provide the documents within this
21 time period for good cause.

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

39 (b) (1) A licensee who fails or refuses to comply with a court
40 order, issued in the enforcement of a subpoena, mandating the

1 release of records to the board, shall pay to the board a civil
2 penalty of up to one thousand dollars (\$1,000) per day for each
3 day that the documents have not been produced after the date by
4 which the court order requires the documents to be produced, up
5 to ten thousand dollars (\$10,000), unless it is determined that the
6 order is unlawful or invalid. Any statute of limitations applicable
7 to the filing of an accusation by the board shall be tolled during
8 the period the licensee is out of compliance with the court order
9 and during any related appeals.

10 (2) Any licensee who fails or refuses to comply with a court
11 order, issued in the enforcement of a subpoena, mandating the
12 release of records to a board is guilty of a misdemeanor punishable
13 by a fine payable to the board not to exceed five thousand dollars
14 (\$5,000). The fine shall be added to the licensee's renewal fee if
15 it is not paid by the next succeeding renewal date. Any statute of
16 limitations applicable to the filing of an accusation by the board
17 shall be tolled during the period the licensee is out of compliance
18 with the court order and during any related appeals.

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

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

1 (c) Multiple acts by a licensee in violation of subdivision (b)
2 shall be punishable by a fine not to exceed five thousand dollars
3 (\$5,000) or by imprisonment in a county jail not exceeding six
4 months, or by both that fine and imprisonment. Multiple acts by
5 a health care facility in violation of subdivision (b) shall be
6 punishable by a fine not to exceed five thousand dollars (\$5,000),
7 shall be reported to the State Department of Public Health, and
8 shall be considered as grounds for disciplinary action with respect
9 to licensure, including suspension or revocation of the license or
10 certificate.

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

16 (e) Imposition of the civil penalties authorized by this section
17 shall be in accordance with the Administrative Procedure Act
18 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
19 2 of the Government Code). Any civil penalties paid to, or received
20 by, the board pursuant to this section shall be deposited into the
21 fund administered by the board.

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

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

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

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

36 SEC. 57. Section 2570.45 is added to the Business and
37 Professions Code, to read:

38 2570.45. (a) Notwithstanding any other provision of law, any
39 employer of a licensee shall report to the board the suspension or
40 termination for cause, or any resignation in lieu of suspension or

1 termination for cause, of any licensee in its employ within 15
2 business days. The report shall not be made until after the
3 conclusion of the review process specified in Section 52.3 of Title
4 2 of the California Code of Regulations and *Skelly v. State*
5 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
6 required reporting shall not constitute a waiver of confidentiality
7 of medical records. The information reported or disclosed shall
8 be kept confidential except as provided in subdivision (c) of Section
9 800 and shall not be subject to discovery in civil cases.

10 (b) The information to be reported by the employer shall include
11 the name and license number of the licensee involved, a
12 description of the facts and circumstances of the suspension or
13 termination for cause, any resignation in lieu of suspension or
14 termination for cause, and any other relevant information deemed
15 appropriate by the employer.

16 (c) The board shall be entitled to inspect and copy the following
17 documents in the record for any suspension or termination for
18 cause, or any resignation in lieu of suspension or termination for
19 cause, resulting in action that is required to be reported pursuant
20 to this section:

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

22 (2) Any document or exhibits relevant to the suspension or
23 termination.

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

28 (e) For purposes of this section, "suspension or termination for
29 cause" or "resignation in lieu of suspension or termination for
30 cause" is defined as resignation, suspension, or termination from
31 employment for any of the following reasons:

32 (1) Use of controlled substances or alcohol to the extent that it
33 impairs the licensee's ability to safely practice.

34 (2) Unlawful sale of a controlled substance or other prescription
35 items.

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

38 (4) Gross negligence or incompetence.

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

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

2 (1) "Gross negligence" means a substantial departure from the
3 standard of care, which, under similar circumstances, would have
4 ordinarily been exercised by a competent licensee, and which has
5 or could have resulted in harm to the consumer. An exercise of so
6 slight a degree of care as to justify the belief that there was a
7 conscious disregard or indifference for the health, safety, or
8 welfare of the consumer shall be considered a substantial departure
9 from the standard of care.

10 (2) "Incompetence" means the lack of possession of, and the
11 failure to exercise that degree of learning, skill, care, and
12 experience ordinarily possessed by, a responsible licensee.

13 (3) "Willful" means a knowing and intentional violation of a
14 known legal duty.

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

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

21 (h) The board shall investigate the circumstances underlying
22 any report received pursuant to this section within 30 days to
23 determine if an interim suspension order or temporary restraining
24 order should be issued. The board shall otherwise provide timely
25 disposition of the reports received pursuant to this section.

26 (i) The board shall send to the licensee a copy of the report
27 along with the reasons for the filing of the report and notice
28 advising the licensee of his or her right to submit additional
29 statements or other information to the board.

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

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

35 SEC. 58. Section 2570.46 is added to the Business and
36 Professions Code, to read:

37 2570.46. Unless otherwise provided, on or after July 1, 2013,
38 the board shall post on its Internet Web site the following
39 information, including the name and license number, in its

1 possession, custody, or control regarding every licensee for which
2 the board licenses:

3 (a) With regard to the status of every license, whether or not
4 the licensee or former licensee is in good standing, subject to a
5 temporary restraining order, subject to an interim suspension
6 order, subject to a restriction or cease practice ordered pursuant
7 to Section 23 of the Penal Code, or subject to any of the
8 enforcement actions described in Section 803.1.

9 (b) With regard to prior discipline of a licensee, whether or not
10 the licensee or former licensee has been subject to discipline by
11 the board or by the board of another state or jurisdiction, as
12 described in Section 803.1.

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

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

20 (e) Any malpractice judgment or arbitration award imposed
21 against a licensee and reported to the healing arts board.

22 (f) Any hospital disciplinary action imposed against a licensee
23 that resulted in the termination or revocation of a licensee's
24 hospital staff privileges for a medical disciplinary cause or reason
25 pursuant to Section 2570.44 or 805.

26 (g) Any misdemeanor conviction of a licensee that results in a
27 disciplinary action or an accusation that is not subsequently
28 withdrawn or dismissed.

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

34 (i) The information provided on the Internet shall be in
35 accordance with the California Public Records Act (Chapter 3.5
36 (commencing with Section 6250) of Division 7 of Title 1 of the
37 Government Code) and the Information Practices Act of 1977
38 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
39 of Division 3 of the Civil Code) and shall comply with the

1 Department of Consumer Affairs Guidelines for Access to Public
2 Records.

3 (j) Information provided on the Internet may not include
4 personal information, unless otherwise provided pursuant to this
5 chapter, including the home telephone number, date of birth, or
6 social security number. The information may not include the
7 licensee's address, but may include the city and county of the
8 licensee's address of record.

9 SEC. 59. Section 2570.47 is added to the Business and
10 Professions Code, to read:

11 2570.47. (a) Unless otherwise provided, if a licensee possesses
12 a license or is otherwise authorized to practice in any state other
13 than California or by any agency of the federal government and
14 that license or authority is suspended or revoked outright, the
15 California license of the licensee shall be suspended automatically
16 for the duration of the suspension or revocation, unless terminated
17 or rescinded as provided in subdivision (c). The board shall notify
18 the licensee of the license suspension and of his or her right to
19 have the issue of penalty heard as provided in this section.

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

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

38 (d) The record of the proceedings that resulted in the suspension
39 or revocation of the licensee's out-of-state license or authority to

1 practice, including a transcript of the testimony therein, may be
2 received in evidence.

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

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

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

18 (h) The other provisions of this article setting forth a procedure
19 for the suspension or revocation of a licensee's license or
20 certificate shall not apply to summary suspensions issued pursuant
21 to this section. If a summary suspension has been issued pursuant
22 to this section, the licensee may request that the hearing on the
23 penalty conducted pursuant to subdivision (c) be held at the same
24 time as a hearing on the accusation.

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

27 SEC. 60. Section 2608.5 of the Business and Professions Code
28 is repealed.

29 ~~2608.5. Each member of the board, or any licensed physical~~
30 ~~therapist appointed by the board, may inspect, or require reports~~
31 ~~from, a general or specialized hospital or any other facility~~
32 ~~providing physical therapy care, treatment or services and the~~
33 ~~physical therapy staff thereof, with respect to the physical therapy~~
34 ~~care, treatment, services, or facilities provided therein, and may~~
35 ~~inspect physical therapy patient records with respect to the care,~~
36 ~~treatment, services, or facilities. The authority to make inspections~~
37 ~~and to require reports as provided by this section shall not be~~
38 ~~delegated by a member of the board to any person other than a~~
39 ~~physical therapist and shall be subject to the restrictions against~~
40 ~~disclosure described in Section 2263.~~

1 *SEC. 61. Section 2660.5 of the Business and Professions Code*
2 *is repealed.*

3 ~~2660.5. The board shall deny a physical therapist license or~~
4 ~~physical therapist assistant approval to an applicant who is required~~
5 ~~to register pursuant to Section 290 of the Penal Code. This section~~
6 ~~does not apply to an applicant who is required to register as a sex~~
7 ~~offender pursuant to Section 290 of the Penal Code solely because~~
8 ~~of a misdemeanor conviction under Section 314 of the Penal Code.~~

9 *SEC. 62. Section 2661.8 is added to the Business and*
10 *Professions Code, to read:*

11 2661.8. (a) *The board may delegate to its executive officer the*
12 *authority to adopt a proposed default decision where an*
13 *administrative action to revoke a license has been filed and the*
14 *licensee has failed to file a notice of defense or to appear at the*
15 *hearing and a proposed default decision revoking the license has*
16 *been issued.*

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

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

25 *SEC. 63. Section 2661.9 is added to the Business and*
26 *Professions Code, to read:*

27 2661.9. (a) *Notwithstanding Section 11415.60 of the*
28 *Government Code, the board may enter into a settlement with a*
29 *licensee or applicant in lieu of the issuance of an accusation or*
30 *statement of issues against that licensee or applicant, as applicable.*

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

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

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

1 settlement against an applicant executed pursuant to this section
2 shall be considered a public record and shall be posted on the
3 applicable board's Internet Web site.

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

7 SEC. 64. Section 2661.10 is added to the Business and
8 Professions Code, to read:

9 2661.10. (a) The license of a licensee shall be suspended
10 automatically during any time that the licensee is incarcerated
11 after conviction of a felony, regardless of whether the conviction
12 has been appealed. The board shall, immediately upon receipt of
13 the certified copy of the record of conviction, determine whether
14 the license of the licensee has been automatically suspended by
15 virtue of his or her incarceration, and if so, the duration of that
16 suspension. The board shall notify the licensee in writing of the
17 license suspension and of his or her right to elect to have the issue
18 of penalty heard as provided in subdivision (d).

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

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

39 (d) (1) Discipline may be ordered against a licensee in
40 accordance with the statutes and regulations of the board when

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

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

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

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

30 SEC. 65. Section 2661.11 is added to the Business and
31 Professions Code, to read:

32 2661.11. (a) Except as otherwise provided, any proposed
33 decision or decision issued in accordance with the procedures set
34 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
35 Division 3 of Title 2 of the Government Code, that contains any
36 finding of fact that the licensee engaged in any act of sexual contact
37 with a patient, as defined in subdivision (c) of Section 729, or any
38 finding that the licensee has committed a sex offense, shall contain
39 an order revoking the license. The proposed decision shall not
40 contain any order staying the revocation of the licensee.

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

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

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

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

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

15 SEC. 66. Section 2661.12 is added to the Business and
16 Professions Code, to read:

17 2661.12. (a) Except as otherwise provided, with regard to an
18 individual who is required to register as a sex offender pursuant
19 to Section 290 of the Penal Code, or the equivalent in another
20 state or territory, under military law, or under federal law, the
21 board shall be subject to the following requirements:

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

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

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

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

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

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

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

16 SEC. 67. *Section 2661.13 is added to the Business and*
17 *Professions Code, to read:*

18 2661.13. (a) *Notwithstanding any other provision of law*
19 *making a communication between a licensee and his or her patients*
20 *a privileged communication, those provisions shall not apply to*
21 *investigations or proceedings conducted by the board. Members*
22 *of the board, deputies, employees, agents, the office of the Attorney*
23 *General, and representatives of the board shall keep in confidence*
24 *during the course of investigations the names of any patients whose*
25 *records are reviewed and may not disclose or reveal those names,*
26 *except as is necessary during the course of an investigation, unless*
27 *and until proceedings are instituted. The authority under this*
28 *subdivision to examine records of patients in the office of a licensee*
29 *is limited to records of patients who have complained to the board*
30 *about that licensee.*

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

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

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

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

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

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

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

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

39 SEC. 68. Section 2661.14 is added to the Business and
40 Professions Code, to read:

1 2661.14. (a) (1) Notwithstanding any other provision of law,
2 a licensee who fails or refuses to comply with a request for the
3 certified medical records of a patient that is accompanied by that
4 patient's written authorization for release of records to a board
5 together with a notice citing this section and describing the
6 penalties for failure to comply with this section shall be required
7 to pay to the board a civil penalty of up to one thousand dollars
8 (\$1,000) per day for each day that the documents have not been
9 produced after the 15th day, up to ten thousand dollars (\$10,000),
10 unless the licensee is unable to provide the documents within this
11 time period for good cause.

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

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

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

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

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

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

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

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

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

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

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

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

25 SEC. 69. Section 2661.15 is added to the Business and
26 Professions Code, to read:

27 2661.15. (a) Notwithstanding any other provision of law, any
28 employer of a licensee shall report to the board the suspension or
29 termination for cause, or any resignation in lieu of suspension or
30 termination for cause, of any licensee in its employ within 15
31 business days. The report shall not be made until after the
32 conclusion of the review process specified in Section 52.3 of Title
33 2 of the California Code of Regulations and *Skelly v. State*
34 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
35 required reporting shall not constitute a waiver of confidentiality
36 of medical records. The information reported or disclosed shall
37 be kept confidential except as provided in subdivision (c) of Section
38 800 and shall not be subject to discovery in civil cases.

39 (b) The information to be reported by the employer shall include
40 the name and license number of the licensee involved, a

1 description of the facts and circumstances of the suspension or
2 termination for cause, any resignation in lieu of suspension or
3 termination for cause, and any other relevant information deemed
4 appropriate by the employer.

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

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

11 (2) Any document or exhibits relevant to the suspension or
12 termination.

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

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

21 (1) Use of controlled substances or alcohol to the extent that it
22 impairs the licensee's ability to safely practice.

23 (2) Unlawful sale of a controlled substance or other prescription
24 items.

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

27 (4) Gross negligence or incompetence.

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

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

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

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

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

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

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

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

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

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

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

26 SEC. 70. Section 2661.16 is added to the Business and
27 Professions Code, to read:

28 2661.16. Unless otherwise provided, on or after July 1, 2013,
29 the board shall post on its Internet Web site the following
30 information including the name and license number in its
31 possession, custody, or control regarding every licensee for which
32 the board licenses:

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

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

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

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

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

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

12 (f) Any hospital disciplinary action imposed against a licensee
13 that resulted in the termination or revocation of a licensee's
14 hospital staff privileges for a medical disciplinary cause or reason
15 pursuant to Section 2661.14 or 805.

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

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

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

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

38 SEC. 71. Section 2661.17 is added to the Business and
39 Professions Code, to read:

1 2661.17. (a) Unless otherwise provided, if a licensee possesses
2 a license or is otherwise authorized to practice in any state other
3 than California or by any agency of the federal government and
4 that license or authority is suspended or revoked outright, the
5 California license of the licensee shall be suspended automatically
6 for the duration of the suspension or revocation, unless terminated
7 or rescinded as provided in subdivision (c). The board shall notify
8 the licensee of the license suspension and of his or her right to
9 have the issue of penalty heard as provided in this section.

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

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

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

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

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

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

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

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

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

16 SEC. 72. *Section 2766 is added to the Business and Professions*
17 *Code, to read:*

18 2766. (a) *The board may delegate to its executive officer the*
19 *authority to adopt a proposed default decision where an*
20 *administrative action to revoke a license has been filed and the*
21 *licensee has failed to file a notice of defense or to appear at the*
22 *hearing and a proposed default decision revoking the license has*
23 *been issued.*

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

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

32 SEC. 73. *Section 2766.1 is added to the Business and*
33 *Professions Code, to read:*

34 2766.1. (a) *Notwithstanding Section 11415.60 of the*
35 *Government Code, the board may enter into a settlement with a*
36 *licensee or applicant in lieu of the issuance of an accusation or*
37 *statement of issues against that licensee or applicant, as applicable.*

38 (b) *The settlement shall include language identifying the factual*
39 *basis for the action being taken and a list of the statutes or*
40 *regulations violated.*

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

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

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

14 SEC. 74. Section 2766.2 is added to the Business and
15 Professions Code, to read:

16 2766.2. (a) The license of a licensee shall be suspended
17 automatically during any time that the licensee is incarcerated
18 after conviction of a felony, regardless of whether the conviction
19 has been appealed. The board shall, immediately upon receipt of
20 the certified copy of the record of conviction, determine whether
21 the license of the licensee has been automatically suspended by
22 virtue of his or her incarceration, and if so, the duration of that
23 suspension. The board shall notify the licensee in writing of the
24 license suspension and of his or her right to elect to have the issue
25 of penalty heard as provided in subdivision (d).

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

35 (c) Notwithstanding subdivision (b), a conviction of a charge
36 of violating any federal statute or regulation or any statute or
37 regulation of this state, regulating dangerous drugs or controlled
38 substances, or a conviction of Section 187, 261, 262, or 288 of the
39 Penal Code, shall be conclusively presumed to be substantially
40 related to the qualifications, functions, or duties of a licensee and

1 no hearing shall be held on this issue. However, upon its own
2 motion or for good cause shown, the board may decline to impose
3 or may set aside the suspension when it appears to be in the interest
4 of justice to do so, with due regard to maintaining the integrity of,
5 and confidence in, the practice regulated by the board.

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

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

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

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

37 SEC. 75. Section 2766.3 is added to the Business and
38 Professions Code, to read:

39 2766.3. (a) Except as otherwise provided, any proposed
40 decision or decision issued in accordance with the procedures set

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

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

10 (1) Any offense for which registration is required by Section
11 290 of the Penal Code or a finding that a person committed such
12 an act.

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

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

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

22 SEC. 76. Section 2766.4 is added to the Business and
23 Professions Code, to read:

24 2766.4. (a) Except as otherwise provided, with regard to an
25 individual who is required to register as a sex offender pursuant
26 to Section 290 of the Penal Code, or the equivalent in another
27 state or territory, under military law, or under federal law, the
28 board shall be subject to the following requirements:

29 (1) The board shall deny an application by the individual for
30 licensure in accordance with the procedures set forth in Chapter
31 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code.

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

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

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

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

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

17 (3) Any administrative adjudication proceeding under Chapter
18 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
19 2 of the Government Code that is fully adjudicated prior to January
20 1, 2008. A petition for reinstatement of a revoked or surrendered
21 license shall be considered a new proceeding for purposes of this
22 paragraph, and the prohibition against reinstating a license to an
23 individual who is required to register as a sex offender shall be
24 applicable.

25 SEC. 77. Section 2766.5 is added to the Business and
26 Professions Code, to read:

27 2766.5. (a) Notwithstanding any other provision of law making
28 a communication between a licensee and his or her patients a
29 privileged communication, those provisions shall not apply to
30 investigations or proceedings conducted by the board. Members
31 of the board, deputies, employees, agents, the office of the Attorney
32 General, and representatives of the board shall keep in confidence
33 during the course of investigations the names of any patients whose
34 records are reviewed and may not disclose or reveal those names,
35 except as is necessary during the course of an investigation, unless
36 and until proceedings are instituted. The authority under this
37 subdivision to examine records of patients in the office of a licensee
38 is limited to records of patients who have complained to the board
39 about that licensee.

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

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

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

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

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

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

39 (f) The licensee shall cooperate with the board in furnishing
40 information or assistance as may be required, including, but not

1 limited to, participation in an interview with investigators or
2 representatives of the board.

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

7 SEC. 78. Section 2766.6 is added to the Business and
8 Professions Code, to read:

9 2766.6. (a) (1) Notwithstanding any other provision of law,
10 a licensee who fails or refuses to comply with a request for the
11 certified medical records of a patient that is accompanied by that
12 patient's written authorization for release of records to a board
13 together with a notice citing this section and describing the
14 penalties for failure to comply with this section shall be required
15 to pay to the board a civil penalty of up to one thousand dollars
16 (\$1,000) per day for each day that the documents have not been
17 produced after the 15th day, up to ten thousand dollars (\$10,000),
18 unless the licensee is unable to provide the documents within this
19 time period for good cause.

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

37 (b) (1) A licensee who fails or refuses to comply with a court
38 order, issued in the enforcement of a subpoena, mandating the
39 release of records to the board, shall pay to the board a civil
40 penalty of up to one thousand dollars (\$1,000) per day for each

1 day that the documents have not been produced after the date by
2 which the court order requires the documents to be produced, up
3 to ten thousand dollars (\$10,000), unless it is determined that the
4 order is unlawful or invalid. Any statute of limitations applicable
5 to the filing of an accusation by the board shall be tolled during
6 the period the licensee is out of compliance with the court order
7 and during any related appeals.

8 (2) Any licensee who fails or refuses to comply with a court
9 order, issued in the enforcement of a subpoena, mandating the
10 release of records to a board is guilty of a misdemeanor punishable
11 by a fine payable to the board not to exceed five thousand dollars
12 (\$5,000). The fine shall be added to the licensee's renewal fee if
13 it is not paid by the next succeeding renewal date. Any statute of
14 limitations applicable to the filing of an accusation by the board
15 shall be tolled during the period the licensee is out of compliance
16 with the court order and during any related appeals.

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

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

39 (c) Multiple acts by a licensee in violation of subdivision (b)
40 shall be punishable by a fine not to exceed five thousand dollars

1 (\$5,000) or by imprisonment in a county jail not exceeding six
2 months, or by both that fine and imprisonment. Multiple acts by
3 a health care facility in violation of subdivision (b) shall be
4 punishable by a fine not to exceed five thousand dollars (\$5,000),
5 shall be reported to the State Department of Public Health, and
6 shall be considered as grounds for disciplinary action with respect
7 to licensure, including suspension or revocation of the license or
8 certificate.

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

13 (e) Imposition of the civil penalties authorized by this section
14 shall be in accordance with the Administrative Procedure Act
15 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
16 2 of the Government Code). Any civil penalties paid to, or received
17 by, the board pursuant to this section shall be deposited into the
18 fund administered by the board.

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

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

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

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

33 SEC. 79. Section 2766.7 is added to the Business and
34 Professions Code, to read:

35 2766.7. (a) Unless otherwise provided, on or after July 1,
36 2013, the board shall post on the Internet the following
37 information, including the name and license number, in its
38 possession, custody, or control regarding every licensee for which
39 the board licenses:

1 (1) With regard to the status of every license, whether or not
2 the licensee or former licensee is in good standing, subject to a
3 temporary restraining order, subject to an interim suspension
4 order, subject to a restriction or cease practice ordered pursuant
5 to Section 23 of the Penal Code, or subject to any of the
6 enforcement actions described in Section 803.1.

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

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

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

18 (5) Any malpractice judgment or arbitration award imposed
19 against a licensee and reported to the healing arts board.

20 (6) Any misdemeanor conviction of a licensee that results in a
21 disciplinary action or an accusation that is not subsequently
22 withdrawn or dismissed.

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

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

36 (c) Information provided on the Internet may not include
37 personal information, unless otherwise provided pursuant to this
38 chapter, including the home telephone number, date of birth, or
39 social security number. The information may not include the

1 licensee's address, nor the city and county of the licensee's address
2 of record.

3 SEC. 80. Section 2766.8 is added to the Business and
4 Professions Code, to read:

5 2766.8. (a) Unless otherwise provided, if a licensee possesses
6 a license or is otherwise authorized to practice in any state other
7 than California or by any agency of the federal government and
8 that license or authority is suspended or revoked outright, the
9 California license of the licensee shall be suspended automatically
10 for the duration of the suspension or revocation, unless terminated
11 or rescinded as provided in subdivision (c). The healing arts board
12 shall notify the licensee of the license suspension and of his or her
13 right to have the issue of penalty heard as provided in this section.

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

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

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

36 (e) This section shall not apply to a licensee who maintains his
37 or her primary practice in California, as evidenced by having
38 maintained a practice in this state for not less than one year
39 immediately preceding the date of suspension or revocation.

1 *Nothing in this section shall preclude a licensee's license from*
2 *being suspended pursuant to any other provision of law.*

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

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

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

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

21 *SEC. 81. Section 2879.1 is added to the Business and*
22 *Professions Code, to read:*

23 *2879.1. (a) The board may delegate to its executive officer the*
24 *authority to adopt a proposed default decision where an*
25 *administrative action to revoke a license has been filed and the*
26 *licensee has failed to file a notice of defense or to appear at the*
27 *hearing and a proposed default decision revoking the license has*
28 *been issued.*

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

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

37 *SEC. 82. Section 2879.2 is added to the Business and*
38 *Professions Code, to read:*

39 *2879.2. (a) Notwithstanding Section 11415.60 of the*
40 *Government Code, the board may enter into a settlement with a*

1 licensee or applicant in lieu of the issuance of an accusation or
2 statement of issues against that licensee or applicant, as applicable.

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

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

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

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

19 SEC. 83. Section 2879.3 is added to the Business and
20 Professions Code, to read:

21 2879.3. (a) The license of a licensee shall be suspended
22 automatically during any time that the licensee is incarcerated
23 after conviction of a felony, regardless of whether the conviction
24 has been appealed. The board shall, immediately upon receipt of
25 the certified copy of the record of conviction, determine whether
26 the license of the licensee has been automatically suspended by
27 virtue of his or her incarceration, and if so, the duration of that
28 suspension. The board shall notify the licensee in writing of the
29 license suspension and of his or her right to elect to have the issue
30 of penalty heard as provided in subdivision (d).

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

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

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

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

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

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

4 SEC. 84. Section 2879.4 is added to the Business and
5 Professions Code, to read:

6 2879.4. (a) Except as otherwise provided, any proposed
7 decision or decision issued in accordance with the procedures set
8 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
9 Division 3 of Title 2 of the Government Code, that contains any
10 finding of fact that the licensee engaged in any act of sexual contact
11 with a patient, as defined in subdivision (c) of Section 729, or any
12 finding that the licensee has committed a sex offense, shall contain
13 an order revoking the license. The proposed decision shall not
14 contain any order staying the revocation of the licensee.

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

17 (1) Any offense for which registration is required by Section
18 290 of the Penal Code or a finding that a person committed such
19 an act.

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

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

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

29 SEC. 85. Section 2879.5 is added to the Business and
30 Professions Code, to read:

31 2879.5. (a) Except as otherwise provided, with regard to an
32 individual who is required to register as a sex offender pursuant
33 to Section 290 of the Penal Code, or the equivalent in another
34 state or territory, under military law, or under federal law, the
35 board shall be subject to the following requirements:

36 (1) The board shall deny an application by the individual for
37 licensure in accordance with the procedures set forth in Chapter
38 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
39 2 of the Government Code.

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

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

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

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

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

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

31 SEC. 86. Section 2879.6 is added to the Business and
32 Professions Code, to read:

33 2879.6. (a) Notwithstanding any other provision of law making
34 a communication between a licensee and his or her patients a
35 privileged communication, those provisions shall not apply to
36 investigations or proceedings conducted by the board. Members
37 of the board, deputies, employees, agents, the office of the Attorney
38 General, and representatives of the board shall keep in confidence
39 during the course of investigations the names of any patients whose
40 records are reviewed and may not disclose or reveal those names,

1 *except as is necessary during the course of an investigation, unless*
2 *and until proceedings are instituted. The authority under this*
3 *subdivision to examine records of patients in the office of a licensee*
4 *is limited to records of patients who have complained to the board*
5 *about that licensee.*

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

14 *(1) Any document relevant to an investigation may be inspected,*
15 *and copies may be obtained, where a patient provides written*
16 *authorization.*

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

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

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

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

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

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

13 SEC. 87. Section 2879.7 is added to the Business and
14 Professions Code, to read:

15 2879.7. (a) (1) Notwithstanding any other provision of law,
16 a licensee who fails or refuses to comply with a request for the
17 certified medical records of a patient that is accompanied by that
18 patient's written authorization for release of records to a board
19 together with a notice citing this section and describing the
20 penalties for failure to comply with this section shall be required
21 to pay to the board a civil penalty of up to one thousand dollars
22 (\$1,000) per day for each day that the documents have not been
23 produced after the 15th day, up to ten thousand dollars (\$10,000),
24 unless the licensee is unable to provide the documents within this
25 time period for good cause.

26 (2) A health care facility shall comply with a request for the
27 certified medical records of a patient that is accompanied by that
28 patient's written authorization for release of records to a board
29 together with a notice citing this section and describing the
30 penalties for failure to comply with this section. Failure to provide
31 the authorizing patient's certified medical records to the board
32 within 15 days of receiving the request, authorization, and notice
33 shall subject the health care facility to a civil penalty, payable to
34 the healing arts board, of up to one thousand dollars (\$1,000) per
35 day for each day that the documents have not been produced after
36 the 15th day, up to ten thousand dollars (\$10,000), unless the
37 health care facility is unable to provide the documents within this
38 time period for good cause. This paragraph shall not require health
39 care facilities to assist the board in obtaining the patient's
40 authorization. The board shall pay the reasonable costs of copying

1 the certified medical records, but shall not be required to make
2 that payment prior to the production of the medical records.

3 (b) (1) A licensee who fails or refuses to comply with a court
4 order, issued in the enforcement of a subpoena, mandating the
5 release of records to the board, shall pay to the board a civil
6 penalty of up to one thousand dollars (\$1,000) per day for each
7 day that the documents have not been produced after the date by
8 which the court order requires the documents to be produced, up
9 to ten thousand dollars (\$10,000), unless it is determined that the
10 order is unlawful or invalid. Any statute of limitations applicable
11 to the filing of an accusation by the healing arts board shall be
12 tolled during the period the licensee is out of compliance with the
13 court order and during any related appeals.

14 (2) Any licensee who fails or refuses to comply with a court
15 order, issued in the enforcement of a subpoena, mandating the
16 release of records to a board is guilty of a misdemeanor punishable
17 by a fine payable to the board not to exceed five thousand dollars
18 (\$5,000). The fine shall be added to the licensee's renewal fee if
19 it is not paid by the next succeeding renewal date. Any statute of
20 limitations applicable to the filing of an accusation by the board
21 shall be tolled during the period the licensee is out of compliance
22 with the court order and during any related appeals.

23 (3) A health care facility that fails or refuses to comply with a
24 court order, issued in the enforcement of a subpoena, mandating
25 the release of patient records to the board, that is accompanied
26 by a notice citing this section and describing the penalties for
27 failure to comply with this section, shall pay to the board a civil
28 penalty of up to one thousand dollars (\$1,000) per day for each
29 day that the documents have not been produced, up to ten thousand
30 dollars (\$10,000), after the date by which the court order requires
31 the documents to be produced, unless it is determined that the
32 order is unlawful or invalid. Any statute of limitations applicable
33 to the filing of an accusation by the board against a licensee shall
34 be tolled during the period the health care facility is out of
35 compliance with the court order and during any related appeals.

36 (4) Any health care facility that fails or refuses to comply with
37 a court order, issued in the enforcement of a subpoena, mandating
38 the release of records to the board is guilty of a misdemeanor
39 punishable by a fine payable to the board not to exceed five
40 thousand dollars (\$5,000). Any statute of limitations applicable

1 to the filing of an accusation by the board against a licensee shall
2 be tolled during the period the health care facility is out of
3 compliance with the court order and during any related appeals.

4 (c) Multiple acts by a licensee in violation of subdivision (b)
5 shall be punishable by a fine not to exceed five thousand dollars
6 (\$5,000) or by imprisonment in a county jail not exceeding six
7 months, or by both that fine and imprisonment. Multiple acts by
8 a health care facility in violation of subdivision (b) shall be
9 punishable by a fine not to exceed five thousand dollars (\$5,000),
10 shall be reported to the State Department of Public Health, and
11 shall be considered as grounds for disciplinary action with respect
12 to licensure, including suspension or revocation of the license or
13 certificate.

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

18 (e) Imposition of the civil penalties authorized by this section
19 shall be in accordance with the Administrative Procedure Act
20 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
21 2 of the Government Code). Any civil penalties paid to, or received
22 by, the board pursuant to this section shall be deposited into the
23 fund administered by the board.

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

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

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

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

38 SEC. 88. Section 2879.8 is added to the Business and
39 Professions Code, to read:

1 2879.8. Unless otherwise provided, on or after July 1, 2013,
2 the board shall post on its Internet Web site the following
3 information, including the name and license number, in its
4 possession, custody, or control regarding every licensee for which
5 the board licenses:

6 (a) With regard to the status of every license, whether or not
7 the licensee or former licensee is in good standing, subject to a
8 temporary restraining order, subject to an interim suspension
9 order, subject to a restriction or cease practice ordered pursuant
10 to Section 23 of the Penal Code, or subject to any of the
11 enforcement actions described in Section 803.1.

12 (b) With regard to prior discipline of a licensee, whether or not
13 the licensee or former licensee has been subject to discipline by
14 the board or by the board of another state or jurisdiction, as
15 described in Section 803.1.

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

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

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

25 (f) Any hospital disciplinary action imposed against a licensee
26 that resulted in the termination or revocation of a licensee's
27 hospital staff privileges for a medical disciplinary cause or reason
28 pursuant to Section 2879.7 or 805.

29 (g) Any misdemeanor conviction of a licensee that results in a
30 disciplinary action or an accusation that is not subsequently
31 withdrawn or dismissed.

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

37 (i) The information provided on the Internet shall be in
38 accordance with the California Public Records Act (Chapter 3.5
39 (commencing with Section 6250) of Division 7 of Title 1 of the
40 Government Code) and the Information Practices Act of 1977

1 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
2 of Division 3 of the Civil Code) and shall comply with the
3 Department of Consumer Affairs Guidelines for Access to Public
4 Records.

5 (j) Information provided on the Internet may not include
6 personal information, unless otherwise provided pursuant to this
7 chapter, including the home telephone number, date of birth, or
8 social security number. The information may not include the
9 licensee's address, but may include the city and county of the
10 licensee's address of record.

11 SEC. 89. Section 2879.10 is added to the Business and
12 Professions Code, to read:

13 2879.10. (a) Unless otherwise provided, if a licensee possesses
14 a license or is otherwise authorized to practice in any state other
15 than California or by any agency of the federal government and
16 that license or authority is suspended or revoked outright, the
17 California license of the licensee shall be suspended automatically
18 for the duration of the suspension or revocation, unless terminated
19 or rescinded as provided in subdivision (c). The healing arts board
20 shall notify the licensee of the license suspension and of his or her
21 right to have the issue of penalty heard as provided in this section.

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

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

1 (d) *The record of the proceedings that resulted in the suspension*
2 *or revocation of the licensee's out-of-state license or authority to*
3 *practice, including a transcript of the testimony therein, may be*
4 *received in evidence.*

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

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

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

20 (h) *The other provisions of this article setting forth a procedure*
21 *for the suspension or revocation of a licensee's license or*
22 *certificate shall not apply to summary suspensions issued pursuant*
23 *to this section. If a summary suspension has been issued pursuant*
24 *to this section, the licensee may request that the hearing on the*
25 *penalty conducted pursuant to subdivision (c) be held at the same*
26 *time as a hearing on the accusation.*

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

29 SEC. 90. *Section 2960.1 of the Business and Professions Code*
30 *is amended to read:*

31 2960.1. (a) *Notwithstanding Section 2960, any proposed*
32 *decision or decision issued under this chapter in accordance with*
33 *the procedures set forth in Chapter 5 (commencing with Section*
34 *11500) of Part 1 of Division 3 of Title 2 of the Government Code,*
35 *that contains any finding of fact that the licensee or registrant*
36 *engaged in any act of sexual contact, as defined in Section 728,*
37 *when that act is with a patient, or with a former patient within two*
38 *years following termination of therapy, shall contain an order of*
39 *revocation. The revocation shall not be stayed by the administrative*
40 *law judge.*

1 (b) Except as otherwise provided, any proposed decision or
2 decision issued under this chapter in accordance with the
3 procedures set forth in Chapter 5 (commencing with Section 11500)
4 of Part 1 of Division 3 of Title 2 of the Government Code, that
5 contains any finding of fact that the licensee has committed a sex
6 offense, shall contain an order revoking the license. The proposed
7 decision or decision shall not contain any order staying the
8 revocation of the licensee.

9 (c) As used in this section, the term sex offense shall mean any
10 of the following:

11 (1) Any offense for which registration is required by Section
12 290 of the Penal Code or a finding that a person committed such
13 an act.

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

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

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

23 SEC. 91. Section 2969.1 is added to the Business and
24 Professions Code, to read:

25 2969.1. (a) The board may delegate to its executive officer the
26 authority to adopt a proposed default decision where an
27 administrative action to revoke a license has been filed and the
28 licensee has failed to file a notice of defense or to appear at the
29 hearing and a proposed default decision revoking the license has
30 been issued.

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

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

39 SEC. 92. Section 2969.2 is added to the Business and
40 Professions Code, to read:

1 2969.2. (a) Notwithstanding Section 11415.60 of the
2 Government Code, the board may enter into a settlement with a
3 licensee or applicant in lieu of the issuance of an accusation or
4 statement of issues against that licensee or applicant, as applicable.

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

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

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

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

21 SEC. 93. Section 2969.3 is added to the Business and
22 Professions Code, to read:

23 2969.3. Unless otherwise provided, on or after July 1, 2013,
24 the board shall post on its Internet Web site the following
25 information, including the name and license number, in its
26 possession, custody, or control regarding every licensee for which
27 the board licenses:

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

34 (b) With regard to prior discipline of a licensee, whether or not
35 the licensee or former licensee has been subject to discipline by
36 the board or by the board of another state or jurisdiction, as
37 described in Section 803.1.

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

39 (d) All current accusations filed by the Attorney General,
40 including those accusations that are on appeal. For purposes of

1 this paragraph, "current accusation" means an accusation that
2 has not been dismissed, withdrawn, or settled, and has not been
3 finally decided upon by an administrative law judge and the board
4 unless an appeal of that decision is pending.

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

7 (f) Any hospital disciplinary action imposed against a licensee
8 that resulted in the termination or revocation of a licensee's
9 hospital staff privileges for a medical disciplinary cause or reason
10 pursuant to Section 805.

11 (g) Any misdemeanor conviction of a licensee that results in a
12 disciplinary action or an accusation that is not subsequently
13 withdrawn or dismissed.

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

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

27 (j) Information provided on the Internet may not include
28 personal information, unless otherwise provided pursuant to this
29 chapter, including the home telephone number, date of birth, or
30 social security number. The information may not include the
31 licensee's address, but may include the city and county of the
32 licensee's address of record.

33 SEC. 94. Section 2969.4 is added to the Business and
34 Professions Code, to read:

35 2969.4. (a) Unless otherwise provided, if a licensee possesses
36 a license or is otherwise authorized to practice in any state other
37 than California or by any agency of the federal government and
38 that license or authority is suspended or revoked outright, the
39 California license of the licensee shall be suspended automatically
40 for the duration of the suspension or revocation, unless terminated

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

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

10 SEC. 95. Section 3112 is added to the Business and Professions
11 Code, to read:

12 3112. (a) The board may delegate to its executive officer the
13 authority to adopt a proposed default decision where an
14 administrative action to revoke a certificate of registration has
15 been filed and the registrant has failed to file a notice of defense
16 or to appear at the hearing and a proposed default decision
17 revoking the certificate of registration has been issued.

18 (b) The board may delegate to its executive officer the authority
19 to adopt a proposed settlement agreement where an administrative
20 action to revoke a certificate of registration has been filed by the
21 board and the registrant has agreed to the revocation or surrender
22 of his or her certificate of registration.

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

26 SEC. 96. Section 3112.1 is added to the Business and
27 Professions Code, to read:

28 3112.1. (a) Notwithstanding Section 11415.60 of the
29 Government Code, the board may enter into a settlement with a
30 registrant or applicant in lieu of the issuance of an accusation or
31 statement of issues against that registrant or applicant, as
32 applicable.

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

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

1 (d) Any settlement against a registrant executed pursuant to
2 this section shall be considered discipline and a public record and
3 shall be posted on the applicable board's Internet Web site. Any
4 settlement against an applicant executed pursuant to this section
5 shall be considered a public record and shall be posted on the
6 applicable board's Internet Web site.

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

10 SEC. 97. Section 3112.2 is added to the Business and
11 Professions Code, to read:

12 3112.2. (a) The certificate of registration of a registrant shall
13 be suspended automatically during any time that the registrant is
14 incarcerated after conviction of a felony, regardless of whether
15 the conviction has been appealed. The board shall, immediately
16 upon receipt of the certified copy of the record of conviction,
17 determine whether the certificate of registration of the registrant
18 has been automatically suspended by virtue of his or her
19 incarceration, and if so, the duration of that suspension. The board
20 shall notify the registrant in writing of the certificate of registration
21 suspension and of his or her right to elect to have the issue of
22 penalty heard as provided in subdivision (d).

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

32 (c) Notwithstanding subdivision (b), a conviction of a charge
33 of violating any federal statute or regulation or any statute or
34 regulation of this state, regulating dangerous drugs or controlled
35 substances, or a conviction of Section 187, 261, 262, or 288 of the
36 Penal Code, shall be conclusively presumed to be substantially
37 related to the qualifications, functions, or duties of a registrant
38 and no hearing shall be held on this issue. However, upon its own
39 motion or for good cause shown, the board may decline to impose
40 or may set aside the suspension when it appears to be in the interest

1 of justice to do so, with due regard to maintaining the integrity of,
2 and confidence in, the practice regulated by the board.

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

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

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

31 (f) Any other provision of law setting forth a procedure for the
32 suspension or revocation of a certificate of registration issued by
33 the board shall not apply to proceedings conducted pursuant to
34 this section.

35 SEC. 98. Section 3112.3 is added to the Business and
36 Professions Code, to read:

37 3112.3. (a) Except as otherwise provided, any proposed
38 decision or decision issued in accordance with the procedures set
39 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
40 Division 3 of Title 2 of the Government Code, that contains any

1 finding of fact that the registrant engaged in any act of sexual
2 contact with a patient, as defined in subdivision (c) of Section 729,
3 or any finding that the licensee has committed a sex offense, shall
4 contain an order revoking the license. The proposed decision shall
5 not contain any order staying the revocation of the certificate.

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

8 (1) Any offense for which registration is required by Section
9 290 of the Penal Code or a finding that a person committed such
10 an act.

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

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

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

20 SEC. 99. Section 3112.4 is added to the Business and
21 Professions Code, to read:

22 3112.4. (a) Except as otherwise provided, with regard to an
23 individual who is required to register as a sex offender pursuant
24 to Section 290 of the Penal Code, or the equivalent in another
25 state or territory, under military law, or under federal law, the
26 board shall be subject to the following requirements:

27 (1) The board shall deny an application by the individual for
28 registration in accordance with the procedures set forth in Chapter
29 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
30 2 of the Government Code.

31 (2) If the individual is registered under this chapter, the board
32 shall promptly revoke the certificate of registration of the
33 individual in accordance with the procedures set forth in Chapter
34 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
35 2 of the Government Code. The board shall not stay the revocation
36 and place the certificate of registration on probation.

37 (3) The board shall not reinstate or reissue the individual's
38 certificate of registration. The board shall not issue a stay of
39 certificate of registration denial nor place the certificate of
40 registration on probation.

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

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

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

14 (3) Any administrative adjudication proceeding under Chapter
15 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
16 2 of the Government Code that is fully adjudicated prior to January
17 1, 2008. A petition for reinstatement of a revoked or surrendered
18 license shall be considered a new proceeding for purposes of this
19 paragraph, and the prohibition against reinstating a certificate of
20 registration to an individual who is required to register as a sex
21 offender shall be applicable.

22 SEC. 100. Section 3112.5 is added to the Business and
23 Professions Code, to read:

24 3112.5. (a) Notwithstanding any other provision of law making
25 a communication between a registrant and his or her patients a
26 privileged communication, those provisions shall not apply to
27 investigations or proceedings conducted by the board. Members
28 of the board, deputies, employees, agents, the office of the Attorney
29 General, and representatives of the board shall keep in confidence
30 during the course of investigations the names of any patients whose
31 records are reviewed and may not disclose or reveal those names,
32 except as is necessary during the course of an investigation, unless
33 and until proceedings are instituted. The authority under this
34 subdivision to examine records of patients in the office of a licensee
35 is limited to records of patients who have complained to the board
36 about that licensee.

37 (b) Notwithstanding any other provision of law, the Attorney
38 General and his or her investigative agents, and the board and its
39 investigators and representatives may inquire into any alleged
40 violation of the laws under the jurisdiction of the board or any

1 other federal or state law, regulation, or rule relevant to the
2 practice regulated by the board, whichever is applicable, and may
3 inspect documents relevant to those investigations in accordance
4 with the following procedures:

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

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

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

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

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

35 (f) The registrant shall cooperate with the board in furnishing
36 information or assistance as may be required, including, but not
37 limited to, participation in an interview with investigators or
38 representatives of the board.

39 (g) This section shall not apply to a licensee who does not have
40 access to, and control over, certified medical records or other

1 types of documents that belong to or are controlled by a health
2 facility or clinic.

3 SEC. 101. Section 3112.6 is added to the Business and
4 Professions Code, to read:

5 3112.6. (a) (1) Notwithstanding any other provision of law,
6 a registrant who fails or refuses to comply with a request for the
7 certified medical records of a patient that is accompanied by that
8 patient's written authorization for release of records to a board
9 together with a notice citing this section and describing the
10 penalties for failure to comply with this section shall be required
11 to pay to the board a civil penalty of up to one thousand dollars
12 (\$1,000) per day for each day that the documents have not been
13 produced after the 15th day, up to ten thousand dollars (\$10,000),
14 unless the registrant is unable to provide the documents within
15 this time period for good cause.

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

33 (b) (1) A registrant who fails or refuses to comply with a court
34 order, issued in the enforcement of a subpoena, mandating the
35 release of records to the board, shall pay to the board a civil
36 penalty of up to one thousand dollars (\$1,000) per day for each
37 day that the documents have not been produced after the date by
38 which the court order requires the documents to be produced, up
39 to ten thousand dollars (\$10,000), unless it is determined that the
40 order is unlawful or invalid. Any statute of limitations applicable

1 to the filing of an accusation by the board shall be tolled during
2 the period the licensee is out of compliance with the court order
3 and during any related appeals.

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

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

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

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

1 shall be considered as grounds for disciplinary action with respect
2 to licensure, including suspension or revocation of the certificate.

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

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

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

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

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

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

28 SEC. 102. Section 3112.7 is added to the Business and
29 Professions Code, to read:

30 3112.7. (a) Notwithstanding any other provision of law, any
31 employer of a licensee shall report to the board the suspension or
32 termination for cause, or any resignation in lieu of suspension or
33 termination for cause, of any licensee in its employ within 15
34 business days. The report shall not be made until after the
35 conclusion of the review process specified in Section 52.3 of Title
36 2 of the California Code of Regulations and *Skelly v. State*
37 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
38 required reporting shall not constitute a waiver of confidentiality
39 of medical records. The information reported or disclosed shall

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

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

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

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

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

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

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

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

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

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

31 (4) Gross negligence or incompetence.

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

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

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

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

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

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

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

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

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

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

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

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

28 SEC. 103. Section 3112.8 is added to the Business and
29 Professions Code, to read:

30 3112.8. Unless otherwise provided, on or after July 1, 2013,
31 the board shall post on its Internet Web site the following
32 information, including the name and license number, in its
33 possession, custody, or control regarding every registrant for
34 which the board licenses:

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

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

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

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

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

14 (f) Any hospital disciplinary action imposed against a registrant
15 that resulted in the termination or revocation of a registrant's
16 hospital staff privileges for a medical disciplinary cause or reason
17 pursuant to Section 3112.6 or 805.

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

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

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

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

1 *SEC. 104. Section 3112.9 is added to the Business and*
2 *Professions Code, to read:*

3 3112.9. (a) *Unless otherwise provided, if a registrant possesses*
4 *a license or is otherwise authorized to practice in any state other*
5 *than California or by any agency of the federal government and*
6 *that license or authority is suspended or revoked outright, the*
7 *California license of the licensee shall be suspended automatically*
8 *for the duration of the suspension or revocation, unless terminated*
9 *or rescinded as provided in subdivision (c). The board shall notify*
10 *the licensee of the license suspension and of his or her right to*
11 *have the issue of penalty heard as provided in this section.*

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

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

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

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

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

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

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

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

19 SEC. 105. Section 3405 is added to the Business and
20 Professions Code, to read:

21 3405. (a) The board may delegate to its executive officer the
22 authority to adopt a proposed default decision where an
23 administrative action to revoke a license has been filed and the
24 licensee has failed to file a notice of defense or to appear at the
25 hearing and a proposed default decision revoking the license has
26 been issued.

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

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

35 SEC. 106. Section 3405.1 is added to the Business and
36 Professions Code, to read:

37 3405.1. (a) Notwithstanding Section 11415.60 of the
38 Government Code, the board may enter into a settlement with a
39 licensee or applicant in lieu of the issuance of an accusation or
40 statement of issues against that licensee or applicant, as applicable.

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

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

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

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

17 SEC. 107. Section 3405.2 is added to the Business and
18 Professions Code, to read:

19 3405.2. (a) The license of a licensee shall be suspended
20 automatically during any time that the licensee is incarcerated
21 after conviction of a felony, regardless of whether the conviction
22 has been appealed. The board shall, immediately upon receipt of
23 the certified copy of the record of conviction, determine whether
24 the license of the licensee has been automatically suspended by
25 virtue of his or her incarceration, and if so, the duration of that
26 suspension. The board shall notify the licensee in writing of the
27 license suspension and of his or her right to elect to have the issue
28 of penalty heard as provided in subdivision (d).

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

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

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

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

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

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

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

1 *SEC. 108. Section 3405.3 is added to the Business and*
2 *Professions Code, to read:*

3 3405.3. (a) *Except as otherwise provided, any proposed*
4 *decision or decision issued in accordance with the procedures set*
5 *forth in Chapter 5 (commencing with Section 11500) of Part 1 of*
6 *Division 3 of Title 2 of the Government Code, that contains any*
7 *finding of fact that the licensee engaged in any act of sexual contact*
8 *with a patient, as defined in subdivision (c) of Section 729, or any*
9 *finding that the licensee has committed a sex offense, shall contain*
10 *an order revoking the license. The proposed decision shall not*
11 *contain any order staying the revocation of the licensee.*

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

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

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

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

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

26 *SEC. 109. Section 3405.4 is added to the Business and*
27 *Professions Code, to read:*

28 3405.4. (a) *Except as otherwise provided, with regard to an*
29 *individual who is required to register as a sex offender pursuant*
30 *to Section 290 of the Penal Code, or the equivalent in another*
31 *state or territory, under military law, or under federal law, the*
32 *board shall be subject to the following requirements:*

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

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

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

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

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

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

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

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

27 SEC. 110. Section 3405.5 is added to the Business and
28 Professions Code, to read:

29 3405.5. (a) Notwithstanding any other provision of law making
30 a communication between a licensee and his or her patients a
31 privileged communication, those provisions shall not apply to
32 investigations or proceedings conducted by the board. Members
33 of the board, deputies, employees, agents, the office of the Attorney
34 General, and representatives of the board shall keep in confidence
35 during the course of investigations the names of any patients whose
36 records are reviewed and may not disclose or reveal those names,
37 except as is necessary during the course of an investigation, unless
38 and until proceedings are instituted. The authority under this
39 subdivision to examine records of patients in the office of a licensee

1 is limited to records of patients who have complained to the board
2 about that licensee.

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

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

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

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

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

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

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

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

9 SEC. 111. Section 3405.6 is added to the Business and
10 Professions Code, to read:

11 3405.6. (a) (1) Notwithstanding any other provision of law,
12 a licensee who fails or refuses to comply with a request for the
13 certified medical records of a patient that is accompanied by that
14 patient's written authorization for release of records to the board
15 together with a notice citing this section and describing the
16 penalties for failure to comply with this section shall be required
17 to pay to the board a civil penalty of up to one thousand dollars
18 (\$1,000) per day for each day that the documents have not been
19 produced after the 15th day, up to ten thousand dollars (\$10,000),
20 unless the licensee is unable to provide the documents within this
21 time period for good cause.

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

39 (b) (1) A licensee who fails or refuses to comply with a court
40 order, issued in the enforcement of a subpoena, mandating the

1 release of records to the board, shall pay to the board a civil
2 penalty of up to one thousand dollars (\$1,000) per day for each
3 day that the documents have not been produced after the date by
4 which the court order requires the documents to be produced, up
5 to ten thousand dollars (\$10,000), unless it is determined that the
6 order is unlawful or invalid. Any statute of limitations applicable
7 to the filing of an accusation by the board shall be tolled during
8 the period the licensee is out of compliance with the court order
9 and during any related appeals.

10 (2) Any licensee who fails or refuses to comply with a court
11 order, issued in the enforcement of a subpoena, mandating the
12 release of records to a board is guilty of a misdemeanor punishable
13 by a fine payable to the board not to exceed five thousand dollars
14 (\$5,000). The fine shall be added to the licensee's renewal fee if
15 it is not paid by the next succeeding renewal date. Any statute of
16 limitations applicable to the filing of an accusation by the board
17 shall be tolled during the period the licensee is out of compliance
18 with the court order and during any related appeals.

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

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

1 (c) Multiple acts by a licensee in violation of subdivision (b)
2 shall be punishable by a fine not to exceed five thousand dollars
3 (\$5,000) or by imprisonment in a county jail not exceeding six
4 months, or by both that fine and imprisonment. Multiple acts by
5 a health care facility in violation of subdivision (b) shall be
6 punishable by a fine not to exceed five thousand dollars (\$5,000),
7 shall be reported to the State Department of Public Health, and
8 shall be considered as grounds for disciplinary action with respect
9 to licensure, including suspension or revocation of the license or
10 certificate.

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

15 (e) Imposition of the civil penalties authorized by this section
16 shall be in accordance with the Administrative Procedure Act
17 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
18 2 of the Government Code). Any civil penalties paid to, or received
19 by, a board pursuant to this section shall be deposited into the
20 fund administered by the board.

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

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

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

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

33 SEC. 112. Section 3405.7 is added to the Business and
34 Professions Code, to read:

35 3405.7. (a) Notwithstanding any other provision of law, any
36 employer of a licensee shall report to the board the suspension or
37 termination for cause, or any resignation in lieu of suspension or
38 termination for cause, of any licensee in its employ within 15
39 business days. The report shall not be made until after the
40 conclusion of the review process specified in Section 52.3 of Title

1 2 of the California Code of Regulations and *Skelly v. State*
2 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
3 required reporting shall not constitute a waiver of confidentiality
4 of medical records. The information reported or disclosed shall
5 be kept confidential except as provided in subdivision (c) of Section
6 800 and shall not be subject to discovery in civil cases.

7 (b) The information to be reported by the employer shall include
8 the name and license number of the licensee involved, a
9 description of the facts and circumstances of the suspension or
10 termination for cause, any resignation in lieu of suspension or
11 termination for cause, and any other relevant information deemed
12 appropriate by the employer.

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

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

19 (2) Any document or exhibits relevant to the suspension or
20 termination.

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

25 (e) For purposes of this section, "suspension or termination for
26 cause" or "resignation in lieu of suspension or termination for
27 cause" is defined as resignation, suspension, or termination from
28 employment for any of the following reasons:

29 (1) Use of controlled substances or alcohol to the extent that it
30 impairs the licensee's ability to safely practice.

31 (2) Unlawful sale of a controlled substance or other prescription
32 items.

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

35 (4) Gross negligence or incompetence.

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

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

39 (1) "Gross negligence" means a substantial departure from the
40 standard of care, which, under similar circumstances, would have

1 ordinarily been exercised by a competent licensee, and which has
2 or could have resulted in harm to the consumer. An exercise of so
3 slight a degree of care as to justify the belief that there was a
4 conscious disregard or indifference for the health, safety, or
5 welfare of the consumer shall be considered a substantial departure
6 from the standard of care.

7 (2) "Incompetence" means the lack of possession of, and the
8 failure to exercise that degree of learning, skill, care, and
9 experience ordinarily possessed by, a responsible licensee.

10 (3) "Willful" means a knowing and intentional violation of a
11 known legal duty.

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

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

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

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

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

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

32 SEC. 113. Section 3405.8 is added to the Business and
33 Professions Code, to read:

34 3405.8. Unless otherwise provided, on or after July 1, 2013,
35 the board shall post on its Internet Web site the following
36 information, including the name and license number, in its
37 possession, custody, or control regarding every licensee for which
38 the board licenses:

39 (a) With regard to the status of every license, whether or not
40 the licensee or former licensee is in good standing, subject to a

1 temporary restraining order; subject to an interim suspension
2 order; subject to a restriction or cease practice ordered pursuant
3 to Section 23 of the Penal Code, or subject to any of the
4 enforcement actions described in Section 803.1.

5 (b) With regard to prior discipline of a licensee, whether or not
6 the licensee or former licensee has been subject to discipline by
7 the board or by the board of another state or jurisdiction, as
8 described in Section 803.1.

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

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

16 (e) Any malpractice judgment or arbitration award imposed
17 against a licensee and reported to the healing arts board.

18 (f) Any hospital disciplinary action imposed against a licensee
19 that resulted in the termination or revocation of a licensee's
20 hospital staff privileges for a medical disciplinary cause or reason
21 pursuant to Section 3405.6 or 805.

22 (g) Any misdemeanor conviction of a licensee that results in a
23 disciplinary action or an accusation that is not subsequently
24 withdrawn or dismissed.

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

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

38 (j) Information provided on the Internet may not include
39 personal information, unless otherwise provided pursuant to this
40 chapter, including the home telephone number, date of birth, or

1 social security number. The information may not include the
2 licensee's address, but may include the city and county of the
3 licensee's address of record.

4 SEC. 114. Section 3405.9 is added to the Business and
5 Professions Code, to read:

6 3405.9. (a) Unless otherwise provided, if a licensee possesses
7 a license or is otherwise authorized to practice in any state other
8 than California or by any agency of the federal government and
9 that license or authority is suspended or revoked outright, the
10 California license of the licensee shall be suspended automatically
11 for the duration of the suspension or revocation, unless terminated
12 or rescinded as provided in subdivision (c). The healing arts board
13 shall notify the licensee of the license suspension and of his or her
14 right to have the issue of penalty heard as provided in this section.

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

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

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

37 (e) This section shall not apply to a licensee who maintains his
38 or her primary practice in California, as evidenced by having
39 maintained a practice in this state for not less than one year
40 immediately preceding the date of suspension or revocation.

1 *Nothing in this section shall preclude a licensee's license from*
2 *being suspended pursuant to any other provision of law.*

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

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

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

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

21 *SEC. 115. Section 3531.1 is added to the Business and*
22 *Professions Code, to read:*

23 *3531.1. (a) The committee may delegate to its executive officer*
24 *the authority to adopt a proposed default decision where an*
25 *administrative action to revoke a license has been filed and the*
26 *licensee has failed to file a notice of defense or to appear at the*
27 *hearing and a proposed default decision revoking the license has*
28 *been issued.*

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

34 *(c) The executive officer shall, at scheduled committee meetings,*
35 *report to the committee the number of proposed default decisions*
36 *or proposed settlement agreements adopted pursuant to this*
37 *section.*

38 *SEC. 116. Section 3531.2 is added to the Business and*
39 *Professions Code, to read:*

1 3531.2. (a) Notwithstanding Section 11415.60 of the
2 Government Code, the committee may enter into a settlement with
3 a licensee or applicant in lieu of the issuance of an accusation or
4 statement of issues against that licensee or applicant, as applicable.

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

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

12 (d) Any settlement against a licensee executed pursuant to this
13 section shall be considered discipline and a public record and
14 shall be posted on the applicable committee's Internet Web site.
15 Any settlement against an applicant executed pursuant to this
16 section shall be considered a public record and shall be posted
17 on the applicable committee's Internet Web site.

18 (e) The executive officer shall, at scheduled committee meetings,
19 report to the committee the number of proposed settlement
20 agreements adopted pursuant to this section.

21 SEC. 117. Section 3531.3 is added to the Business and
22 Professions Code, to read:

23 3531.3. (a) The license of a licensee shall be suspended
24 automatically during any time that the licensee is incarcerated
25 after conviction of a felony, regardless of whether the conviction
26 has been appealed. The committee shall, immediately upon receipt
27 of the certified copy of the record of conviction, determine whether
28 the license of the licensee has been automatically suspended by
29 virtue of his or her incarceration, and if so, the duration of that
30 suspension. The committee shall notify the licensee in writing of
31 the license suspension and of his or her right to elect to have the
32 issue of penalty heard as provided in subdivision (d).

33 (b) Upon receipt of the certified copy of the record of conviction,
34 if after a hearing before an administrative law judge from the
35 Office of Administrative Hearings it is determined that the felony
36 for which the licensee was convicted was substantially related to
37 the qualifications, functions, or duties of a licensee, the committee
38 shall suspend the license until the time for appeal has elapsed, if
39 no appeal has been taken, or until the judgment of conviction has

1 been affirmed on appeal or has otherwise become final, and until
2 further order of the committee.

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

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

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

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

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

7 SEC. 118. Section 3531.4 is added to the Business and
8 Professions Code, to read:

9 3531.4. (a) Except as otherwise provided, any proposed
10 decision or decision issued in accordance with the procedures set
11 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
12 Division 3 of Title 2 of the Government Code, that contains any
13 finding of fact that the licensee engaged in any act of sexual contact
14 with a patient, as defined in subdivision (c) of Section 729, or any
15 finding that the licensee has committed a sex offense, shall contain
16 an order revoking the license. The proposed decision shall not
17 contain any order staying the revocation of the licensee.

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

20 (1) Any offense for which registration is required by Section
21 290 of the Penal Code or a finding that a person committed such
22 an act.

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

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

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

32 SEC. 119. Section 3531.5 is added to the Business and
33 Professions Code, to read:

34 3531.5. (a) Except as otherwise provided, with regard to an
35 individual who is required to register as a sex offender pursuant
36 to Section 290 of the Penal Code, or the equivalent in another
37 state or territory, under military law, or under federal law, the
38 committee shall be subject to the following requirements:

39 (1) The committee shall deny an application by the individual
40 for licensure in accordance with the procedures set forth in

1 Chapter 5 (commencing with Section 11500) of Part 1 of Division
2 3 of Title 2 of the Government Code.

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

9 (3) The committee shall not reinstate or reissue the individual's
10 license. The committee shall not issue a stay of license denial nor
11 place the license on probation.

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

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

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

25 (3) Any administrative adjudication proceeding under Chapter
26 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
27 2 of the Government Code that is fully adjudicated prior to January
28 1, 2008. A petition for reinstatement of a revoked or surrendered
29 license shall be considered a new proceeding for purposes of this
30 paragraph, and the prohibition against reinstating a license to an
31 individual who is required to register as a sex offender shall be
32 applicable.

33 SEC. 120. Section 3531.6 is added to the Business and
34 Professions Code, to read:

35 3531.6. (a) Notwithstanding any other provision of law making
36 a communication between a licensee and his or her patients a
37 privileged communication, those provisions shall not apply to
38 investigations or proceedings conducted by the committee.
39 Members of the committee, deputies, employees, agents, the office
40 of the Attorney General, and representatives of the committee shall

1 *keep in confidence during the course of investigations the names*
2 *of any patients whose records are reviewed and may not disclose*
3 *or reveal those names, except as is necessary during the course*
4 *of an investigation, unless and until proceedings are instituted.*
5 *The authority under this subdivision to examine records of patients*
6 *in the office of a licensee is limited to records of patients who have*
7 *complained to the committee about that licensee.*

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

16 *(1) Any document relevant to an investigation may be inspected,*
17 *and copies may be obtained, where a patient provides written*
18 *authorization.*

19 *(2) Any document relevant to the business operations of a*
20 *licensee, and not involving medical records attributable to*
21 *identifiable patients, may be inspected and copied where relevant*
22 *to an investigation of a licensee.*

23 *(c) In all cases where documents are inspected or copies of*
24 *those documents are received, their acquisition or review shall be*
25 *arranged so as not to unnecessarily disrupt the medical and*
26 *business operations of the licensee or of the facility where the*
27 *records are kept or used.*

28 *(d) Where certified documents are lawfully requested from*
29 *licensees in accordance with this section by the Attorney General*
30 *or his or her agents or deputies, or investigators of the committee,*
31 *the documents shall be provided within 10 business days of receipt*
32 *of the request, unless the licensee is unable to provide the certified*
33 *documents within this time period for good cause, including, but*
34 *not limited to, physical inability to access the records in the time*
35 *allowed due to illness or travel. Failure to produce requested*
36 *certified documents or copies thereof, after being informed of the*
37 *required deadline, shall constitute unprofessional conduct. The*
38 *committee may use its authority to cite and fine a licensee for any*
39 *violation of this section. This remedy is in addition to any other*

1 authority of the committee to sanction a licensee for a delay in
2 producing requested records.

3 (e) Searches conducted of the office or medical facility of any
4 licensee shall not interfere with the recordkeeping format or
5 preservation needs of any licensee necessary for the lawful care
6 of patients.

7 (f) The licensee shall cooperate with the committee in furnishing
8 information or assistance as may be required, including, but not
9 limited to, participation in an interview with investigators or
10 representatives of the committee.

11 (g) This section shall not apply to a licensee who does not have
12 access to, and control over, certified medical records or other
13 types of documents that belong to or are controlled by a health
14 facility or clinic.

15 SEC. 121. Section 3531.7 is added to the Business and
16 Professions Code, to read:

17 3531.7. (a) (1) Notwithstanding any other provision of law,
18 a licensee who fails or refuses to comply with a request for the
19 certified medical records of a patient that is accompanied by that
20 patient's written authorization for release of records to the
21 committee together with a notice citing this section and describing
22 the penalties for failure to comply with this section shall be
23 required to pay to the committee a civil penalty of up to one
24 thousand dollars (\$1,000) per day for each day that the documents
25 have not been produced after the 15th day, up to ten thousand
26 dollars (\$10,000), unless the licensee is unable to provide the
27 documents within this time period for good cause.

28 (2) A health care facility shall comply with a request for the
29 certified medical records of a patient that is accompanied by that
30 patient's written authorization for release of records to the
31 committee together with a notice citing this section and describing
32 the penalties for failure to comply with this section. Failure to
33 provide the authorizing patient's certified medical records to the
34 committee within 15 days of receiving the request, authorization,
35 and notice shall subject the health care facility to a civil penalty,
36 payable to the committee, of up to one thousand dollars (\$1,000)
37 per day for each day that the documents have not been produced
38 after the 15th day, up to ten thousand dollars (\$10,000), unless
39 the health care facility is unable to provide the documents within
40 this time period for good cause. This paragraph shall not require

1 health care facilities to assist the committee in obtaining the
2 patient's authorization. The committee shall pay the reasonable
3 costs of copying the certified medical records, but shall not be
4 required to make that payment prior to the production of the
5 medical records.

6 (b) (1) A licensee who fails or refuses to comply with a court
7 order, issued in the enforcement of a subpoena, mandating the
8 release of records to the committee, shall pay to the committee a
9 civil penalty of up to one thousand dollars (\$1,000) per day for
10 each day that the documents have not been produced after the date
11 by which the court order requires the documents to be produced,
12 up to ten thousand dollars (\$10,000), unless it is determined that
13 the order is unlawful or invalid. Any statute of limitations
14 applicable to the filing of an accusation by the committee shall be
15 tolled during the period the licensee is out of compliance with the
16 court order and during any related appeals.

17 (2) Any licensee who fails or refuses to comply with a court
18 order, issued in the enforcement of a subpoena, mandating the
19 release of records to the committee is guilty of a misdemeanor
20 punishable by a fine payable to the committee not to exceed five
21 thousand dollars (\$5,000). The fine shall be added to the licensee's
22 renewal fee if it is not paid by the next succeeding renewal date.
23 Any statute of limitations applicable to the filing of an accusation
24 by the committee shall be tolled during the period the licensee is
25 out of compliance with the court order and during any related
26 appeals.

27 (3) A health care facility that fails or refuses to comply with a
28 court order, issued in the enforcement of a subpoena, mandating
29 the release of patient records to the committee, that is accompanied
30 by a notice citing this section and describing the penalties for
31 failure to comply with this section, shall pay to the committee a
32 civil penalty of up to one thousand dollars (\$1,000) per day for
33 each day that the documents have not been produced, up to ten
34 thousand dollars (\$10,000), after the date by which the court order
35 requires the documents to be produced, unless it is determined
36 that the order is unlawful or invalid. Any statute of limitations
37 applicable to the filing of an accusation by the committee against
38 a licensee shall be tolled during the period the health care facility
39 is out of compliance with the court order and during any related
40 appeals.

1 (4) Any health care facility that fails or refuses to comply with
2 a court order, issued in the enforcement of a subpoena, mandating
3 the release of records to the committee is guilty of a misdemeanor
4 punishable by a fine payable to the committee not to exceed five
5 thousand dollars (\$5,000). Any statute of limitations applicable
6 to the filing of an accusation by the committee against a licensee
7 shall be tolled during the period the health care facility is out of
8 compliance with the court order and during any related appeals.

9 (c) Multiple acts by a licensee in violation of subdivision (b)
10 shall be punishable by a fine not to exceed five thousand dollars
11 (\$5,000) or by imprisonment in a county jail not exceeding six
12 months, or by both that fine and imprisonment. Multiple acts by
13 a health care facility in violation of subdivision (b) shall be
14 punishable by a fine not to exceed five thousand dollars (\$5,000),
15 shall be reported to the State Department of Public Health, and
16 shall be considered as grounds for disciplinary action with respect
17 to licensure, including suspension or revocation of the license or
18 certificate.

19 (d) A failure or refusal of a licensee to comply with a court
20 order, issued in the enforcement of a subpoena, mandating the
21 release of records to the committee constitutes unprofessional
22 conduct and is grounds for suspension or revocation of his or her
23 license.

24 (e) Imposition of the civil penalties authorized by this section
25 shall be in accordance with the Administrative Procedure Act
26 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
27 2 of the Government Code). Any civil penalties paid to, or received
28 by, the committee pursuant to this section shall be deposited into
29 the fund administered by the committee.

30 (f) For purposes of this section, "certified medical records"
31 means a copy of the patient's medical records authenticated by
32 the licensee or health care facility, as appropriate, on a form
33 prescribed by the committee.

34 (g) For purposes of this section, a "health care facility" means
35 a clinic or health facility licensed or exempt from licensure
36 pursuant to Division 2 (commencing with Section 1200) of the
37 Health and Safety Code.

38 (h) If the committee complies with Section 1684.1, 2225.5, or
39 2969, the committee shall not be subject to the requirements of
40 this section.

1 (i) This section shall not apply to a licensee who does not have
2 access to, or control over, certified medical records or other types
3 of documents that belong to or are controlled by a health facility
4 or clinic.

5 SEC. 122. Section 3531.8 is added to the Business and
6 Professions Code, to read:

7 3531.8. (a) Notwithstanding any other provision of law, any
8 employer of a licensee shall report to the committee the suspension
9 or termination for cause, or any resignation in lieu of suspension
10 or termination for cause, of any licensee in its employ within 15
11 business days. The report shall not be made until after the
12 conclusion of the review process specified in Section 52.3 of Title
13 2 of the California Code of Regulations and *Skelly v. State*
14 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
15 required reporting shall not constitute a waiver of confidentiality
16 of medical records. The information reported or disclosed shall
17 be kept confidential except as provided in subdivision (c) of Section
18 800 and shall not be subject to discovery in civil cases.

19 (b) The information to be reported by the employer shall include
20 the name and license number of the licensee involved, a
21 description of the facts and circumstances of the suspension or
22 termination for cause, any resignation in lieu of suspension or
23 termination for cause, and any other relevant information deemed
24 appropriate by the employer.

25 (c) The committee shall be entitled to inspect and copy the
26 following documents in the record for any suspension or
27 termination for cause, or any resignation in lieu of suspension or
28 termination for cause, resulting in action that is required to be
29 reported pursuant to this section:

30 (1) Any statement for suspension or termination of the licensee.

31 (2) Any document or exhibits relevant to the suspension or
32 termination.

33 (d) If, during the investigation by the committee of the cause
34 for the termination or suspension or resignation of the licensee,
35 it is found that there has been a violation of existing state or federal
36 law, the committee shall report the violation to the appropriate
37 agency.

38 (e) For purposes of this section, "suspension or termination for
39 cause" or "resignation in lieu of suspension or termination for

- 1 cause" is defined as resignation, suspension, or termination from
2 employment for any of the following reasons:
- 3 (1) Use of controlled substances or alcohol to the extent that it
4 impairs the licensee's ability to safely practice.
- 5 (2) Unlawful sale of a controlled substance or other prescription
6 items.
- 7 (3) Patient or client abuse, neglect, physical harm, or sexual
8 contact with a patient or client.
- 9 (4) Gross negligence or incompetence.
- 10 (5) Theft from a patient or client, any other employee, or the
11 employer.
- 12 (f) As used in this section, the following definitions apply:
- 13 (1) "Gross negligence" means a substantial departure from the
14 standard of care, which, under similar circumstances, would have
15 ordinarily been exercised by a competent licensee, and which has
16 or could have resulted in harm to the consumer. An exercise of so
17 slight a degree of care as to justify the belief that there was a
18 conscious disregard or indifference for the health, safety, or
19 welfare of the consumer shall be considered a substantial departure
20 from the standard of care.
- 21 (2) "Incompetence" means the lack of possession of, and the
22 failure to exercise that degree of learning, skill, care, and
23 experience ordinarily possessed by, a responsible licensee.
- 24 (3) "Willful" means a knowing and intentional violation of a
25 known legal duty.
- 26 (g) (1) Willful failure of an employer to make a report required
27 by this section is punishable by an administrative fine not to exceed
28 one hundred thousand dollars (\$100,000) per violation.
- 29 (2) Any failure of an employer, other than willful failure, to
30 make a report required by this section is punishable by an
31 administrative fine not to exceed fifty thousand dollars (\$50,000).
- 32 (h) The committee shall investigate the circumstances underlying
33 any report received pursuant to this section within 30 days to
34 determine if an interim suspension order or temporary restraining
35 order should be issued. The committee shall otherwise provide
36 timely disposition of the reports received pursuant to this section.
- 37 (i) The committee shall send to the licentiate a copy of the report
38 along with the reasons for the filing of the report and notice
39 advising the licentiate of his or her right to submit additional
40 statements or other information to the committee.

1 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
2 incur any civil penalty as a result of making any report required
3 by this article.

4 (k) No report is required under this section where a report of
5 the action taken is already required under Section 805.

6 SEC. 123. Section 3531.9 is added to the Business and
7 Professions Code, to read:

8 3531.9. Unless otherwise provided, on or after July 1, 2013,
9 the committee shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the committee licenses:

13 (a) With regard to the status of every license, whether or not
14 the licensee or former licensee is in good standing, subject to a
15 temporary restraining order, subject to an interim suspension
16 order, subject to a restriction or cease practice ordered pursuant
17 to Section 23 of the Penal Code, or subject to any of the
18 enforcement actions described in Section 803.1.

19 (b) With regard to prior discipline of a licensee, whether or not
20 the licensee or former licensee has been subject to discipline by
21 the board or by the committee of another state or jurisdiction, as
22 described in Section 803.1.

23 (c) Any felony conviction of a licensee reported to the committee.

24 (d) All current accusations filed by the Attorney General,
25 including those accusations that are on appeal. For purposes of
26 this paragraph, "current accusation" means an accusation that
27 has not been dismissed, withdrawn, or settled, and has not been
28 finally decided upon by an administrative law judge and the
29 committee unless an appeal of that decision is pending.

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the committee.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee's
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 3531.7 or 805.

36 (g) Any misdemeanor conviction of a licensee that results in a
37 disciplinary action or an accusation that is not subsequently
38 withdrawn or dismissed.

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 what types of information are not disclosed. These disclaimers
2 and statements shall be developed by the committee and shall be
3 adopted by regulation.

4 (i) The information provided on the Internet shall be in
5 accordance with the California Public Records Act (Chapter 3.5
6 (commencing with Section 6250) of Division 7 of Title 1 of the
7 Government Code) and the Information Practices Act of 1977
8 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
9 of Division 3 of the Civil Code) and shall comply with the
10 Department of Consumer Affairs Guidelines for Access to Public
11 Records.

12 (j) Information provided on the Internet may not include
13 personal information, unless otherwise provided pursuant to this
14 chapter, including the home telephone number, date of birth, or
15 social security number. The information may not include the
16 licensee's address, but may include the city and county of the
17 licensee's address of record.

18 SEC. 124. Section 3531.10 is added to the Business and
19 Professions Code, to read:

20 3531.10. (a) Unless otherwise provided, if a licensee possesses
21 a license or is otherwise authorized to practice in any state other
22 than California or by any agency of the federal government and
23 that license or authority is suspended or revoked outright, the
24 California license of the licensee shall be suspended automatically
25 for the duration of the suspension or revocation, unless terminated
26 or rescinded as provided in subdivision (c). The committee shall
27 notify the licensee of the license suspension and of his or her right
28 to have the issue of penalty heard as provided in this section.

29 (b) Upon its own motion or for good cause shown, the committee
30 may decline to impose or may set aside the suspension when it
31 appears to be in the interest of justice to do so, with due regard
32 to maintaining the integrity of, and confidence in, the specific
33 healing art.

34 (c) The issue of penalty shall be heard by an administrative law
35 judge sitting alone or with a panel of the committee, in the
36 discretion of the committee. A licensee may request a hearing on
37 the penalty and that hearing shall be held within 90 days from the
38 date of the request. If the order suspending or revoking the license
39 or authority to practice is overturned on appeal, any discipline
40 ordered pursuant to this section shall automatically cease. Upon

1 a showing to the administrative law judge or panel by the licensee
2 that the out-of-state action is not a basis for discipline in
3 California, the suspension shall be rescinded. If an accusation for
4 permanent discipline is not filed within 90 days of the suspension
5 imposed pursuant to this section, the suspension shall automatically
6 terminate.

7 (d) The record of the proceedings that resulted in the suspension
8 or revocation of the licensee's out-of-state license or authority to
9 practice, including a transcript of the testimony therein, may be
10 received in evidence.

11 (e) This section shall not apply to a licensee who maintains his
12 or her primary practice in California, as evidenced by having
13 maintained a practice in this state for not less than one year
14 immediately preceding the date of suspension or revocation.
15 Nothing in this section shall preclude a licensee's license from
16 being suspended pursuant to any other provision of law.

17 (f) This section shall not apply to a licensee whose license has
18 been surrendered, whose only discipline is a medical staff
19 disciplinary action at a federal hospital and not for medical
20 disciplinary cause or reason as that term is defined in Section 805,
21 or whose revocation or suspension has been stayed, even if the
22 licensee remains subject to terms of probation or other discipline.

23 (g) This section shall not apply to a suspension or revocation
24 imposed by a state that is based solely on the prior discipline of
25 the licensee by another state.

26 (h) The other provisions of this article setting forth a procedure
27 for the suspension or revocation of a licensee's license or
28 certificate shall not apply to summary suspensions issued pursuant
29 to this section. If a summary suspension has been issued pursuant
30 to this section, the licensee may request that the hearing on the
31 penalty conducted pursuant to subdivision (c) be held at the same
32 time as a hearing on the accusation.

33 (i) If the committee complies with Section 2310 it shall not be
34 subject to the requirements of this section.

35 SEC. 125. Section 3665 is added to the Business and
36 Professions Code, to read:

37 3665. (a) The committee may delegate to its executive officer
38 the authority to adopt a proposed default decision where an
39 administrative action to revoke a license has been filed and the
40 licensee has failed to file a notice of defense or to appear at the

1 hearing and a proposed default decision revoking the license has
2 been issued.

3 (b) The committee may delegate to its executive officer the
4 authority to adopt a proposed settlement agreement where an
5 administrative action to revoke a license has been filed by the
6 committee and the licensee has agreed to the revocation or
7 surrender of his or her license.

8 (c) The executive officer shall, at scheduled committee meetings,
9 report to the committee the number of proposed default decisions
10 or proposed settlement agreements adopted pursuant to this
11 section.

12 SEC. 126. Section 3665.1 is added to the Business and
13 Professions Code, to read:

14 3665.1. (a) Notwithstanding Section 11415.60 of the
15 Government Code, the committee may enter into a settlement with
16 a licensee or applicant in lieu of the issuance of an accusation or
17 statement of issues against that licensee or applicant, as applicable.

18 (b) The settlement shall include language identifying the factual
19 basis for the action being taken and a list of the statutes or
20 regulations violated.

21 (c) A person who enters a settlement pursuant to this section is
22 not precluded from filing a petition, in the timeframe permitted by
23 law, to modify the terms of the settlement or petition for early
24 termination of probation, if probation is part of the settlement.

25 (d) Any settlement against a licensee executed pursuant to this
26 section shall be considered discipline and a public record and
27 shall be posted on the applicable committee's Internet Web site.
28 Any settlement against an applicant executed pursuant to this
29 section shall be considered a public record and shall be posted
30 on the applicable committee's Internet Web site.

31 (e) The executive officer shall, at scheduled committee meetings,
32 report to the committee the number of proposed settlement
33 agreements adopted pursuant to this section.

34 SEC. 127. Section 3665.2 is added to the Business and
35 Professions Code, to read:

36 3665.2. (a) The license of a licensee shall be suspended
37 automatically during any time that the licensee is incarcerated
38 after conviction of a felony, regardless of whether the conviction
39 has been appealed. The committee shall, immediately upon receipt
40 of the certified copy of the record of conviction, determine whether

1 the license of the licensee has been automatically suspended by
2 virtue of his or her incarceration, and if so, the duration of that
3 suspension. The committee shall notify the licensee in writing of
4 the license suspension and of his or her right to elect to have the
5 issue of penalty heard as provided in subdivision (d).

6 (b) Upon receipt of the certified copy of the record of conviction,
7 if after a hearing before an administrative law judge from the
8 Office of Administrative Hearings it is determined that the felony
9 for which the licensee was convicted was substantially related to
10 the qualifications, functions, or duties of a licensee, the committee
11 shall suspend the license until the time for appeal has elapsed, if
12 no appeal has been taken, or until the judgment of conviction has
13 been affirmed on appeal or has otherwise become final, and until
14 further order of the committee.

15 (c) Notwithstanding subdivision (b), a conviction of a charge
16 of violating any federal statute or regulation or any statute or
17 regulation of this state, regulating dangerous drugs or controlled
18 substances, or a conviction of Section 187, 261, 262, or 288 of the
19 Penal Code, shall be conclusively presumed to be substantially
20 related to the qualifications, functions, or duties of a licensee and
21 no hearing shall be held on this issue. However, upon its own
22 motion or for good cause shown, the committee may decline to
23 impose or may set aside the suspension when it appears to be in
24 the interest of justice to do so, with due regard to maintaining the
25 integrity of, and confidence in, the practice regulated by the
26 committee.

27 (d) (1) Discipline may be ordered against a licensee in
28 accordance with the statutes and regulations of the committee
29 when the time for appeal has elapsed, the judgment of conviction
30 has been affirmed on appeal, or an order granting probation is
31 made suspending the imposition of sentence, irrespective of a
32 subsequent order under Section 1203.4 of the Penal Code allowing
33 the person to withdraw his or her plea of guilty and to enter a plea
34 of not guilty, setting aside the verdict of guilty, or dismissing the
35 accusation, complaint, information, or indictment.

36 (2) The issue of penalty shall be heard by an administrative law
37 judge from the Office of Administrative Hearings. The hearing
38 shall not be had until the judgment of conviction has become final
39 or, irrespective of a subsequent order under Section 1203.4 of the
40 Penal Code, an order granting probation has been made

1 suspending the imposition of sentence; except that a licensee may,
2 at his or her option, elect to have the issue of penalty decided
3 before those time periods have elapsed. Where the licensee so
4 elects, the issue of penalty shall be heard in the manner described
5 in subdivision (b) at the hearing to determine whether the
6 conviction was substantially related to the qualifications, functions,
7 or duties of a licensee. If the conviction of a licensee who has made
8 this election is overturned on appeal, any discipline ordered
9 pursuant to this section shall automatically cease. Nothing in this
10 subdivision shall prohibit the board from pursuing disciplinary
11 action based on any cause other than the overturned conviction.

12 (e) The record of the proceedings resulting in a conviction,
13 including a transcript of the testimony in those proceedings, may
14 be received in evidence.

15 (f) Any other provision of law setting forth a procedure for the
16 suspension or revocation of a license issued by the board shall not
17 apply to proceedings conducted pursuant to this section.

18 SEC. 128. Section 3665.3 is added to the Business and
19 Professions Code, to read:

20 3665.3. (a) Except as otherwise provided, any proposed
21 decision or decision issued in accordance with the procedures set
22 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
23 Division 3 of Title 2 of the Government Code, that contains any
24 finding of fact that the licensee engaged in any act of sexual contact
25 with a patient, as defined in subdivision (c) of Section 729, or any
26 finding that the licensee has committed a sex offense, shall contain
27 an order revoking the license. The proposed decision shall not
28 contain any order staying the revocation of the licensee.

29 (b) As used in this section, the term sex offense shall mean any
30 of the following:

31 (1) Any offense for which registration is required by Section
32 290 of the Penal Code or a finding that a person committed such
33 an act.

34 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
35 or 647(a) or (d) of the Penal Code or a finding that a person
36 committed such an act.

37 (3) Any attempt to commit any of the offenses specified in this
38 section.

39 (4) Any offense committed or attempted in any other state or
40 against the laws of the United States which, if committed or

1 attempted in this state, would have been punishable as one or more
2 of the offenses specified in this section.

3 SEC. 129. Section 3665.4 is added to the Business and
4 Professions Code, to read:

5 3665.4. (a) Except as otherwise provided, with regard to an
6 individual who is required to register as a sex offender pursuant
7 to Section 290 of the Penal Code, or the equivalent in another
8 state or territory, under military law, or under federal law, the
9 committee shall be subject to the following requirements:

10 (1) The committee shall deny an application by the individual
11 for licensure in accordance with the procedures set forth in
12 Chapter 5 (commencing with Section 11500) of Part 1 of Division
13 3 of Title 2 of the Government Code.

14 (2) If the individual is licensed under this chapter, the committee
15 shall promptly revoke the license of the individual in accordance
16 with the procedures set forth in Chapter 5 (commencing with
17 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
18 Code. The committee shall not stay the revocation and place the
19 license on probation.

20 (3) The committee shall not reinstate or reissue the individual's
21 license. The board shall not issue a stay of license denial nor place
22 the license on probation.

23 (b) This section shall not apply to any of the following:

24 (1) An individual who has been relieved under Section 290.5 of
25 the Penal Code of his or her duty to register as a sex offender, or
26 whose duty to register has otherwise been formally terminated
27 under California law or the law of the jurisdiction that requires
28 his or her registration as a sex offender.

29 (2) An individual who is required to register as a sex offender
30 pursuant to Section 290 of the Penal Code solely because of a
31 misdemeanor conviction under Section 314 of the Penal Code.
32 However, nothing in this paragraph shall prohibit the committee
33 from exercising its discretion to discipline a licensee under any
34 other provision of state law based upon the licensee's conviction
35 under Section 314 of the Penal Code.

36 (3) Any administrative adjudication proceeding under Chapter
37 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
38 2 of the Government Code that is fully adjudicated prior to January
39 1, 2008. A petition for reinstatement of a revoked or surrendered
40 license shall be considered a new proceeding for purposes of this

1 paragraph, and the prohibition against reinstating a license to an
2 individual who is required to register as a sex offender shall be
3 applicable.

4 SEC. 130. Section 3665.5 is added to the Business and
5 Professions Code, to read:

6 3665.5. (a) Notwithstanding any other provision of law making
7 a communication between a licensee and his or her patients a
8 privileged communication, those provisions shall not apply to
9 investigations or proceedings conducted by the board. Members
10 of the board, deputies, employees, agents, the office of the Attorney
11 General, and representatives of the board shall keep in confidence
12 during the course of investigations the names of any patients whose
13 records are reviewed and may not disclose or reveal those names,
14 except as is necessary during the course of an investigation, unless
15 and until proceedings are instituted. The authority under this
16 subdivision to examine records of patients in the office of a licensee
17 is limited to records of patients who have complained to the board
18 about that licensee.

19 (b) Notwithstanding any other provision of law, the Attorney
20 General and his or her investigative agents, and the committee
21 and its investigators and representatives may inquire into any
22 alleged violation of the laws under the jurisdiction of the committee
23 or any other federal or state law, regulation, or rule relevant to
24 the practice regulated by the committee, whichever is applicable,
25 and may inspect documents relevant to those investigations in
26 accordance with the following procedures:

27 (1) Any document relevant to an investigation may be inspected,
28 and copies may be obtained, where a patient provides written
29 authorization.

30 (2) Any document relevant to the business operations of a
31 licensee, and not involving medical records attributable to
32 identifiable patients, may be inspected and copied where relevant
33 to an investigation of a licensee.

34 (c) In all cases where documents are inspected or copies of
35 those documents are received, their acquisition or review shall be
36 arranged so as not to unnecessarily disrupt the medical and
37 business operations of the licensee or of the facility where the
38 records are kept or used.

39 (d) Where certified documents are lawfully requested from
40 licensees in accordance with this section by the Attorney General

1 or his or her agents or deputies, or investigators of any board, the
2 documents shall be provided within 10 business days of receipt of
3 the request, unless the licensee is unable to provide the certified
4 documents within this time period for good cause, including, but
5 not limited to, physical inability to access the records in the time
6 allowed due to illness or travel. Failure to produce requested
7 certified documents or copies thereof, after being informed of the
8 required deadline, shall constitute unprofessional conduct. The
9 committee may use its authority to cite and fine a licensee for any
10 violation of this section. This remedy is in addition to any other
11 authority of the committee to sanction a licensee for a delay in
12 producing requested records.

13 (e) Searches conducted of the office or medical facility of any
14 licensee shall not interfere with the recordkeeping format or
15 preservation needs of any licensee necessary for the lawful care
16 of patients.

17 (f) The licensee shall cooperate with the board in furnishing
18 information or assistance as may be required, including, but not
19 limited to, participation in an interview with investigators or
20 representatives of the committee.

21 (g) This section shall not apply to a licensee who does not have
22 access to, and control over, certified medical records or other
23 types of documents that belong to or are controlled by a health
24 facility or clinic.

25 SEC. 131. Section 3665.6 is added to the Business and
26 Professions Code, to read:

27 3665.6. (a) (1) Notwithstanding any other provision of law,
28 a licensee who fails or refuses to comply with a request for the
29 certified medical records of a patient that is accompanied by that
30 patient's written authorization for release of records to the
31 committee together with a notice citing this section and describing
32 the penalties for failure to comply with this section shall be
33 required to pay to the board a civil penalty of up to one thousand
34 dollars (\$1,000) per day for each day that the documents have not
35 been produced after the 15th day, up to ten thousand dollars
36 (\$10,000), unless the licensee is unable to provide the documents
37 within this time period for good cause.

38 (2) A health care facility shall comply with a request for the
39 certified medical records of a patient that is accompanied by that
40 patient's written authorization for release of records to the

1 committee together with a notice citing this section and describing
2 the penalties for failure to comply with this section. Failure to
3 provide the authorizing patient's certified medical records to the
4 board within 15 days of receiving the request, authorization, and
5 notice shall subject the health care facility to a civil penalty,
6 payable to the committee, of up to one thousand dollars (\$1,000)
7 per day for each day that the documents have not been produced
8 after the 15th day, up to ten thousand dollars (\$10,000), unless
9 the health care facility is unable to provide the documents within
10 this time period for good cause. This paragraph shall not require
11 health care facilities to assist the committee in obtaining the
12 patient's authorization. The committee shall pay the reasonable
13 costs of copying the certified medical records, but shall not be
14 required to make that payment prior to the production of the
15 medical records.

16 (b) (1) A licensee who fails or refuses to comply with a court
17 order, issued in the enforcement of a subpoena, mandating the
18 release of records to the committee, shall pay to the committee a
19 civil penalty of up to one thousand dollars (\$1,000) per day for
20 each day that the documents have not been produced after the date
21 by which the court order requires the documents to be produced,
22 up to ten thousand dollars (\$10,000), unless it is determined that
23 the order is unlawful or invalid. Any statute of limitations
24 applicable to the filing of an accusation by the committee shall be
25 tolled during the period the licensee is out of compliance with the
26 court order and during any related appeals.

27 (2) Any licensee who fails or refuses to comply with a court
28 order, issued in the enforcement of a subpoena, mandating the
29 release of records to a board is guilty of a misdemeanor punishable
30 by a fine payable to the committee not to exceed five thousand
31 dollars (\$5,000). The fine shall be added to the licensee's renewal
32 fee if it is not paid by the next succeeding renewal date. Any statute
33 of limitations applicable to the filing of an accusation by the
34 committee shall be tolled during the period the licensee is out of
35 compliance with the court order and during any related appeals.

36 (3) A health care facility that fails or refuses to comply with a
37 court order, issued in the enforcement of a subpoena, mandating
38 the release of patient records to the committee, that is accompanied
39 by a notice citing this section and describing the penalties for
40 failure to comply with this section, shall pay to the committee a

1 civil penalty of up to one thousand dollars (\$1,000) per day for
2 each day that the documents have not been produced, up to ten
3 thousand dollars (\$10,000), after the date by which the court order
4 requires the documents to be produced, unless it is determined
5 that the order is unlawful or invalid. Any statute of limitations
6 applicable to the filing of an accusation by the committee against
7 a licensee shall be tolled during the period the health care facility
8 is out of compliance with the court order and during any related
9 appeals.

10 (4) Any health care facility that fails or refuses to comply with
11 a court order, issued in the enforcement of a subpoena, mandating
12 the release of records to a healing arts board is guilty of a
13 misdemeanor punishable by a fine payable to the committee not
14 to exceed five thousand dollars (\$5,000). Any statute of limitations
15 applicable to the filing of an accusation by the committee against
16 a licensee shall be tolled during the period the health care facility
17 is out of compliance with the court order and during any related
18 appeals.

19 (c) Multiple acts by a licensee in violation of subdivision (b)
20 shall be punishable by a fine not to exceed five thousand dollars
21 (\$5,000) or by imprisonment in a county jail not exceeding six
22 months, or by both that fine and imprisonment. Multiple acts by
23 a health care facility in violation of subdivision (b) shall be
24 punishable by a fine not to exceed five thousand dollars (\$5,000),
25 shall be reported to the State Department of Public Health, and
26 shall be considered as grounds for disciplinary action with respect
27 to licensure, including suspension or revocation of the license or
28 certificate.

29 (d) A failure or refusal of a licensee to comply with a court
30 order, issued in the enforcement of a subpoena, mandating the
31 release of records to the committee constitutes unprofessional
32 conduct and is grounds for suspension or revocation of his or her
33 license.

34 (e) Imposition of the civil penalties authorized by this section
35 shall be in accordance with the Administrative Procedure Act
36 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
37 2 of the Government Code). Any civil penalties paid to, or received
38 by, the committee pursuant to this section shall be deposited into
39 the fund administered by the committee.

1 (f) For purposes of this section, "certified medical records"
2 means a copy of the patient's medical records authenticated by
3 the licensee or health care facility, as appropriate, on a form
4 prescribed by the licensee's board.

5 (g) For purposes of this section, a "health care facility" means
6 a clinic or health facility licensed or exempt from licensure
7 pursuant to Division 2 (commencing with Section 1200) of the
8 Health and Safety Code.

9 (h) If the committee complies with Section 1684.1, 2225.5, or
10 2969, the committee shall not be subject to the requirements of
11 this section.

12 (i) This section shall not apply to a licensee who does not have
13 access to, or control over, certified medical records or other types
14 of documents that belong to or are controlled by a health facility
15 or clinic.

16 SEC. 132. Section 3665.7 is added to the Business and
17 Professions Code, to read:

18 3665.7. (a) Notwithstanding any other provision of law, any
19 employer of a licensee shall report to the committee the suspension
20 or termination for cause, or any resignation in lieu of suspension
21 or termination for cause, of any licensee in its employ within 15
22 business days. The report shall not be made until after the
23 conclusion of the review process specified in Section 52.3 of Title
24 2 of the California Code of Regulations and *Skelly v. State*
25 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
26 required reporting shall not constitute a waiver of confidentiality
27 of medical records. The information reported or disclosed shall
28 be kept confidential except as provided in subdivision (c) of Section
29 800 and shall not be subject to discovery in civil cases.

30 (b) The information to be reported by the employer shall include
31 the name and license number of the licensee involved, a
32 description of the facts and circumstances of the suspension or
33 termination for cause, any resignation in lieu of suspension or
34 termination for cause, and any other relevant information deemed
35 appropriate by the employer.

36 (c) The committee shall be entitled to inspect and copy the
37 following documents in the record for any suspension or
38 termination for cause, or any resignation in lieu of suspension or
39 termination for cause, resulting in action that is required to be
40 reported pursuant to this section:

1 (1) Any statement for suspension or termination of the licensee.

2 (2) Any document or exhibits relevant to the suspension or
3 termination.

4 (d) If, during the investigation by the committee of the cause
5 for the termination or suspension or resignation of the licensee,
6 it is found that there has been a violation of existing state or federal
7 law, the committee shall report the violation to the appropriate
8 agency.

9 (e) For purposes of this section, "suspension or termination for
10 cause" or "resignation in lieu of suspension or termination for
11 cause" is defined as resignation, suspension, or termination from
12 employment for any of the following reasons:

13 (1) Use of controlled substances or alcohol to the extent that it
14 impairs the licensee's ability to safely practice.

15 (2) Unlawful sale of a controlled substance or other prescription
16 items.

17 (3) Patient or client abuse, neglect, physical harm, or sexual
18 contact with a patient or client.

19 (4) Gross negligence or incompetence.

20 (5) Theft from a patient or client, any other employee, or the
21 employer.

22 (f) As used in this section, the following definitions apply:

23 (1) "Gross negligence" means a substantial departure from the
24 standard of care, which, under similar circumstances, would have
25 ordinarily been exercised by a competent licensee, and which has
26 or could have resulted in harm to the consumer. An exercise of so
27 slight a degree of care as to justify the belief that there was a
28 conscious disregard or indifference for the health, safety, or
29 welfare of the consumer shall be considered a substantial departure
30 from the standard of care.

31 (2) "Incompetence" means the lack of possession of, and the
32 failure to exercise that degree of learning, skill, care, and
33 experience ordinarily possessed by, a responsible licensee.

34 (3) "Willful" means a knowing and intentional violation of a
35 known legal duty.

36 (g) (1) Willful failure of an employer to make a report required
37 by this section is punishable by an administrative fine not to exceed
38 one hundred thousand dollars (\$100,000) per violation.

1 (2) Any failure of an employer, other than willful failure, to
2 make a report required by this section is punishable by an
3 administrative fine not to exceed fifty thousand dollars (\$50,000).

4 (h) The committee shall investigate the circumstances underlying
5 any report received pursuant to this section within 30 days to
6 determine if an interim suspension order or temporary restraining
7 order should be issued. The board shall otherwise provide timely
8 disposition of the reports received pursuant to this section.

9 (i) The committee shall send to the licentiate a copy of the report
10 along with the reasons for the filing of the report and notice
11 advising the licentiate of his or her right to submit additional
12 statements or other information to the board.

13 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
14 incur any civil penalty as a result of making any report required
15 by this article.

16 (k) No report is required under this section where a report of
17 the action taken is already required under Section 805.

18 SEC. 133. Section 3665.8 is added to the Business and
19 Professions Code, to read:

20 3665.8. Unless otherwise provided, on or after July 1, 2013,
21 the committee shall post on its Internet Web site the following
22 information, including the name and license number, in its
23 possession, custody, or control regarding every licensee for which
24 the committee licenses:

25 (a) With regard to the status of every license, whether or not
26 the licensee or former licensee is in good standing, subject to a
27 temporary restraining order, subject to an interim suspension
28 order, subject to a restriction or cease practice ordered pursuant
29 to Section 23 of the Penal Code, or subject to any of the
30 enforcement actions described in Section 803.1.

31 (b) With regard to prior discipline of a licensee, whether or not
32 the licensee or former licensee has been subject to discipline by
33 the board or by the board of another state or jurisdiction, as
34 described in Section 803.1.

35 (c) Any felony conviction of a licensee reported to the board.

36 (d) All current accusations filed by the Attorney General,
37 including those accusations that are on appeal. For purposes of
38 this paragraph, "current accusation" means an accusation that
39 has not been dismissed, withdrawn, or settled, and has not been

1 finally decided upon by an administrative law judge and the board
2 unless an appeal of that decision is pending.

3 (e) Any malpractice judgment or arbitration award imposed
4 against a licensee and reported to the committee.

5 (f) Any hospital disciplinary action imposed against a licensee
6 that resulted in the termination or revocation of a licensee's
7 hospital staff privileges for a medical disciplinary cause or reason
8 pursuant to Section 3665.8 or 805.

9 (g) Any misdemeanor conviction of a licensee that results in a
10 disciplinary action or an accusation that is not subsequently
11 withdrawn or dismissed.

12 (h) Appropriate disclaimers and explanatory statements to
13 accompany the above information, including an explanation of
14 what types of information are not disclosed. These disclaimers
15 and statements shall be developed by the board and shall be
16 adopted by regulation.

17 (i) The information provided on the Internet shall be in
18 accordance with the California Public Records Act (Chapter 3.5
19 (commencing with Section 6250) of Division 7 of Title 1 of the
20 Government Code) and the Information Practices Act of 1977
21 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
22 of Division 3 of the Civil Code) and shall comply with the
23 Department of Consumer Affairs Guidelines for Access to Public
24 Records.

25 (j) Information provided on the Internet may not include
26 personal information, unless otherwise provided pursuant to this
27 chapter, including the home telephone number, date of birth, or
28 social security number. The information may not include the
29 licensee's address, but may include the city and county of the
30 licensee's address of record.

31 SEC. 134. Section 3665.9 is added to the Business and
32 Professions Code, to read:

33 3665.9. (a) Unless otherwise provided, if a licensee possesses
34 a license or is otherwise authorized to practice in any state other
35 than California or by any agency of the federal government and
36 that license or authority is suspended or revoked outright, the
37 California license of the licensee shall be suspended automatically
38 for the duration of the suspension or revocation, unless terminated
39 or rescinded as provided in subdivision (c). The committee shall

1 *notify the licensee of the license suspension and of his or her right*
2 *to have the issue of penalty heard as provided in this section.*

3 (b) *Upon its own motion or for good cause shown, a committee*
4 *may decline to impose or may set aside the suspension when it*
5 *appears to be in the interest of justice to do so, with due regard*
6 *to maintaining the integrity of, and confidence in, the specific*
7 *healing art.*

8 (c) *The issue of penalty shall be heard by an administrative law*
9 *judge sitting alone or with a panel of the committee, in the*
10 *discretion of the board. A licensee may request a hearing on the*
11 *penalty and that hearing shall be held within 90 days from the*
12 *date of the request. If the order suspending or revoking the license*
13 *or authority to practice is overturned on appeal, any discipline*
14 *ordered pursuant to this section shall automatically cease. Upon*
15 *a showing to the administrative law judge or panel by the licensee*
16 *that the out-of-state action is not a basis for discipline in*
17 *California, the suspension shall be rescinded. If an accusation for*
18 *permanent discipline is not filed within 90 days of the suspension*
19 *imposed pursuant to this section, the suspension shall automatically*
20 *terminate.*

21 (d) *The record of the proceedings that resulted in the suspension*
22 *or revocation of the licensee's out-of-state license or authority to*
23 *practice, including a transcript of the testimony therein, may be*
24 *received in evidence.*

25 (e) *This section shall not apply to a licensee who maintains his*
26 *or her primary practice in California, as evidenced by having*
27 *maintained a practice in this state for not less than one year*
28 *immediately preceding the date of suspension or revocation.*
29 *Nothing in this section shall preclude a licensee's license from*
30 *being suspended pursuant to any other provision of law.*

31 (f) *This section shall not apply to a licensee whose license has*
32 *been surrendered, whose only discipline is a medical staff*
33 *disciplinary action at a federal hospital and not for medical*
34 *disciplinary cause or reason as that term is defined in Section 805,*
35 *or whose revocation or suspension has been stayed, even if the*
36 *licensee remains subject to terms of probation or other discipline.*

37 (g) *This section shall not apply to a suspension or revocation*
38 *imposed by a state that is based solely on the prior discipline of*
39 *the licensee by another state.*

1 (h) The other provisions of this article setting forth a procedure
2 for the suspension or revocation of a licensee's license or
3 certificate shall not apply to summary suspensions issued pursuant
4 to this section. If a summary suspension has been issued pursuant
5 to this section, the licensee may request that the hearing on the
6 penalty conducted pursuant to subdivision (c) be held at the same
7 time as a hearing on the accusation.

8 (i) A board that complies with Section 2310 shall not be subject
9 to the requirements of this section.

10 SEC. 135. Section 3769.4 is added to the Business and
11 Professions Code, to read:

12 3769.4. (a) The board may delegate to its executive officer the
13 authority to adopt a proposed default decision where an
14 administrative action to revoke a license has been filed and the
15 licensee has failed to file a notice of defense or to appear at the
16 hearing and a proposed default decision revoking the license has
17 been issued.

18 (b) The board may delegate to its executive officer the authority
19 to adopt a proposed settlement agreement where an administrative
20 action to revoke a license has been filed by the board and the
21 licensee has agreed to the revocation or surrender of his or her
22 license.

23 (c) The executive officer shall, at scheduled board meetings,
24 report to the board the number of proposed default decisions or
25 proposed settlement agreements adopted pursuant to this section.

26 SEC. 136. Section 3769.5 is added to the Business and
27 Professions Code, to read:

28 3769.5. (a) Notwithstanding Section 11415.60 of the
29 Government Code, the board may enter into a settlement with a
30 licensee or applicant in lieu of the issuance of an accusation or
31 statement of issues against that licensee or applicant, as applicable.

32 (b) The settlement shall include language identifying the factual
33 basis for the action being taken and a list of the statutes or
34 regulations violated.

35 (c) A person who enters a settlement pursuant to this section is
36 not precluded from filing a petition, in the timeframe permitted by
37 law, to modify the terms of the settlement or petition for early
38 termination of probation, if probation is part of the settlement.

39 (d) Any settlement against a licensee executed pursuant to this
40 section shall be considered discipline and a public record and

1 shall be posted on the applicable board's Internet Web site. Any
2 settlement against an applicant executed pursuant to this section
3 shall be considered a public record and shall be posted on the
4 applicable board's Internet Web site.

5 (e) The executive officer shall, at scheduled board meetings,
6 report to the board the number of proposed settlement agreements
7 adopted pursuant to this section.

8 SEC. 137. Section 3769.6 is added to the Business and
9 Professions Code, to read:

10 3769.6. (a) The license of a licensee shall be suspended
11 automatically during any time that the licensee is incarcerated
12 after conviction of a felony, regardless of whether the conviction
13 has been appealed. The board shall, immediately upon receipt of
14 the certified copy of the record of conviction, determine whether
15 the license of the licensee has been automatically suspended by
16 virtue of his or her incarceration, and if so, the duration of that
17 suspension. The board shall notify the licensee in writing of the
18 license suspension and of his or her right to elect to have the issue
19 of penalty heard as provided in subdivision (d).

20 (b) Upon receipt of the certified copy of the record of conviction,
21 if after a hearing before an administrative law judge from the
22 Office of Administrative Hearings it is determined that the felony
23 for which the licensee was convicted was substantially related to
24 the qualifications, functions, or duties of a licensee, the board
25 shall suspend the license until the time for appeal has elapsed, if
26 no appeal has been taken, or until the judgment of conviction has
27 been affirmed on appeal or has otherwise become final, and until
28 further order of the board.

29 (c) Notwithstanding subdivision (b), a conviction of a charge
30 of violating any federal statute or regulation or any statute or
31 regulation of this state, regulating dangerous drugs or controlled
32 substances, or a conviction of Section 187, 261, 262, or 288 of the
33 Penal Code, shall be conclusively presumed to be substantially
34 related to the qualifications, functions, or duties of a licensee and
35 no hearing shall be held on this issue. However, upon its own
36 motion or for good cause shown, the board may decline to impose
37 or may set aside the suspension when it appears to be in the interest
38 of justice to do so, with due regard to maintaining the integrity of,
39 and confidence in, the practice regulated by the board.

1 (d) (1) Discipline may be ordered against a licensee in
2 accordance with the statutes and regulations of the board when
3 the time for appeal has elapsed, the judgment of conviction has
4 been affirmed on appeal, or an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent
6 order under Section 1203.4 of the Penal Code allowing the person
7 to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, setting aside the verdict of guilty, or dismissing the
9 accusation, complaint, information, or indictment.

10 (2) The issue of penalty shall be heard by an administrative law
11 judge from the Office of Administrative Hearings. The hearing
12 shall not be had until the judgment of conviction has become final
13 or, irrespective of a subsequent order under Section 1203.4 of the
14 Penal Code, an order granting probation has been made
15 suspending the imposition of sentence; except that a licensee may,
16 at his or her option, elect to have the issue of penalty decided
17 before those time periods have elapsed. Where the licensee so
18 elects, the issue of penalty shall be heard in the manner described
19 in subdivision (b) at the hearing to determine whether the
20 conviction was substantially related to the qualifications, functions,
21 or duties of a licensee. If the conviction of a licensee who has made
22 this election is overturned on appeal, any discipline ordered
23 pursuant to this section shall automatically cease. Nothing in this
24 subdivision shall prohibit the board from pursuing disciplinary
25 action based on any cause other than the overturned conviction.

26 (e) The record of the proceedings resulting in a conviction,
27 including a transcript of the testimony in those proceedings, may
28 be received in evidence.

29 (f) Any other provision of law setting forth a procedure for the
30 suspension or revocation of a license issued by the board shall not
31 apply to proceedings conducted pursuant to this section.

32 SEC. 138. Section 3769.7 is added to the Business and
33 Professions Code, to read:

34 3769.7. (a) Except as otherwise provided, any proposed
35 decision or decision issued in accordance with the procedures set
36 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
37 Division 3 of Title 2 of the Government Code, that contains any
38 finding of fact that the licensee engaged in any act of sexual contact
39 with a patient, as defined in subdivision (c) of Section 729, or any
40 finding that the licensee has committed a sex offense, shall contain

1 an order revoking the license. The proposed decision shall not
2 contain any order staying the revocation of the licensee.

3 (b) As used in this section, the term sex offense shall mean any
4 of the following:

5 (1) Any offense for which registration is required by Section
6 290 of the Penal Code or a finding that a person committed such
7 an act.

8 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
9 or 647(a) or (d) of the Penal Code or a finding that a person
10 committed such an act.

11 (3) Any attempt to commit any of the offenses specified in this
12 section.

13 (4) Any offense committed or attempted in any other state or
14 against the laws of the United States which, if committed or
15 attempted in this state, would have been punishable as one or more
16 of the offenses specified in this section.

17 SEC. 139. Section 3769.8 is added to the Business and
18 Professions Code, to read:

19 3769.8. (a) Except as otherwise provided, with regard to an
20 individual who is required to register as a sex offender pursuant
21 to Section 290 of the Penal Code, or the equivalent in another
22 state or territory, under military law, or under federal law, the
23 board shall be subject to the following requirements:

24 (1) The board shall deny an application by the individual for
25 licensure in accordance with the procedures set forth in Chapter
26 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
27 2 of the Government Code.

28 (2) If the individual is licensed under this chapter, the board
29 shall promptly revoke the license of the individual in accordance
30 with the procedures set forth in Chapter 5 (commencing with
31 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
32 Code. The board shall not stay the revocation and place the license
33 on probation.

34 (3) The board shall not reinstate or reissue the individual's
35 license. The board shall not issue a stay of license denial nor place
36 the license on probation.

37 (b) This section shall not apply to any of the following:

38 (1) An individual who has been relieved under Section 290.5 of
39 the Penal Code of his or her duty to register as a sex offender, or
40 whose duty to register has otherwise been formally terminated

1 under California law or the law of the jurisdiction that requires
2 his or her registration as a sex offender.

3 (2) An individual who is required to register as a sex offender
4 pursuant to Section 290 of the Penal Code solely because of a
5 misdemeanor conviction under Section 314 of the Penal Code.
6 However, nothing in this paragraph shall prohibit the board from
7 exercising its discretion to discipline a licensee under any other
8 provision of state law based upon the licensee's conviction under
9 Section 314 of the Penal Code.

10 (3) Any administrative adjudication proceeding under Chapter
11 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
12 2 of the Government Code that is fully adjudicated prior to January
13 1, 2008. A petition for reinstatement of a revoked or surrendered
14 license shall be considered a new proceeding for purposes of this
15 paragraph, and the prohibition against reinstating a license to an
16 individual who is required to register as a sex offender shall be
17 applicable.

18 SEC. 140. Section 3769.9 is added to the Business and
19 Professions Code, to read:

20 3769.9. Unless otherwise provided, on or after July 1, 2013,
21 the board shall post on its Internet Web site the following
22 information in its possession, custody, or control regarding every
23 licensee for which the board licenses:

24 (a) With regard to the status of every license, whether or not
25 the licensee or former licensee is in good standing, subject to a
26 temporary restraining order, subject to an interim suspension
27 order, subject to a restriction or cease practice ordered pursuant
28 to Section 23 of the Penal Code, or subject to any of the
29 enforcement actions described in Section 803.1.

30 (b) With regard to prior discipline of a licensee, whether or not
31 the licensee or former licensee has been subject to discipline by
32 the board or by the board of another state or jurisdiction, as
33 described in Section 803.1.

34 (c) Any felony conviction of a licensee reported to the board.

35 (d) All current accusations filed by the Attorney General,
36 including those accusations that are on appeal. For purposes of
37 this paragraph, "current accusation" means an accusation that
38 has not been dismissed, withdrawn, or settled, and has not been
39 finally decided upon by an administrative law judge and the board
40 unless an appeal of that decision is pending.

1 (e) Any malpractice judgment or arbitration award imposed
2 against a licensee and reported to the healing arts board.

3 (f) Any hospital disciplinary action imposed against a licensee
4 that resulted in the termination or revocation of a licensee's
5 hospital staff privileges for a medical disciplinary cause or reason
6 pursuant to Section 805.

7 (g) Any misdemeanor conviction of a licensee that results in a
8 disciplinary action or an accusation that is not subsequently
9 withdrawn or dismissed.

10 (h) Appropriate disclaimers and explanatory statements to
11 accompany the above information, including an explanation of
12 what types of information are not disclosed. These disclaimers
13 and statements shall be developed by the board and shall be
14 adopted by regulation.

15 (i) The information provided on the Internet shall be in
16 accordance with the California Public Records Act (Chapter 3.5
17 (commencing with Section 6250) of Division 7 of Title 1 of the
18 Government Code) and the Information Practices Act of 1977
19 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
20 of Division 3 of the Civil Code) and shall comply with the
21 Department of Consumer Affairs Guidelines for Access to Public
22 Records.

23 (j) Information provided on the Internet may not include
24 personal information, unless otherwise provided pursuant to this
25 chapter, including the home telephone number, date of birth, or
26 social security number. The information may not include the
27 licensee's address, but may include the city and county of the
28 licensee's address of record.

29 SEC. 141. Section 3796.10 is added to the Business and
30 Professions Code, to read:

31 3796.10. (a) Unless otherwise provided, if a licensee possesses
32 a license or is otherwise authorized to practice in any state other
33 than California or by any agency of the federal government and
34 that license or authority is suspended or revoked outright, the
35 California license of the licensee shall be suspended automatically
36 for the duration of the suspension or revocation, unless terminated
37 or rescinded as provided in subdivision (c). The healing arts board
38 shall notify the licensee of the license suspension and of his or her
39 right to have the issue of penalty heard as provided in this section.

1 (b) Upon its own motion or for good cause shown, a healing
2 arts board may decline to impose or may set aside the suspension
3 when it appears to be in the interest of justice to do so, with due
4 regard to maintaining the integrity of, and confidence in, the
5 specific healing art.

6 (c) The issue of penalty shall be heard by an administrative law
7 judge sitting alone or with a panel of the board, in the discretion
8 of the board. A licensee may request a hearing on the penalty and
9 that hearing shall be held within 90 days from the date of the
10 request. If the order suspending or revoking the license or authority
11 to practice is overturned on appeal, any discipline ordered
12 pursuant to this section shall automatically cease. Upon a showing
13 to the administrative law judge or panel by the licensee that the
14 out-of-state action is not a basis for discipline in California, the
15 suspension shall be rescinded. If an accusation for permanent
16 discipline is not filed within 90 days of the suspension imposed
17 pursuant to this section, the suspension shall automatically
18 terminate.

19 (d) The record of the proceedings that resulted in the suspension
20 or revocation of the licensee's out-of-state license or authority to
21 practice, including a transcript of the testimony therein, may be
22 received in evidence.

23 (e) This section shall not apply to a licensee who maintains his
24 or her primary practice in California, as evidenced by having
25 maintained a practice in this state for not less than one year
26 immediately preceding the date of suspension or revocation.
27 Nothing in this section shall preclude a licensee's license from
28 being suspended pursuant to any other provision of law.

29 (f) This section shall not apply to a licensee whose license has
30 been surrendered, whose only discipline is a medical staff
31 disciplinary action at a federal hospital and not for medical
32 disciplinary cause or reason as that term is defined in Section 805,
33 or whose revocation or suspension has been stayed, even if the
34 licensee remains subject to terms of probation or other discipline.

35 (g) This section shall not apply to a suspension or revocation
36 imposed by a state that is based solely on the prior discipline of
37 the licensee by another state.

38 (h) The other provisions of this article setting forth a procedure
39 for the suspension or revocation of a licensee's license or
40 certificate shall not apply to summary suspensions issued pursuant

1 to this section. If a summary suspension has been issued pursuant
2 to this section, the licensee may request that the hearing on the
3 penalty conducted pursuant to subdivision (c) be held at the same
4 time as a hearing on the accusation.

5 (i) A board that complies with Section 2310 shall not be subject
6 to the requirements of this section.

7 SEC. 142. Section 4316 is added to the Business and
8 Professions Code, to read:

9 4316. (a) The board may delegate to its executive officer the
10 authority to adopt a proposed default decision where an
11 administrative action to revoke a license has been filed and the
12 licensee has failed to file a notice of defense or to appear at the
13 hearing and a proposed default decision revoking the license has
14 been issued.

15 (b) The board may delegate to its executive officer the authority
16 to adopt a proposed settlement agreement where an administrative
17 action to revoke a license has been filed by the board and the
18 licensee has agreed to the revocation or surrender of his or her
19 license.

20 (c) The executive officer shall, at scheduled board meetings,
21 report to the board the number of proposed default decisions or
22 proposed settlement agreements adopted pursuant to this section.

23 SEC. 143. Section 4316.1 is added to the Business and
24 Professions Code, to read:

25 4316.1. (a) Notwithstanding Section 11415.60 of the
26 Government Code, the board may enter into a settlement with a
27 licensee or applicant in lieu of the issuance of an accusation or
28 statement of issues against that licensee or applicant, as applicable.

29 (b) The settlement shall include language identifying the factual
30 basis for the action being taken and a list of the statutes or
31 regulations violated.

32 (c) A person who enters a settlement pursuant to this section is
33 not precluded from filing a petition, in the timeframe permitted by
34 law, to modify the terms of the settlement or petition for early
35 termination of probation, if probation is part of the settlement.

36 (d) Any settlement against a licensee executed pursuant to this
37 section shall be considered discipline and a public record and
38 shall be posted on the applicable board's Internet Web site. Any
39 settlement against an applicant executed pursuant to this section

1 shall be considered a public record and shall be posted on the
2 applicable board's Internet Web site.

3 (e) The executive officer shall, at scheduled board meetings,
4 report to the board the number of proposed settlement agreements
5 adopted pursuant to this section.

6 SEC. 144. Section 4316.2 is added to the Business and
7 Professions Code, to read:

8 4316.2. (a) The license of a licensee shall be suspended
9 automatically during any time that the licensee is incarcerated
10 after conviction of a felony, regardless of whether the conviction
11 has been appealed. The board shall, immediately upon receipt of
12 the certified copy of the record of conviction, determine whether
13 the license of the licensee has been automatically suspended by
14 virtue of his or her incarceration, and if so, the duration of that
15 suspension. The board shall notify the licensee in writing of the
16 license suspension and of his or her right to elect to have the issue
17 of penalty heard as provided in subdivision (d).

18 (b) Upon receipt of the certified copy of the record of conviction,
19 if after a hearing before an administrative law judge from the
20 Office of Administrative Hearings it is determined that the felony
21 for which the licensee was convicted was substantially related to
22 the qualifications, functions, or duties of a licensee, the board
23 shall suspend the license until the time for appeal has elapsed, if
24 no appeal has been taken, or until the judgment of conviction has
25 been affirmed on appeal or has otherwise become final, and until
26 further order of the board.

27 (c) Notwithstanding subdivision (b), a conviction of a charge
28 of violating any federal statute or regulation or any statute or
29 regulation of this state, regulating dangerous drugs or controlled
30 substances, or a conviction of Section 187, 261, 262, or 288 of the
31 Penal Code, shall be conclusively presumed to be substantially
32 related to the qualifications, functions, or duties of a licensee and
33 no hearing shall be held on this issue. However, upon its own
34 motion or for good cause shown, the board may decline to impose
35 or may set aside the suspension when it appears to be in the interest
36 of justice to do so, with due regard to maintaining the integrity of,
37 and confidence in, the practice regulated by the board.

38 (d) (1) Discipline may be ordered against a licensee in
39 accordance with the statutes and regulations of the board when
40 the time for appeal has elapsed, the judgment of conviction has

1 been affirmed on appeal, or an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent
3 order under Section 1203.4 of the Penal Code allowing the person
4 to withdraw his or her plea of guilty and to enter a plea of not
5 guilty, setting aside the verdict of guilty, or dismissing the
6 accusation, complaint, information, or indictment.

7 (2) The issue of penalty shall be heard by an administrative law
8 judge from the Office of Administrative Hearings. The hearing
9 shall not be had until the judgment of conviction has become final
10 or, irrespective of a subsequent order under Section 1203.4 of the
11 Penal Code, an order granting probation has been made
12 suspending the imposition of sentence; except that a licensee may,
13 at his or her option, elect to have the issue of penalty decided
14 before those time periods have elapsed. Where the licensee so
15 elects, the issue of penalty shall be heard in the manner described
16 in subdivision (b) at the hearing to determine whether the
17 conviction was substantially related to the qualifications, functions,
18 or duties of a licensee. If the conviction of a licensee who has made
19 this election is overturned on appeal, any discipline ordered
20 pursuant to this section shall automatically cease. Nothing in this
21 subdivision shall prohibit the board from pursuing disciplinary
22 action based on any cause other than the overturned conviction.

23 (e) The record of the proceedings resulting in a conviction,
24 including a transcript of the testimony in those proceedings, may
25 be received in evidence.

26 (f) Any other provision of law setting forth a procedure for the
27 suspension or revocation of a license issued by the board shall not
28 apply to proceedings conducted pursuant to this section.

29 SEC. 145. Section 4316.3 is added to the Business and
30 Professions Code, to read:

31 4316.3. (a) Except as otherwise provided, any proposed
32 decision or decision issued in accordance with the procedures set
33 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
34 Division 3 of Title 2 of the Government Code, that contains any
35 finding of fact that the licensee engaged in any act of sexual contact
36 with a patient, as defined in subdivision (c) of Section 729, or any
37 finding that the licensee has committed a sex offense, shall contain
38 an order revoking the license. The proposed decision shall not
39 contain any order staying the revocation of the licensee.

1 (b) As used in this section, the term sex offense shall mean any
2 of the following:

3 (1) Any offense for which registration is required by Section
4 290 of the Penal Code or a finding that a person committed such
5 an act.

6 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
7 or 647(a) or (d) of the Penal Code or a finding that a person
8 committed such an act.

9 (3) Any attempt to commit any of the offenses specified in this
10 section.

11 (4) Any offense committed or attempted in any other state or
12 against the laws of the United States which, if committed or
13 attempted in this state, would have been punishable as one or more
14 of the offenses specified in this section.

15 SEC. 146. Section 4316.4 is added to the Business and
16 Professions Code, to read:

17 4316.4. (a) Except as otherwise provided, with regard to an
18 individual who is required to register as a sex offender pursuant
19 to Section 290 of the Penal Code, or the equivalent in another
20 state or territory, under military law, or under federal law, the
21 board shall be subject to the following requirements:

22 (1) The board shall deny an application by the individual for
23 licensure in accordance with the procedures set forth in Chapter
24 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
25 2 of the Government Code.

26 (2) If the individual is licensed under this chapter, the board
27 shall promptly revoke the license of the individual in accordance
28 with the procedures set forth in Chapter 5 (commencing with
29 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
30 Code. The board shall not stay the revocation and place the license
31 on probation.

32 (3) The board shall not reinstate or reissue the individual's
33 license. The board shall not issue a stay of license denial nor place
34 the license on probation.

35 (b) This section shall not apply to any of the following:

36 (1) An individual who has been relieved under Section 290.5 of
37 the Penal Code of his or her duty to register as a sex offender, or
38 whose duty to register has otherwise been formally terminated
39 under California law or the law of the jurisdiction that requires
40 his or her registration as a sex offender.

1 (2) *An individual who is required to register as a sex offender*
2 *pursuant to Section 290 of the Penal Code solely because of a*
3 *misdemeanor conviction under Section 314 of the Penal Code.*
4 *However, nothing in this paragraph shall prohibit the board from*
5 *exercising its discretion to discipline a licensee under any other*
6 *provision of state law based upon the licensee's conviction under*
7 *Section 314 of the Penal Code.*

8 (3) *Any administrative adjudication proceeding under Chapter*
9 *5 (commencing with Section 11500) of Part 1 of Division 3 of Title*
10 *2 of the Government Code that is fully adjudicated prior to January*
11 *1, 2008. A petition for reinstatement of a revoked or surrendered*
12 *license shall be considered a new proceeding for purposes of this*
13 *paragraph, and the prohibition against reinstating a license to an*
14 *individual who is required to register as a sex offender shall be*
15 *applicable.*

16 SEC. 147. *Section 4316.5 is added to the Business and*
17 *Professions Code, to read:*

18 4316.5. *Unless otherwise provided, on or after July 1, 2013,*
19 *the board shall post on its Internet Web site the following*
20 *information in its possession, custody, or control regarding every*
21 *licensee for which the board licenses:*

22 (a) *With regard to the status of every license, whether or not*
23 *the licensee or former licensee is in good standing, subject to a*
24 *temporary restraining order, subject to an interim suspension*
25 *order, subject to a restriction or cease practice ordered pursuant*
26 *to Section 23 of the Penal Code, or subject to any of the*
27 *enforcement actions described in Section 803.1.*

28 (b) *With regard to prior discipline of a licensee, whether or not*
29 *the licensee or former licensee has been subject to discipline by*
30 *the board or by the board of another state or jurisdiction, as*
31 *described in Section 803.1.*

32 (c) *Any felony conviction of a licensee reported to the board.*

33 (d) *All current accusations filed by the Attorney General,*
34 *including those accusations that are on appeal. For purposes of*
35 *this paragraph, "current accusation" means an accusation that*
36 *has not been dismissed, withdrawn, or settled, and has not been*
37 *finally decided upon by an administrative law judge and the board*
38 *unless an appeal of that decision is pending.*

39 (e) *Any malpractice judgment or arbitration award imposed*
40 *against a licensee and reported to the healing arts board.*

1 (f) Any hospital disciplinary action imposed against a licensee
2 that resulted in the termination or revocation of a licensee's
3 hospital staff privileges for a medical disciplinary cause or reason
4 pursuant to Section 805.

5 (g) Any misdemeanor conviction of a licensee that results in a
6 disciplinary action or an accusation that is not subsequently
7 withdrawn or dismissed.

8 (h) Appropriate disclaimers and explanatory statements to
9 accompany the above information, including an explanation of
10 what types of information are not disclosed. These disclaimers
11 and statements shall be developed by the board and shall be
12 adopted by regulation.

13 (i) The information provided on the Internet shall be in
14 accordance with the California Public Records Act (Chapter 3.5
15 (commencing with Section 6250) of Division 7 of Title 1 of the
16 Government Code) and the Information Practices Act of 1977
17 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
18 of Division 3 of the Civil Code) and shall comply with the
19 Department of Consumer Affairs Guidelines for Access to Public
20 Records.

21 (j) Information provided on the Internet may not include
22 personal information, unless otherwise provided pursuant to this
23 chapter, including the home telephone number, date of birth, or
24 social security number. The information may not include the
25 licensee's address, but may include the city and county of the
26 licensee's address of record.

27 SEC. 148. Section 4316.6 is added to the Business and
28 Professions Code, to read:

29 4316.6. (a) Unless otherwise provided, if a licensee possesses
30 a license or is otherwise authorized to practice in any state other
31 than California or by any agency of the federal government and
32 that license or authority is suspended or revoked outright, the
33 California license of the licensee shall be suspended automatically
34 for the duration of the suspension or revocation, unless terminated
35 or rescinded as provided in subdivision (c). The healing arts board
36 shall notify the licensee of the license suspension and of his or her
37 right to have the issue of penalty heard as provided in this section.

38 (b) Upon its own motion or for good cause shown, a healing
39 arts board may decline to impose or may set aside the suspension
40 when it appears to be in the interest of justice to do so, with due

1 regard to maintaining the integrity of, and confidence in, the
2 specific healing art.

3 (c) The issue of penalty shall be heard by an administrative law
4 judge sitting alone or with a panel of the board, in the discretion
5 of the board. A licensee may request a hearing on the penalty and
6 that hearing shall be held within 90 days from the date of the
7 request. If the order suspending or revoking the license or authority
8 to practice is overturned on appeal, any discipline ordered
9 pursuant to this section shall automatically cease. Upon a showing
10 to the administrative law judge or panel by the licensee that the
11 out-of-state action is not a basis for discipline in California, the
12 suspension shall be rescinded. If an accusation for permanent
13 discipline is not filed within 90 days of the suspension imposed
14 pursuant to this section, the suspension shall automatically
15 terminate.

16 (d) The record of the proceedings that resulted in the suspension
17 or revocation of the licensee's out-of-state license or authority to
18 practice, including a transcript of the testimony therein, may be
19 received in evidence.

20 (e) This section shall not apply to a licensee who maintains his
21 or her primary practice in California, as evidenced by having
22 maintained a practice in this state for not less than one year
23 immediately preceding the date of suspension or revocation.
24 Nothing in this section shall preclude a licensee's license from
25 being suspended pursuant to any other provision of law.

26 (f) This section shall not apply to a licensee whose license has
27 been surrendered, whose only discipline is a medical staff
28 disciplinary action at a federal hospital and not for medical
29 disciplinary cause or reason as that term is defined in Section 805,
30 or whose revocation or suspension has been stayed, even if the
31 licensee remains subject to terms of probation or other discipline.

32 (g) This section shall not apply to a suspension or revocation
33 imposed by a state that is based solely on the prior discipline of
34 the licensee by another state.

35 (h) The other provisions of this article setting forth a procedure
36 for the suspension or revocation of a licensee's license or
37 certificate shall not apply to summary suspensions issued pursuant
38 to this section. If a summary suspension has been issued pursuant
39 to this section, the licensee may request that the hearing on the

1 penalty conducted pursuant to subdivision (c) be held at the same
2 time as a hearing on the accusation.

3 (i) A board that complies with Section 2310 shall not be subject
4 to the requirements of this section.

5 SEC. 149. Section 4375 is added to the Business and
6 Professions Code, to read:

7 4375. (a) It is the intent of the Legislature, through a request
8 in 2012 from the Joint Legislative Audit Committee, that the Bureau
9 of State Audits conduct a thorough performance audit of the
10 Pharmacists Recovery Program to evaluate the effectiveness and
11 efficiency of the program, and make recommendations regarding
12 the continuation of the program and any changes or reforms
13 required to ensure that pharmacists and intern pharmacists
14 participating in the program are appropriately monitored, and
15 the public is protected from pharmacists and intern pharmacists
16 who are impaired due to alcohol or drug abuse or mental or
17 physical illness. The audit shall be completed by January 1, 2013.
18 The board and its staff shall cooperate with the audit, and the
19 board shall provide data, information, and case files as requested
20 by the auditor to perform all of its duties. The provision of
21 confidential data, information, and case files by the board to the
22 auditor shall not constitute a waiver of any exemption from
23 disclosure or discovery or of any confidentiality protection or
24 privilege otherwise provided by law that is applicable to the data,
25 information, or case files.

26 (b) It is the intent of the Legislature that the audit shall be paid
27 for with funds from the Pharmacy Board Contingent Fund.

28 SEC. 150. Section 4526 is added to the Business and
29 Professions Code, to read:

30 4526. (a) The board may delegate to its executive officer the
31 authority to adopt a proposed default decision where an
32 administrative action to revoke a license has been filed and the
33 licensee has failed to file a notice of defense or to appear at the
34 hearing and a proposed default decision revoking the license has
35 been issued.

36 (b) The board may delegate to its executive officer the authority
37 to adopt a proposed settlement agreement where an administrative
38 action to revoke a license has been filed by the board and the
39 licensee has agreed to the revocation or surrender of his or her
40 license.

1 (c) *The executive officer shall, at scheduled board meetings,*
2 *report to the board the number of proposed default decisions or*
3 *proposed settlement agreements adopted pursuant to this section.*

4 SEC. 151. *Section 4526.1 is added to the Business and*
5 *Professions Code, to read:*

6 4526.1. (a) *Notwithstanding Section 11415.60 of the*
7 *Government Code, the board may enter into a settlement with a*
8 *licensee or applicant in lieu of the issuance of an accusation or*
9 *statement of issues against that licensee or applicant, as applicable.*

10 (b) *The settlement shall include language identifying the factual*
11 *basis for the action being taken and a list of the statutes or*
12 *regulations violated.*

13 (c) *A person who enters a settlement pursuant to this section is*
14 *not precluded from filing a petition, in the timeframe permitted by*
15 *law, to modify the terms of the settlement or petition for early*
16 *termination of probation, if probation is part of the settlement.*

17 (d) *Any settlement against a licensee executed pursuant to this*
18 *section shall be considered discipline and a public record and*
19 *shall be posted on the applicable board's Internet Web site. Any*
20 *settlement against an applicant executed pursuant to this section*
21 *shall be considered a public record and shall be posted on the*
22 *applicable board's Internet Web site.*

23 (e) *The executive officer shall, at scheduled board meetings,*
24 *report to the board the number of proposed settlement agreements*
25 *adopted pursuant to this section.*

26 SEC. 152. *Section 4526.2 is added to the Business and*
27 *Professions Code, to read:*

28 4526.2. (a) *The license of a licensee shall be suspended*
29 *automatically during any time that the licensee is incarcerated*
30 *after conviction of a felony, regardless of whether the conviction*
31 *has been appealed. The board shall, immediately upon receipt of*
32 *the certified copy of the record of conviction, determine whether*
33 *the license of the licensee has been automatically suspended by*
34 *virtue of his or her incarceration, and if so, the duration of that*
35 *suspension. The board shall notify the licensee in writing of the*
36 *license suspension and of his or her right to elect to have the issue*
37 *of penalty heard as provided in subdivision (d).*

38 (b) *Upon receipt of the certified copy of the record of conviction,*
39 *if after a hearing before an administrative law judge from the*
40 *Office of Administrative Hearings it is determined that the felony*

1 for which the licensee was convicted was substantially related to
2 the qualifications, functions, or duties of a licensee, the board
3 shall suspend the license until the time for appeal has elapsed, if
4 no appeal has been taken, or until the judgment of conviction has
5 been affirmed on appeal or has otherwise become final, and until
6 further order of the board.

7 (c) Notwithstanding subdivision (b), a conviction of a charge
8 of violating any federal statute or regulation or any statute or
9 regulation of this state, regulating dangerous drugs or controlled
10 substances, or a conviction of Section 187, 261, 262, or 288 of the
11 Penal Code, shall be conclusively presumed to be substantially
12 related to the qualifications, functions, or duties of a licensee and
13 no hearing shall be held on this issue. However, upon its own
14 motion or for good cause shown, the board may decline to impose
15 or may set aside the suspension when it appears to be in the interest
16 of justice to do so, with due regard to maintaining the integrity of,
17 and confidence in, the practice regulated by the board.

18 (d) (1) Discipline may be ordered against a licensee in
19 accordance with the statutes and regulations of the board when
20 the time for appeal has elapsed, the judgment of conviction has
21 been affirmed on appeal, or an order granting probation is made
22 suspending the imposition of sentence, irrespective of a subsequent
23 order under Section 1203.4 of the Penal Code allowing the person
24 to withdraw his or her plea of guilty and to enter a plea of not
25 guilty, setting aside the verdict of guilty, or dismissing the
26 accusation, complaint, information, or indictment.

27 (2) The issue of penalty shall be heard by an administrative law
28 judge from the Office of Administrative Hearings. The hearing
29 shall not be had until the judgment of conviction has become final
30 or, irrespective of a subsequent order under Section 1203.4 of the
31 Penal Code, an order granting probation has been made
32 suspending the imposition of sentence; except that a licensee may,
33 at his or her option, elect to have the issue of penalty decided
34 before those time periods have elapsed. Where the licensee so
35 elects, the issue of penalty shall be heard in the manner described
36 in subdivision (b) at the hearing to determine whether the
37 conviction was substantially related to the qualifications, functions,
38 or duties of a licensee. If the conviction of a licensee who has made
39 this election is overturned on appeal, any discipline ordered
40 pursuant to this section shall automatically cease. Nothing in this

1 subdivision shall prohibit the board from pursuing disciplinary
2 action based on any cause other than the overturned conviction.

3 (e) The record of the proceedings resulting in a conviction,
4 including a transcript of the testimony in those proceedings, may
5 be received in evidence.

6 (f) Any other provision of law setting forth a procedure for the
7 suspension or revocation of a license issued by the board shall not
8 apply to proceedings conducted pursuant to this section.

9 SEC. 153. Section 4526.3 is added to the Business and
10 Professions Code, to read:

11 4526.3. (a) Except as otherwise provided, any proposed
12 decision or decision issued in accordance with the procedures set
13 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
14 Division 3 of Title 2 of the Government Code, that contains any
15 finding of fact that the licensee engaged in any act of sexual contact
16 with a patient, as defined in subdivision (c) of Section 729, or any
17 finding that the licensee has committed a sex offense, shall contain
18 an order revoking the license. The proposed decision shall not
19 contain any order staying the revocation of the licensee.

20 (b) As used in this section, the term sex offense shall mean any
21 of the following:

22 (1) Any offense for which registration is required by Section
23 290 of the Penal Code or a finding that a person committed such
24 an act.

25 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
26 or 647(a) or (d) of the Penal Code or a finding that a person
27 committed such an act.

28 (3) Any attempt to commit any of the offenses specified in this
29 section.

30 (4) Any offense committed or attempted in any other state or
31 against the laws of the United States which, if committed or
32 attempted in this state, would have been punishable as one or more
33 of the offenses specified in this section.

34 SEC. 154. Section 4526.4 is added to the Business and
35 Professions Code, to read:

36 4526.4. (a) Except as otherwise provided, with regard to an
37 individual who is required to register as a sex offender pursuant
38 to Section 290 of the Penal Code, or the equivalent in another
39 state or territory, under military law, or under federal law, the
40 board shall be subject to the following requirements:

1 (1) The board shall deny an application by the individual for
2 licensure in accordance with the procedures set forth in Chapter
3 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
4 2 of the Government Code.

5 (2) If the individual is licensed under this chapter, the board
6 shall promptly revoke the license of the individual in accordance
7 with the procedures set forth in Chapter 5 (commencing with
8 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
9 Code. The board shall not stay the revocation and place the license
10 on probation.

11 (3) The board shall not reinstate or reissue the individual's
12 license. The board shall not issue a stay of license denial nor place
13 the license on probation.

14 (b) This section shall not apply to any of the following:

15 (1) An individual who has been relieved under Section 290.5 of
16 the Penal Code of his or her duty to register as a sex offender, or
17 whose duty to register has otherwise been formally terminated
18 under California law or the law of the jurisdiction that requires
19 his or her registration as a sex offender.

20 (2) An individual who is required to register as a sex offender
21 pursuant to Section 290 of the Penal Code solely because of a
22 misdemeanor conviction under Section 314 of the Penal Code.
23 However, nothing in this paragraph shall prohibit the board from
24 exercising its discretion to discipline a licensee under any other
25 provision of state law based upon the licensee's conviction under
26 Section 314 of the Penal Code.

27 (3) Any administrative adjudication proceeding under Chapter
28 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
29 2 of the Government Code that is fully adjudicated prior to January
30 1, 2008. A petition for reinstatement of a revoked or surrendered
31 license shall be considered a new proceeding for purposes of this
32 paragraph, and the prohibition against reinstating a license to an
33 individual who is required to register as a sex offender shall be
34 applicable.

35 SEC. 155. Section 4526.5 is added to the Business and
36 Professions Code, to read:

37 4526.5. (a) Notwithstanding any other provision of law making
38 a communication between a licensee and his or her patients a
39 privileged communication, those provisions shall not apply to
40 investigations or proceedings conducted by the board. Members

1 of the board, deputies, employees, agents, the office of the Attorney
2 General, and representatives of the board shall keep in confidence
3 during the course of investigations the names of any patients whose
4 records are reviewed and may not disclose or reveal those names,
5 except as is necessary during the course of an investigation, unless
6 and until proceedings are instituted. The authority under this
7 subdivision to examine records of patients in the office of a licensee
8 is limited to records of patients who have complained to the board
9 about that licensee.

10 (b) Notwithstanding any other provision of law, the Attorney
11 General and his or her investigative agents, and the board and its
12 investigators and representatives may inquire into any alleged
13 violation of the laws under the jurisdiction of the board or any
14 other federal or state law, regulation, or rule relevant to the
15 practice regulated by the board, whichever is applicable, and may
16 inspect documents relevant to those investigations in accordance
17 with the following procedures:

18 (1) Any document relevant to an investigation may be inspected,
19 and copies may be obtained, where a patient provides written
20 authorization.

21 (2) Any document relevant to the business operations of a
22 licensee, and not involving medical records attributable to
23 identifiable patients, may be inspected and copied where relevant
24 to an investigation of a licensee.

25 (c) In all cases where documents are inspected or copies of
26 those documents are received, their acquisition or review shall be
27 arranged so as not to unnecessarily disrupt the medical and
28 business operations of the licensee or of the facility where the
29 records are kept or used.

30 (d) Where certified documents are lawfully requested from
31 licensees in accordance with this section by the Attorney General
32 or his or her agents or deputies, or investigators of any board, the
33 documents shall be provided within 10 business days of receipt of
34 the request, unless the licensee is unable to provide the certified
35 documents within this time period for good cause, including, but
36 not limited to, physical inability to access the records in the time
37 allowed due to illness or travel. Failure to produce requested
38 certified documents or copies thereof, after being informed of the
39 required deadline, shall constitute unprofessional conduct. A board
40 may use its authority to cite and fine a licensee for any violation

1 of this section. This remedy is in addition to any other authority
2 of the board to sanction a licensee for a delay in producing
3 requested records.

4 (e) Searches conducted of the office or medical facility of any
5 licensee shall not interfere with the recordkeeping format or
6 preservation needs of any licensee necessary for the lawful care
7 of patients.

8 (f) The licensee shall cooperate with the board in furnishing
9 information or assistance as may be required, including, but not
10 limited to, participation in an interview with investigators or
11 representatives of the healing arts board.

12 (g) This section shall not apply to a licensee who does not have
13 access to, and control over, certified medical records or other
14 types of documents that belong to or are controlled by a health
15 facility or clinic.

16 SEC. 156. Section 4526.6 is added to the Business and
17 Professions Code, to read:

18 4526.6. (a) (1) Notwithstanding any other provision of law,
19 a licensee who fails or refuses to comply with a request for the
20 certified medical records of a patient that is accompanied by that
21 patient's written authorization for release of records to a board
22 together with a notice citing this section and describing the
23 penalties for failure to comply with this section shall be required
24 to pay to the board a civil penalty of up to one thousand dollars
25 (\$1,000) per day for each day that the documents have not been
26 produced after the 15th day, up to ten thousand dollars (\$10,000),
27 unless the licensee is unable to provide the documents within this
28 time period for good cause.

29 (2) A health care facility shall comply with a request for the
30 certified medical records of a patient that is accompanied by that
31 patient's written authorization for release of records to a board
32 together with a notice citing this section and describing the
33 penalties for failure to comply with this section. Failure to provide
34 the authorizing patient's certified medical records to the board
35 within 15 days of receiving the request, authorization, and notice
36 shall subject the health care facility to a civil penalty, payable to
37 the healing arts board, of up to one thousand dollars (\$1,000) per
38 day for each day that the documents have not been produced after
39 the 15th day, up to ten thousand dollars (\$10,000), unless the
40 health care facility is unable to provide the documents within this

1 time period for good cause. This paragraph shall not require health
2 care facilities to assist the board in obtaining the patient's
3 authorization. The board shall pay the reasonable costs of copying
4 the certified medical records, but shall not be required to make
5 that payment prior to the production of the medical records.

6 (b) (1) A licensee who fails or refuses to comply with a court
7 order, issued in the enforcement of a subpoena, mandating the
8 release of records to the board, shall pay to the board a civil
9 penalty of up to one thousand dollars (\$1,000) per day for each
10 day that the documents have not been produced after the date by
11 which the court order requires the documents to be produced, up
12 to ten thousand dollars (\$10,000), unless it is determined that the
13 order is unlawful or invalid. Any statute of limitations applicable
14 to the filing of an accusation by the board shall be tolled during
15 the period the licensee is out of compliance with the court order
16 and during any related appeals.

17 (2) Any licensee who fails or refuses to comply with a court
18 order, issued in the enforcement of a subpoena, mandating the
19 release of records to a board is guilty of a misdemeanor punishable
20 by a fine payable to the board not to exceed five thousand dollars
21 (\$5,000). The fine shall be added to the licensee's renewal fee if
22 it is not paid by the next succeeding renewal date. Any statute of
23 limitations applicable to the filing of an accusation by the board
24 shall be tolled during the period the licensee is out of compliance
25 with the court order and during any related appeals.

26 (3) A health care facility that fails or refuses to comply with a
27 court order, issued in the enforcement of a subpoena, mandating
28 the release of patient records to the board, that is accompanied
29 by a notice citing this section and describing the penalties for
30 failure to comply with this section, shall pay to the board a civil
31 penalty of up to one thousand dollars (\$1,000) per day for each
32 day that the documents have not been produced, up to ten thousand
33 dollars (\$10,000), after the date by which the court order requires
34 the documents to be produced, unless it is determined that the
35 order is unlawful or invalid. Any statute of limitations applicable
36 to the filing of an accusation by the board against a licensee shall
37 be tolled during the period the health care facility is out of
38 compliance with the court order and during any related appeals.

39 (4) Any health care facility that fails or refuses to comply with
40 a court order, issued in the enforcement of a subpoena, mandating

1 the release of records to a healing arts board is guilty of a
2 misdemeanor punishable by a fine payable to the board not to
3 exceed five thousand dollars (\$5,000). Any statute of limitations
4 applicable to the filing of an accusation by the healing arts board
5 against a licensee shall be tolled during the period the health care
6 facility is out of compliance with the court order and during any
7 related appeals.

8 (c) Multiple acts by a licensee in violation of subdivision (b)
9 shall be punishable by a fine not to exceed five thousand dollars
10 (\$5,000) or by imprisonment in a county jail not exceeding six
11 months, or by both that fine and imprisonment. Multiple acts by
12 a health care facility in violation of subdivision (b) shall be
13 punishable by a fine not to exceed five thousand dollars (\$5,000),
14 shall be reported to the State Department of Public Health, and
15 shall be considered as grounds for disciplinary action with respect
16 to licensure, including suspension or revocation of the license or
17 certificate.

18 (d) A failure or refusal of a licensee to comply with a court
19 order, issued in the enforcement of a subpoena, mandating the
20 release of records to the healing arts board constitutes
21 unprofessional conduct and is grounds for suspension or revocation
22 of his or her license.

23 (e) Imposition of the civil penalties authorized by this section
24 shall be in accordance with the Administrative Procedure Act
25 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
26 2 of the Government Code). Any civil penalties paid to, or received
27 by, the board pursuant to this section shall be deposited into the
28 fund administered by the board.

29 (f) For purposes of this section, "certified medical records"
30 means a copy of the patient's medical records authenticated by
31 the licensee or health care facility, as appropriate, on a form
32 prescribed by the licensee's board.

33 (g) For purposes of this section, a "health care facility" means
34 a clinic or health facility licensed or exempt from licensure
35 pursuant to Division 2 (commencing with Section 1200) of the
36 Health and Safety Code.

37 (h) If a board complies with Section 1684.1, 2225.5, or 2969,
38 that board shall not be subject to the requirements of this section.

39 (i) This section shall not apply to a licensee who does not have
40 access to, or control over, certified medical records or other types

1 of documents that belong to or are controlled by a health facility
2 or clinic.

3 SEC. 157. Section 4526.8 is added to the Business and
4 Professions Code, to read:

5 4526.8. Unless otherwise provided, on or after July 1, 2013,
6 the board shall post on its Internet Web site the following
7 information, including the name and the license number, in its
8 possession, custody, or control regarding every licensee for which
9 the board licenses:

10 (a) With regard to the status of every license, whether or not
11 the licensee or former licensee is in good standing, subject to a
12 temporary restraining order, subject to an interim suspension
13 order, subject to a restriction or cease practice ordered pursuant
14 to Section 23 of the Penal Code, or subject to any of the
15 enforcement actions described in Section 803.1.

16 (b) With regard to prior discipline of a licensee, whether or not
17 the licensee or former licensee has been subject to discipline by
18 the board or by the board of another state or jurisdiction, as
19 described in Section 803.1.

20 (c) Any felony conviction of a licensee reported to the board.

21 (d) All current accusations filed by the Attorney General,
22 including those accusations that are on appeal. For purposes of
23 this paragraph, "current accusation" means an accusation that
24 has not been dismissed, withdrawn, or settled, and has not been
25 finally decided upon by an administrative law judge and the board
26 unless an appeal of that decision is pending.

27 (e) Any malpractice judgment or arbitration award imposed
28 against a licensee and reported to the board.

29 (f) Any hospital disciplinary action imposed against a licensee
30 that resulted in the termination or revocation of a licensee's
31 hospital staff privileges for a medical disciplinary cause or reason
32 pursuant to Section 4526.6 or 805.

33 (g) Any misdemeanor conviction of a licensee that results in a
34 disciplinary action or an accusation that is not subsequently
35 withdrawn or dismissed.

36 (h) Appropriate disclaimers and explanatory statements to
37 accompany the above information, including an explanation of
38 what types of information are not disclosed. These disclaimers
39 and statements shall be developed by the board and shall be
40 adopted by regulation.

1 (i) The information provided on the Internet shall be in
2 accordance with the California Public Records Act (Chapter 3.5
3 (commencing with Section 6250) of Division 7 of Title 1 of the
4 Government Code) and the Information Practices Act of 1977
5 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
6 of Division 3 of the Civil Code) and shall comply with the
7 Department of Consumer Affairs Guidelines for Access to Public
8 Records.

9 (j) Information provided on the Internet may not include
10 personal information, unless otherwise provided pursuant to this
11 chapter, including the home telephone number, date of birth, or
12 social security number. The information may not include the
13 licensee's address, but may include the city and county of the
14 licensee's address of record.

15 SEC. 158. Section 4526.9 is added to the Business and
16 Professions Code, to read:

17 4526.9. (a) Unless otherwise provided, if a licensee possesses
18 a license or is otherwise authorized to practice in any state other
19 than California or by any agency of the federal government and
20 that license or authority is suspended or revoked outright, the
21 California license of the licensee shall be suspended automatically
22 for the duration of the suspension or revocation, unless terminated
23 or rescinded as provided in subdivision (c). The healing arts board
24 shall notify the licensee of the license suspension and of his or her
25 right to have the issue of penalty heard as provided in this section.

26 (b) Upon its own motion or for good cause shown, the board
27 may decline to impose or may set aside the suspension when it
28 appears to be in the interest of justice to do so, with due regard
29 to maintaining the integrity of, and confidence in, the specific
30 healing art.

31 (c) The issue of penalty shall be heard by an administrative law
32 judge sitting alone or with a panel of the board, in the discretion
33 of the board. A licensee may request a hearing on the penalty and
34 that hearing shall be held within 90 days from the date of the
35 request. If the order suspending or revoking the license or authority
36 to practice is overturned on appeal, any discipline ordered
37 pursuant to this section shall automatically cease. Upon a showing
38 to the administrative law judge or panel by the licensee that the
39 out-of-state action is not a basis for discipline in California, the
40 suspension shall be rescinded. If an accusation for permanent

1 discipline is not filed within 90 days of the suspension imposed
2 pursuant to this section, the suspension shall automatically
3 terminate.

4 (d) The record of the proceedings that resulted in the suspension
5 or revocation of the licensee's out-of-state license or authority to
6 practice, including a transcript of the testimony therein, may be
7 received in evidence.

8 (e) This section shall not apply to a licensee who maintains his
9 or her primary practice in California, as evidenced by having
10 maintained a practice in this state for not less than one year
11 immediately preceding the date of suspension or revocation.
12 Nothing in this section shall preclude a licensee's license from
13 being suspended pursuant to any other provision of law.

14 (f) This section shall not apply to a licensee whose license has
15 been surrendered, whose only discipline is a medical staff
16 disciplinary action at a federal hospital and not for medical
17 disciplinary cause or reason as that term is defined in Section 805,
18 or whose revocation or suspension has been stayed, even if the
19 licensee remains subject to terms of probation or other discipline.

20 (g) This section shall not apply to a suspension or revocation
21 imposed by a state that is based solely on the prior discipline of
22 the licensee by another state.

23 (h) The other provisions of this article setting forth a procedure
24 for the suspension or revocation of a licensee's license or
25 certificate shall not apply to summary suspensions issued pursuant
26 to this section. If a summary suspension has been issued pursuant
27 to this section, the licensee may request that the hearing on the
28 penalty conducted pursuant to subdivision (c) be held at the same
29 time as a hearing on the accusation.

30 (i) A board that complies with Section 2310 shall not be subject
31 to the requirements of this section.

32 SEC. 159. Section 4888 is added to the Business and
33 Professions Code, to read:

34 4888. (a) The board may delegate to its executive officer the
35 authority to adopt a proposed default decision where an
36 administrative action to revoke a license has been filed and the
37 licensee has failed to file a notice of defense or to appear at the
38 hearing and a proposed default decision revoking the license has
39 been issued.

1 (b) The board may delegate to its executive officer the authority
2 to adopt a proposed settlement agreement where an administrative
3 action to revoke a license has been filed by the board and the
4 licensee has agreed to the revocation or surrender of his or her
5 license.

6 (c) The executive officer shall, at scheduled board meetings,
7 report to the board the number of proposed default decisions or
8 proposed settlement agreements adopted pursuant to this section.

9 SEC. 160. Section 4888.1 is added to the Business and
10 Professions Code, to read:

11 4888.1. (a) Notwithstanding Section 11415.60 of the
12 Government Code, the board may enter into a settlement with a
13 licensee or applicant in lieu of the issuance of an accusation or
14 statement of issues against that licensee or applicant, as applicable.

15 (b) The settlement shall include language identifying the factual
16 basis for the action being taken and a list of the statutes or
17 regulations violated.

18 (c) A person who enters a settlement pursuant to this section is
19 not precluded from filing a petition, in the timeframe permitted by
20 law, to modify the terms of the settlement or petition for early
21 termination of probation, if probation is part of the settlement.

22 (d) Any settlement against a licensee executed pursuant to this
23 section shall be considered discipline and a public record and
24 shall be posted on the applicable board's Internet Web site. Any
25 settlement against an applicant executed pursuant to this section
26 shall be considered a public record and shall be posted on the
27 applicable board's Internet Web site.

28 (e) The executive officer shall, at scheduled board meetings,
29 report to the board the number of proposed settlement agreements
30 adopted pursuant to this section.

31 SEC. 161. Section 4888.2 is added to the Business and
32 Professions Code, to read:

33 4888.2. (a) The license of a licensee shall be suspended
34 automatically during any time that the licensee is incarcerated
35 after conviction of a felony, regardless of whether the conviction
36 has been appealed. The board shall, immediately upon receipt of
37 the certified copy of the record of conviction, determine whether
38 the license of the licensee has been automatically suspended by
39 virtue of his or her incarceration, and if so, the duration of that
40 suspension. The board shall notify the licensee in writing of the

1 license suspension and of his or her right to elect to have the issue
2 of penalty heard as provided in subdivision (d).

3 (b) Upon receipt of the certified copy of the record of conviction,
4 if after a hearing before an administrative law judge from the
5 Office of Administrative Hearings it is determined that the felony
6 for which the licensee was convicted was substantially related to
7 the qualifications, functions, or duties of a licensee, the board
8 shall suspend the license until the time for appeal has elapsed, if
9 no appeal has been taken, or until the judgment of conviction has
10 been affirmed on appeal or has otherwise become final, and until
11 further order of the board.

12 (c) Notwithstanding subdivision (b), a conviction of a charge
13 of violating any federal statute or regulation or any statute or
14 regulation of this state, regulating dangerous drugs or controlled
15 substances, or a conviction of Section 187, 261, 262, or 288 of the
16 Penal Code, shall be conclusively presumed to be substantially
17 related to the qualifications, functions, or duties of a licensee and
18 no hearing shall be held on this issue. However, upon its own
19 motion or for good cause shown, the board may decline to impose
20 or may set aside the suspension when it appears to be in the interest
21 of justice to do so, with due regard to maintaining the integrity of,
22 and confidence in, the practice regulated by the board.

23 (d) (1) Discipline may be ordered against a licensee in
24 accordance with the statutes and regulations of the board when
25 the time for appeal has elapsed, the judgment of conviction has
26 been affirmed on appeal, or an order granting probation is made
27 suspending the imposition of sentence, irrespective of a subsequent
28 order under Section 1203.4 of the Penal Code allowing the person
29 to withdraw his or her plea of guilty and to enter a plea of not
30 guilty, setting aside the verdict of guilty, or dismissing the
31 accusation, complaint, information, or indictment.

32 (2) The issue of penalty shall be heard by an administrative law
33 judge from the Office of Administrative Hearings. The hearing
34 shall not be had until the judgment of conviction has become final
35 or, irrespective of a subsequent order under Section 1203.4 of the
36 Penal Code, an order granting probation has been made
37 suspending the imposition of sentence; except that a licensee may,
38 at his or her option, elect to have the issue of penalty decided
39 before those time periods have elapsed. Where the licensee so
40 elects, the issue of penalty shall be heard in the manner described

1 in subdivision (b) at the hearing to determine whether the
2 conviction was substantially related to the qualifications, functions,
3 or duties of a licensee. If the conviction of a licensee who has made
4 this election is overturned on appeal, any discipline ordered
5 pursuant to this section shall automatically cease. Nothing in this
6 subdivision shall prohibit the board from pursuing disciplinary
7 action based on any cause other than the overturned conviction.

8 (e) The record of the proceedings resulting in a conviction,
9 including a transcript of the testimony in those proceedings, may
10 be received in evidence.

11 (f) Any other provision of law setting forth a procedure for the
12 suspension or revocation of a license issued by the board shall not
13 apply to proceedings conducted pursuant to this section.

14 SEC. 162. Section 4888.3 is added to the Business and
15 Professions Code, to read:

16 4888.3. (a) Except as otherwise provided, any proposed
17 decision or decision issued in accordance with the procedures set
18 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
19 Division 3 of Title 2 of the Government Code, that contains any
20 finding of fact that the licensee engaged in any act of sexual contact
21 with a patient, as defined in subdivision (c) of Section 729, or any
22 finding that the licensee has committed a sex offense, shall contain
23 an order revoking the license. The proposed decision shall not
24 contain any order staying the revocation of the licensee.

25 (b) As used in this section, the term sex offense shall mean any
26 of the following:

27 (1) Any offense for which registration is required by Section
28 290 of the Penal Code or a finding that a person committed such
29 an act.

30 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
31 or 647(a) or (d) of the Penal Code or a finding that a person
32 committed such an act.

33 (3) Any attempt to commit any of the offenses specified in this
34 section.

35 (4) Any offense committed or attempted in any other state or
36 against the laws of the United States which, if committed or
37 attempted in this state, would have been punishable as one or more
38 of the offenses specified in this section.

39 SEC. 163. Section 4888.4 is added to the Business and
40 Professions Code, to read:

1 4888.4. (a) Except as otherwise provided, with regard to an
2 individual who is required to register as a sex offender pursuant
3 to Section 290 of the Penal Code, or the equivalent in another
4 state or territory, under military law, or under federal law, the
5 board shall be subject to the following requirements:

6 (1) The board shall deny an application by the individual for
7 licensure in accordance with the procedures set forth in Chapter
8 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
9 2 of the Government Code.

10 (2) If the individual is licensed under this chapter, the board
11 shall promptly revoke the license of the individual in accordance
12 with the procedures set forth in Chapter 5 (commencing with
13 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
14 Code. The board shall not stay the revocation and place the license
15 on probation.

16 (3) The board shall not reinstate or reissue the individual's
17 license. The board shall not issue a stay of license denial nor place
18 the license on probation.

19 (b) This section shall not apply to any of the following:

20 (1) An individual who has been relieved under Section 290.5 of
21 the Penal Code of his or her duty to register as a sex offender, or
22 whose duty to register has otherwise been formally terminated
23 under California law or the law of the jurisdiction that requires
24 his or her registration as a sex offender.

25 (2) An individual who is required to register as a sex offender
26 pursuant to Section 290 of the Penal Code solely because of a
27 misdemeanor conviction under Section 314 of the Penal Code.
28 However, nothing in this paragraph shall prohibit the board from
29 exercising its discretion to discipline a licensee under any other
30 provision of state law based upon the licensee's conviction under
31 Section 314 of the Penal Code.

32 (3) Any administrative adjudication proceeding under Chapter
33 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
34 2 of the Government Code that is fully adjudicated prior to January
35 1, 2008. A petition for reinstatement of a revoked or surrendered
36 license shall be considered a new proceeding for purposes of this
37 paragraph, and the prohibition against reinstating a license to an
38 individual who is required to register as a sex offender shall be
39 applicable.

1 *SEC. 164. Section 4888.5 is added to the Business and*
2 *Professions Code, to read:*

3 *4888.5. (a) Notwithstanding any other provision of law, any*
4 *employer of a licensee shall report to the board the suspension or*
5 *termination for cause, or any resignation in lieu of suspension or*
6 *termination for cause, of any licensee in its employ within 15*
7 *business days. The report shall not be made until after the*
8 *conclusion of the review process specified in Section 52.3 of Title*
9 *2 of the California Code of Regulations and Skelly v. State*
10 *Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This*
11 *required reporting shall not constitute a waiver of confidentiality*
12 *of medical records. The information reported or disclosed shall*
13 *be kept confidential except as provided in subdivision (c) of Section*
14 *800 and shall not be subject to discovery in civil cases.*

15 *(b) The information to be reported by the employer shall include*
16 *the name and license number of the licensee involved, a*
17 *description of the facts and circumstances of the suspension or*
18 *termination for cause, any resignation in lieu of suspension or*
19 *termination for cause, and any other relevant information deemed*
20 *appropriate by the employer.*

21 *(c) The board shall be entitled to inspect and copy the following*
22 *documents in the record for any suspension or termination for*
23 *cause, or any resignation in lieu of suspension or termination for*
24 *cause, resulting in action that is required to be reported pursuant*
25 *to this section:*

26 *(1) Any statement for suspension or termination of the licensee.*

27 *(2) Any document or exhibits relevant to the suspension or*
28 *termination.*

29 *(d) If, during the investigation by the board of the cause for the*
30 *termination or suspension or resignation of the licensee, it is found*
31 *that there has been a violation of existing state or federal law, the*
32 *board shall report the violation to the appropriate agency.*

33 *(e) For purposes of this section, "suspension or termination for*
34 *cause" or "resignation in lieu of suspension or termination for*
35 *cause" is defined as resignation, suspension, or termination from*
36 *employment for any of the following reasons:*

37 *(1) Use of controlled substances or alcohol to the extent that it*
38 *impairs the licensee's ability to safely practice.*

39 *(2) Unlawful sale of a controlled substance or other prescription*
40 *items.*

1 (3) Patient or client abuse, neglect, physical harm, or sexual
2 contact with a patient or client.

3 (4) Gross negligence or incompetence.

4 (5) Theft from a patient or client, any other employee, or the
5 employer.

6 (f) As used in this section, the following definitions apply:

7 (1) "Gross negligence" means a substantial departure from the
8 standard of care, which, under similar circumstances, would have
9 ordinarily been exercised by a competent licensee, and which has
10 or could have resulted in harm to the consumer. An exercise of so
11 slight a degree of care as to justify the belief that there was a
12 conscious disregard or indifference for the health, safety, or
13 welfare of the consumer shall be considered a substantial departure
14 from the standard of care.

15 (2) "Incompetence" means the lack of possession of, and the
16 failure to exercise that degree of learning, skill, care, and
17 experience ordinarily possessed by, a responsible licensee.

18 (3) "Willful" means a knowing and intentional violation of a
19 known legal duty.

20 (g) (1) Willful failure of an employer to make a report required
21 by this section is punishable by an administrative fine not to exceed
22 one hundred thousand dollars (\$100,000) per violation.

23 (2) Any failure of an employer, other than willful failure, to
24 make a report required by this section is punishable by an
25 administrative fine not to exceed fifty thousand dollars (\$50,000).

26 (h) The board shall investigate the circumstances underlying
27 any report received pursuant to this section within 30 days to
28 determine if an interim suspension order or temporary restraining
29 order should be issued. The board shall otherwise provide timely
30 disposition of the reports received pursuant to this section.

31 (i) The board shall send to the licentiate a copy of the report
32 along with the reasons for the filing of the report and notice
33 advising the licentiate of his or her right to submit additional
34 statements or other information to the board.

35 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
36 incur any civil penalty as a result of making any report required
37 by this article.

38 (k) No report is required under this section where a report of
39 the action taken is already required under Section 805.

1 SEC. 165. Section 4888.6 is added to the Business and
2 Professions Code, to read:

3 4888.6. Unless otherwise provided, on or after July 1, 2013,
4 the board shall post on its Internet Web site the following
5 information, including the name and license number, in its
6 possession, custody, or control regarding every licensee for which
7 the board licenses:

8 (a) With regard to the status of every license, whether or not
9 the licensee or former licensee is in good standing, subject to a
10 temporary restraining order, subject to an interim suspension
11 order, subject to a restriction or cease practice ordered pursuant
12 to Section 23 of the Penal Code, or subject to any of the
13 enforcement actions described in Section 803.1.

14 (b) With regard to prior discipline of a licensee, whether or not
15 the licensee or former licensee has been subject to discipline by
16 the board or by the board of another state or jurisdiction, as
17 described in Section 803.1.

18 (c) Any felony conviction of a licensee reported to the board.

19 (d) All current accusations filed by the Attorney General,
20 including those accusations that are on appeal. For purposes of
21 this paragraph, "current accusation" means an accusation that
22 has not been dismissed, withdrawn, or settled, and has not been
23 finally decided upon by an administrative law judge and the board
24 unless an appeal of that decision is pending.

25 (e) Any malpractice judgment or arbitration award imposed
26 against a licensee and reported to the board.

27 (f) Any hospital disciplinary action imposed against a licensee
28 that resulted in the termination or revocation of a licensee's
29 hospital staff privileges for a medical disciplinary cause or reason
30 pursuant to Section 805.

31 (g) Any misdemeanor conviction of a licensee that results in a
32 disciplinary action or an accusation that is not subsequently
33 withdrawn or dismissed.

34 (h) Appropriate disclaimers and explanatory statements to
35 accompany the above information, including an explanation of
36 what types of information are not disclosed. These disclaimers
37 and statements shall be developed by the board and shall be
38 adopted by regulation.

39 (i) The information provided on the Internet shall be in
40 accordance with the California Public Records Act (Chapter 3.5

1 (commencing with Section 6250) of Division 7 of Title 1 of the
2 Government Code) and the Information Practices Act of 1977
3 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
4 of Division 3 of the Civil Code) and shall comply with the
5 Department of Consumer Affairs Guidelines for Access to Public
6 Records.

7 (j) Information provided on the Internet may not include
8 personal information, unless otherwise provided pursuant to this
9 chapter, including the home telephone number, date of birth, or
10 social security number. The information may not include the
11 licensee's address, but may include the city and county of the
12 licensee's address of record.

13 SEC. 166. Section 4888.7 is added to the Business and
14 Professions Code, to read:

15 4888.7. (a) Unless otherwise provided, if a licensee possesses
16 a license or is otherwise authorized to practice in any state other
17 than California or by any agency of the federal government and
18 that license or authority is suspended or revoked outright, the
19 California license of the licensee shall be suspended automatically
20 for the duration of the suspension or revocation, unless terminated
21 or rescinded as provided in subdivision (c). The board shall notify
22 the licensee of the license suspension and of his or her right to
23 have the issue of penalty heard as provided in this section.

24 (b) Upon its own motion or for good cause shown, the board
25 may decline to impose or may set aside the suspension when it
26 appears to be in the interest of justice to do so, with due regard
27 to maintaining the integrity of, and confidence in, the specific
28 healing art.

29 (c) The issue of penalty shall be heard by an administrative law
30 judge sitting alone or with a panel of the board, in the discretion
31 of the board. A licensee may request a hearing on the penalty and
32 that hearing shall be held within 90 days from the date of the
33 request. If the order suspending or revoking the license or authority
34 to practice is overturned on appeal, any discipline ordered
35 pursuant to this section shall automatically cease. Upon a showing
36 to the administrative law judge or panel by the licensee that the
37 out-of-state action is not a basis for discipline in California, the
38 suspension shall be rescinded. If an accusation for permanent
39 discipline is not filed within 90 days of the suspension imposed

1 pursuant to this section, the suspension shall automatically
2 terminate.

3 (d) The record of the proceedings that resulted in the suspension
4 or revocation of the licensee's out-of-state license or authority to
5 practice, including a transcript of the testimony therein, may be
6 received in evidence.

7 (e) This section shall not apply to a licensee who maintains his
8 or her primary practice in California, as evidenced by having
9 maintained a practice in this state for not less than one year
10 immediately preceding the date of suspension or revocation.
11 Nothing in this section shall preclude a licensee's license from
12 being suspended pursuant to any other provision of law.

13 (f) This section shall not apply to a licensee whose license has
14 been surrendered, whose only discipline is a medical staff
15 disciplinary action at a federal hospital and not for medical
16 disciplinary cause or reason as that term is defined in Section 805,
17 or whose revocation or suspension has been stayed, even if the
18 licensee remains subject to terms of probation or other discipline.

19 (g) This section shall not apply to a suspension or revocation
20 imposed by a state that is based solely on the prior discipline of
21 the licensee by another state.

22 (h) The other provisions of this article setting forth a procedure
23 for the suspension or revocation of a licensee's license or
24 certificate shall not apply to summary suspensions issued pursuant
25 to this section. If a summary suspension has been issued pursuant
26 to this section, the licensee may request that the hearing on the
27 penalty conducted pursuant to subdivision (c) be held at the same
28 time as a hearing on the accusation.

29 (i) A board that complies with Section 2310 shall not be subject
30 to the requirements of this section.

31 SEC. 167. Section 4964.1 is added to the Business and
32 Professions Code, to read:

33 4964.1. (a) The board may delegate to its executive officer the
34 authority to adopt a proposed default decision where an
35 administrative action to revoke a license has been filed and the
36 licensee has failed to file a notice of defense or to appear at the
37 hearing and a proposed default decision revoking the license has
38 been issued.

39 (b) The board may delegate to its executive officer the authority
40 to adopt a proposed settlement agreement where an administrative

1 action to revoke a license has been filed by the board and the
2 licensee has agreed to the revocation or surrender of his or her
3 license.

4 (c) The executive officer shall, at scheduled board meetings,
5 report to the board the number of proposed default decisions or
6 proposed settlement agreements adopted pursuant to this section.

7 SEC. 168. Section 4964.2 is added to the Business and
8 Professions Code, to read:

9 4964.2. (a) Notwithstanding Section 11415.60 of the
10 Government Code, the board may enter into a settlement with a
11 licensee or applicant in lieu of the issuance of an accusation or
12 statement of issues against that licensee or applicant, as applicable.

13 (b) The settlement shall include language identifying the factual
14 basis for the action being taken and a list of the statutes or
15 regulations violated.

16 (c) A person who enters a settlement pursuant to this section is
17 not precluded from filing a petition, in the timeframe permitted by
18 law, to modify the terms of the settlement or petition for early
19 termination of probation, if probation is part of the settlement.

20 (d) Any settlement against a licensee executed pursuant to this
21 section shall be considered discipline and a public record and
22 shall be posted on the applicable board's Internet Web site. Any
23 settlement against an applicant executed pursuant to this section
24 shall be considered a public record and shall be posted on the
25 applicable board's Internet Web site.

26 (e) The executive officer shall, at scheduled board meetings,
27 report to the board the number of proposed settlement agreements
28 adopted pursuant to this section.

29 SEC. 169. Section 4964.3 is added to the Business and
30 Professions Code, to read:

31 4964.3. (a) The license of a licensee shall be suspended
32 automatically during any time that the licensee is incarcerated
33 after conviction of a felony, regardless of whether the conviction
34 has been appealed. The board shall, immediately upon receipt of
35 the certified copy of the record of conviction, determine whether
36 the license of the licensee has been automatically suspended by
37 virtue of his or her incarceration, and if so, the duration of that
38 suspension. The board shall notify the licensee in writing of the
39 license suspension and of his or her right to elect to have the issue
40 of penalty heard as provided in subdivision (d).

1 (b) Upon receipt of the certified copy of the record of conviction,
2 if after a hearing before an administrative law judge from the
3 Office of Administrative Hearings it is determined that the felony
4 for which the licensee was convicted was substantially related to
5 the qualifications, functions, or duties of a licensee, the board
6 shall suspend the license until the time for appeal has elapsed, if
7 no appeal has been taken, or until the judgment of conviction has
8 been affirmed on appeal or has otherwise become final, and until
9 further order of the board.

10 (c) Notwithstanding subdivision (b), a conviction of a charge
11 of violating any federal statute or regulation or any statute or
12 regulation of this state, regulating dangerous drugs or controlled
13 substances, or a conviction of Section 187, 261, 262, or 288 of the
14 Penal Code, shall be conclusively presumed to be substantially
15 related to the qualifications, functions, or duties of a licensee and
16 no hearing shall be held on this issue. However, upon its own
17 motion or for good cause shown, the board may decline to impose
18 or may set aside the suspension when it appears to be in the interest
19 of justice to do so, with due regard to maintaining the integrity of,
20 and confidence in, the practice regulated by the board.

21 (d) (1) Discipline may be ordered against a licensee in
22 accordance with the statutes and regulations of the board when
23 the time for appeal has elapsed, the judgment of conviction has
24 been affirmed on appeal, or an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent
26 order under Section 1203.4 of the Penal Code allowing the person
27 to withdraw his or her plea of guilty and to enter a plea of not
28 guilty, setting aside the verdict of guilty, or dismissing the
29 accusation, complaint, information, or indictment.

30 (2) The issue of penalty shall be heard by an administrative law
31 judge from the Office of Administrative Hearings. The hearing
32 shall not be had until the judgment of conviction has become final
33 or, irrespective of a subsequent order under Section 1203.4 of the
34 Penal Code, an order granting probation has been made
35 suspending the imposition of sentence; except that a licensee may,
36 at his or her option, elect to have the issue of penalty decided
37 before those time periods have elapsed. Where the licensee so
38 elects, the issue of penalty shall be heard in the manner described
39 in subdivision (b) at the hearing to determine whether the
40 conviction was substantially related to the qualifications, functions,

1 or duties of a licensee. If the conviction of a licensee who has made
2 this election is overturned on appeal, any discipline ordered
3 pursuant to this section shall automatically cease. Nothing in this
4 subdivision shall prohibit the board from pursuing disciplinary
5 action based on any cause other than the overturned conviction.

6 (e) The record of the proceedings resulting in a conviction,
7 including a transcript of the testimony in those proceedings, may
8 be received in evidence.

9 (f) Any other provision of law setting forth a procedure for the
10 suspension or revocation of a license issued by the board shall not
11 apply to proceedings conducted pursuant to this section.

12 SEC. 170. Section 4964.4 is added to the Business and
13 Professions Code, to read:

14 4964.4. (a) Except as otherwise provided, any proposed
15 decision or decision issued in accordance with the procedures set
16 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code, that contains any
18 finding of fact that the licensee engaged in any act of sexual contact
19 with a patient, as defined in subdivision (c) of Section 729, or any
20 finding that the licensee has committed a sex offense, shall contain
21 an order revoking the license. The proposed decision shall not
22 contain any order staying the revocation of the licensee.

23 (b) As used in this section, the term sex offense shall mean any
24 of the following:

25 (1) Any offense for which registration is required by Section
26 290 of the Penal Code or a finding that a person committed such
27 an act.

28 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
29 or 647(a) or (d) of the Penal Code or a finding that a person
30 committed such an act.

31 (3) Any attempt to commit any of the offenses specified in this
32 section.

33 (4) Any offense committed or attempted in any other state or
34 against the laws of the United States which, if committed or
35 attempted in this state, would have been punishable as one or more
36 of the offenses specified in this section.

37 SEC. 171. Section 4964.55 is added to the Business and
38 Professions Code, to read:

39 4964.55. (a) Except as otherwise provided, with regard to an
40 individual who is required to register as a sex offender pursuant

1 to Section 290 of the Penal Code, or the equivalent in another
2 state or territory, under military law, or under federal law, the
3 board shall be subject to the following requirements:

4 (1) The board shall deny an application by the individual for
5 licensure in accordance with the procedures set forth in Chapter
6 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
7 2 of the Government Code.

8 (2) If the individual is licensed under this chapter, the board
9 shall promptly revoke the license of the individual in accordance
10 with the procedures set forth in Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code. The board shall not stay the revocation and place the license
13 on probation.

14 (3) The board shall not reinstate or reissue the individual's
15 license. The board shall not issue a stay of license denial nor place
16 the license on probation.

17 (b) This section shall not apply to any of the following:

18 (1) An individual who has been relieved under Section 290.5 of
19 the Penal Code of his or her duty to register as a sex offender, or
20 whose duty to register has otherwise been formally terminated
21 under California law or the law of the jurisdiction that requires
22 his or her registration as a sex offender.

23 (2) An individual who is required to register as a sex offender
24 pursuant to Section 290 of the Penal Code solely because of a
25 misdemeanor conviction under Section 314 of the Penal Code.
26 However, nothing in this paragraph shall prohibit the board from
27 exercising its discretion to discipline a licensee under any other
28 provision of state law based upon the licensee's conviction under
29 Section 314 of the Penal Code.

30 (3) Any administrative adjudication proceeding under Chapter
31 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code that is fully adjudicated prior to January
33 1, 2008. A petition for reinstatement of a revoked or surrendered
34 license shall be considered a new proceeding for purposes of this
35 paragraph, and the prohibition against reinstating a license to an
36 individual who is required to register as a sex offender shall be
37 applicable.

38 SEC. 172. Section 4964.6 is added to the Business and
39 Professions Code, to read:

1 4964.6. (a) Notwithstanding any other provision of law making
2 a communication between a licensee and his or her patients a
3 privileged communication, those provisions shall not apply to
4 investigations or proceedings conducted by the board. Members
5 of the board, deputies, employees, agents, the office of the Attorney
6 General, and representatives of the board shall keep in confidence
7 during the course of investigations the names of any patients whose
8 records are reviewed and may not disclose or reveal those names,
9 except as is necessary during the course of an investigation, unless
10 and until proceedings are instituted. The authority under this
11 subdivision to examine records of patients in the office of a licensee
12 is limited to records of patients who have complained to the board
13 about that licensee.

14 (b) Notwithstanding any other provision of law, the Attorney
15 General and his or her investigative agents, and the board and its
16 investigators and representatives may inquire into any alleged
17 violation of the laws under the jurisdiction of the board or any
18 other federal or state law, regulation, or rule relevant to the
19 practice regulated by the board, whichever is applicable, and may
20 inspect documents relevant to those investigations in accordance
21 with the following procedures:

22 (1) Any document relevant to an investigation may be inspected,
23 and copies may be obtained, where a patient provides written
24 authorization.

25 (2) Any document relevant to the business operations of a
26 licensee, and not involving medical records attributable to
27 identifiable patients, may be inspected and copied where relevant
28 to an investigation of a licensee.

29 (c) In all cases where documents are inspected or copies of
30 those documents are received, their acquisition or review shall be
31 arranged so as not to unnecessarily disrupt the medical and
32 business operations of the licensee or of the facility where the
33 records are kept or used.

34 (d) Where certified documents are lawfully requested from
35 licensees in accordance with this section by the Attorney General
36 or his or her agents or deputies, or investigators of any board, the
37 documents shall be provided within 10 business days of receipt of
38 the request, unless the licensee is unable to provide the certified
39 documents within this time period for good cause, including, but
40 not limited to, physical inability to access the records in the time

1 allowed due to illness or travel. Failure to produce requested
2 certified documents or copies thereof, after being informed of the
3 required deadline, shall constitute unprofessional conduct. A board
4 may use its authority to cite and fine a licensee for any violation
5 of this section. This remedy is in addition to any other authority
6 of the healing arts board to sanction a licensee for a delay in
7 producing requested records.

8 (e) Searches conducted of the office or medical facility of any
9 licensee shall not interfere with the recordkeeping format or
10 preservation needs of any licensee necessary for the lawful care
11 of patients.

12 (f) The licensee shall cooperate with the board in furnishing
13 information or assistance as may be required, including, but not
14 limited to, participation in an interview with investigators or
15 representatives of the healing arts board.

16 (g) This section shall not apply to a licensee who does not have
17 access to, and control over, certified medical records or other
18 types of documents that belong to or are controlled by a health
19 facility or clinic.

20 SEC. 173. Section 4964.7 is added to the Business and
21 Professions Code, to read:

22 4964.7. (a) (1) Notwithstanding any other provision of law,
23 a licensee who fails or refuses to comply with a request for the
24 certified medical records of a patient that is accompanied by that
25 patient's written authorization for release of records to a board
26 together with a notice citing this section and describing the
27 penalties for failure to comply with this section shall be required
28 to pay to the board a civil penalty of up to one thousand dollars
29 (\$1,000) per day for each day that the documents have not been
30 produced after the 15th day, up to ten thousand dollars (\$10,000),
31 unless the licensee is unable to provide the documents within this
32 time period for good cause.

33 (2) A health care facility shall comply with a request for the
34 certified medical records of a patient that is accompanied by that
35 patient's written authorization for release of records to a board
36 together with a notice citing this section and describing the
37 penalties for failure to comply with this section. Failure to provide
38 the authorizing patient's certified medical records to the board
39 within 15 days of receiving the request, authorization, and notice
40 shall subject the health care facility to a civil penalty, payable to

1 the healing arts board, of up to one thousand dollars (\$1,000) per
2 day for each day that the documents have not been produced after
3 the 15th day, up to ten thousand dollars (\$10,000), unless the
4 health care facility is unable to provide the documents within this
5 time period for good cause. This paragraph shall not require health
6 care facilities to assist the board in obtaining the patient's
7 authorization. The board shall pay the reasonable costs of copying
8 the certified medical records, but shall not be required to make
9 that payment prior to the production of the medical records.

10 (b) (1) A licensee who fails or refuses to comply with a court
11 order, issued in the enforcement of a subpoena, mandating the
12 release of records to the board, shall pay to the healing arts board
13 a civil penalty of up to one thousand dollars (\$1,000) per day for
14 each day that the documents have not been produced after the date
15 by which the court order requires the documents to be produced,
16 up to ten thousand dollars (\$10,000), unless it is determined that
17 the order is unlawful or invalid. Any statute of limitations
18 applicable to the filing of an accusation by the healing arts board
19 shall be tolled during the period the licensee is out of compliance
20 with the court order and during any related appeals.

21 (2) Any licensee who fails or refuses to comply with a court
22 order, issued in the enforcement of a subpoena, mandating the
23 release of records to a board is guilty of a misdemeanor punishable
24 by a fine payable to the board not to exceed five thousand dollars
25 (\$5,000). The fine shall be added to the licensee's renewal fee if
26 it is not paid by the next succeeding renewal date. Any statute of
27 limitations applicable to the filing of an accusation by the board
28 shall be tolled during the period the licensee is out of compliance
29 with the court order and during any related appeals.

30 (3) A health care facility that fails or refuses to comply with a
31 court order, issued in the enforcement of a subpoena, mandating
32 the release of patient records to the board, that is accompanied
33 by a notice citing this section and describing the penalties for
34 failure to comply with this section, shall pay to the board a civil
35 penalty of up to one thousand dollars (\$1,000) per day for each
36 day that the documents have not been produced, up to ten thousand
37 dollars (\$10,000), after the date by which the court order requires
38 the documents to be produced, unless it is determined that the
39 order is unlawful or invalid. Any statute of limitations applicable
40 to the filing of an accusation by the board against a licensee shall

1 *be tolled during the period the health care facility is out of*
2 *compliance with the court order and during any related appeals.*

3 *(4) Any health care facility that fails or refuses to comply with*
4 *a court order, issued in the enforcement of a subpoena, mandating*
5 *the release of records to the board is guilty of a misdemeanor*
6 *punishable by a fine payable to the board not to exceed five*
7 *thousand dollars (\$5,000). Any statute of limitations applicable*
8 *to the filing of an accusation by the board against a licensee shall*
9 *be tolled during the period the health care facility is out of*
10 *compliance with the court order and during any related appeals.*

11 *(c) Multiple acts by a licensee in violation of subdivision (b)*
12 *shall be punishable by a fine not to exceed five thousand dollars*
13 *(\$5,000) or by imprisonment in a county jail not exceeding six*
14 *months, or by both that fine and imprisonment. Multiple acts by*
15 *a health care facility in violation of subdivision (b) shall be*
16 *punishable by a fine not to exceed five thousand dollars (\$5,000),*
17 *shall be reported to the State Department of Public Health, and*
18 *shall be considered as grounds for disciplinary action with respect*
19 *to licensure, including suspension or revocation of the license or*
20 *certificate.*

21 *(d) A failure or refusal of a licensee to comply with a court*
22 *order, issued in the enforcement of a subpoena, mandating the*
23 *release of records to the board constitutes unprofessional conduct*
24 *and is grounds for suspension or revocation of his or her license.*

25 *(e) Imposition of the civil penalties authorized by this section*
26 *shall be in accordance with the Administrative Procedure Act*
27 *(Chapter 5 (commencing with Section 11500) of Division 3 of Title*
28 *2 of the Government Code). Any civil penalties paid to, or received*
29 *by, the board pursuant to this section shall be deposited into the*
30 *fund administered by the board.*

31 *(f) For purposes of this section, "certified medical records"*
32 *means a copy of the patient's medical records authenticated by*
33 *the licensee or health care facility, as appropriate, on a form*
34 *prescribed by the licensee's board.*

35 *(g) For purposes of this section, a "health care facility" means*
36 *a clinic or health facility licensed or exempt from licensure*
37 *pursuant to Division 2 (commencing with Section 1200) of the*
38 *Health and Safety Code.*

39 *(h) If a board complies with Section 1684.1, 2225.5, or 2969,*
40 *that board shall not be subject to the requirements of this section.*

1 (i) This section shall not apply to a licensee who does not have
2 access to, or control over, certified medical records or other types
3 of documents that belong to or are controlled by a health facility
4 or clinic.

5 SEC. 174. Section 4964.8 is added to the Business and
6 Professions Code, to read:

7 4964.8. (a) Notwithstanding any other provision of law, any
8 employer of a licensee shall report to the board the suspension or
9 termination for cause, or any resignation in lieu of suspension or
10 termination for cause, of any licensee in its employ within 15
11 business days. The report shall not be made until after the
12 conclusion of the review process specified in Section 52.3 of Title
13 2 of the California Code of Regulations and *Skelly v. State*
14 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
15 required reporting shall not constitute a waiver of confidentiality
16 of medical records. The information reported or disclosed shall
17 be kept confidential except as provided in subdivision (c) of Section
18 800 and shall not be subject to discovery in civil cases.

19 (b) The information to be reported by the employer shall include
20 the name and license number of the licensee involved, a
21 description of the facts and circumstances of the suspension or
22 termination for cause, any resignation in lieu of suspension or
23 termination for cause, and any other relevant information deemed
24 appropriate by the employer.

25 (c) The board shall be entitled to inspect and copy the following
26 documents in the record for any suspension or termination for
27 cause, or any resignation in lieu of suspension or termination for
28 cause, resulting in action that is required to be reported pursuant
29 to this section:

30 (1) Any statement for suspension or termination of the licensee.

31 (2) Any document or exhibits relevant to the suspension or
32 termination.

33 (d) If, during the investigation by the board of the cause for the
34 termination or suspension or resignation of the licensee, it is found
35 that there has been a violation of existing state or federal law, the
36 board shall report the violation to the appropriate agency.

37 (e) For purposes of this section, "suspension or termination for
38 cause" or "resignation in lieu of suspension or termination for
39 cause" is defined as resignation, suspension, or termination from
40 employment for any of the following reasons:

1 (1) Use of controlled substances or alcohol to the extent that it
2 impairs the licensee's ability to safely practice.

3 (2) Unlawful sale of a controlled substance or other prescription
4 items.

5 (3) Patient or client abuse, neglect, physical harm, or sexual
6 contact with a patient or client.

7 (4) Gross negligence or incompetence.

8 (5) Theft from a patient or client, any other employee, or the
9 employer.

10 (f) As used in this section, the following definitions apply:

11 (1) "Gross negligence" means a substantial departure from the
12 standard of care, which, under similar circumstances, would have
13 ordinarily been exercised by a competent licensee, and which has
14 or could have resulted in harm to the consumer. An exercise of so
15 slight a degree of care as to justify the belief that there was a
16 conscious disregard or indifference for the health, safety, or
17 welfare of the consumer shall be considered a substantial departure
18 from the standard of care.

19 (2) "Incompetence" means the lack of possession of, and the
20 failure to exercise that degree of learning, skill, care, and
21 experience ordinarily possessed by, a responsible licensee.

22 (3) "Willful" means a knowing and intentional violation of a
23 known legal duty.

24 (g) (1) Willful failure of an employer to make a report required
25 by this section is punishable by an administrative fine not to exceed
26 one hundred thousand dollars (\$100,000) per violation.

27 (2) Any failure of an employer, other than willful failure, to
28 make a report required by this section is punishable by an
29 administrative fine not to exceed fifty thousand dollars (\$50,000).

30 (h) The board shall investigate the circumstances underlying
31 any report received pursuant to this section within 30 days to
32 determine if an interim suspension order or temporary restraining
33 order should be issued. The board shall otherwise provide timely
34 disposition of the reports received pursuant to this section.

35 (i) The board shall send to the licentiate a copy of the report
36 along with the reasons for the filing of the report and notice
37 advising the licentiate of his or her right to submit additional
38 statements or other information to the board.

1 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
2 incur any civil penalty as a result of making any report required
3 by this article.

4 (k) No report is required under this section where a report of
5 the action taken is already required under Section 805.

6 SEC. 175. Section 4964.9 is added to the Business and
7 Professions Code, to read:

8 4964.9. Unless otherwise provided, on or after July 1, 2013,
9 the board shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the board licenses:

13 (a) With regard to the status of every license, whether or not
14 the licensee or former licensee is in good standing, subject to a
15 temporary restraining order, subject to an interim suspension
16 order, subject to a restriction or cease practice ordered pursuant
17 to Section 23 of the Penal Code, or subject to any of the
18 enforcement actions described in Section 803.1.

19 (b) With regard to prior discipline of a licensee, whether or not
20 the licensee or former licensee has been subject to discipline by
21 the board or by the board of another state or jurisdiction, as
22 described in Section 803.1.

23 (c) Any felony conviction of a licensee reported to the board.

24 (d) All current accusations filed by the Attorney General,
25 including those accusations that are on appeal. For purposes of
26 this paragraph, "current accusation" means an accusation that
27 has not been dismissed, withdrawn, or settled, and has not been
28 finally decided upon by an administrative law judge and the board
29 unless an appeal of that decision is pending.

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the board.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee's
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 4964.7 or 805.

36 (g) Any misdemeanor conviction of a licensee that results in a
37 disciplinary action or an accusation that is not subsequently
38 withdrawn or dismissed.

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 what types of information are not disclosed. These disclaimers
2 and statements shall be developed by the board and shall be
3 adopted by regulation.

4 (i) The information provided on the Internet shall be in
5 accordance with the California Public Records Act (Chapter 3.5
6 (commencing with Section 6250) of Division 7 of Title 1 of the
7 Government Code) and the Information Practices Act of 1977
8 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
9 of Division 3 of the Civil Code) and shall comply with the
10 Department of Consumer Affairs Guidelines for Access to Public
11 Records.

12 (j) Information provided on the Internet may not include
13 personal information, unless otherwise provided pursuant to this
14 chapter, including the home telephone number, date of birth, or
15 social security number. The information may not include the
16 licensee's address, but may include the city and county of the
17 licensee's address of record.

18 SEC. 176. Section 4964.10 is added to the Business and
19 Professions Code, to read:

20 4964.10. (a) Unless otherwise provided, if a licensee possesses
21 a license or is otherwise authorized to practice in any state other
22 than California or by any agency of the federal government and
23 that license or authority is suspended or revoked outright, the
24 California license of the licensee shall be suspended automatically
25 for the duration of the suspension or revocation, unless terminated
26 or rescinded as provided in subdivision (c). The board shall notify
27 the licensee of the license suspension and of his or her right to
28 have the issue of penalty heard as provided in this section.

29 (b) Upon its own motion or for good cause shown, the board
30 may decline to impose or may set aside the suspension when it
31 appears to be in the interest of justice to do so, with due regard
32 to maintaining the integrity of, and confidence in, the specific
33 healing art.

34 (c) The issue of penalty shall be heard by an administrative law
35 judge sitting alone or with a panel of the board, in the discretion
36 of the board. A licensee may request a hearing on the penalty and
37 that hearing shall be held within 90 days from the date of the
38 request. If the order suspending or revoking the license or authority
39 to practice is overturned on appeal, any discipline ordered
40 pursuant to this section shall automatically cease. Upon a showing

1 to the administrative law judge or panel by the licensee that the
2 out-of-state action is not a basis for discipline in California, the
3 suspension shall be rescinded. If an accusation for permanent
4 discipline is not filed within 90 days of the suspension imposed
5 pursuant to this section, the suspension shall automatically
6 terminate.

7 (d) The record of the proceedings that resulted in the suspension
8 or revocation of the licensee's out-of-state license or authority to
9 practice, including a transcript of the testimony therein, may be
10 received in evidence.

11 (e) This section shall not apply to a licensee who maintains his
12 or her primary practice in California, as evidenced by having
13 maintained a practice in this state for not less than one year
14 immediately preceding the date of suspension or revocation.
15 Nothing in this section shall preclude a licensee's license from
16 being suspended pursuant to any other provision of law.

17 (f) This section shall not apply to a licensee whose license has
18 been surrendered, whose only discipline is a medical staff
19 disciplinary action at a federal hospital and not for medical
20 disciplinary cause or reason as that term is defined in Section 805,
21 or whose revocation or suspension has been stayed, even if the
22 licensee remains subject to terms of probation or other discipline.

23 (g) This section shall not apply to a suspension or revocation
24 imposed by a state that is based solely on the prior discipline of
25 the licensee by another state.

26 (h) The other provisions of this article setting forth a procedure
27 for the suspension or revocation of a licensee's license or
28 certificate shall not apply to summary suspensions issued pursuant
29 to this section. If a summary suspension has been issued pursuant
30 to this section, the licensee may request that the hearing on the
31 penalty conducted pursuant to subdivision (c) be held at the same
32 time as a hearing on the accusation.

33 (i) A board that complies with Section 2310 shall not be subject
34 to the requirements of this section.

35 SEC. 177. Section 4982.26 of the Business and Professions
36 Code is amended to read:

37 4982.26. (a) The board shall revoke any license issued under
38 this chapter upon a decision made in accordance with the
39 procedures set forth in Chapter 5 (commencing with Section 11500)
40 of Part 1 of Division 3 of Title 2 of the Government Code, that

1 contains any finding of fact that the licensee or registrant engaged
2 in any act of sexual contact, as defined in Section 729, when that
3 act is with a patient, or with a former patient when the relationship
4 was terminated primarily for the purpose of engaging in that act.
5 The revocation shall not be stayed by the administrative law judge
6 or the board.

7 (b) *Except as otherwise provided, any proposed decision or*
8 *decision issued under this chapter in accordance with the*
9 *procedures set forth in Chapter 5 (commencing with Section 11500)*
10 *of Part 1 of Division 3 of Title 2 of the Government Code, that*
11 *contains any finding of fact that the licensee has committed a sex*
12 *offense, shall contain an order revoking the license. The proposed*
13 *decision or decision shall not contain any order staying the*
14 *revocation of the licensee.*

15 (c) *As used in this section, the term sex offense shall mean any*
16 *of the following:*

17 (1) *Any offense for which registration is required by Section*
18 *290 of the Penal Code or a finding that a person committed such*
19 *an act.*

20 (2) *Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
21 *or 647(a) or (d) of the Penal Code or a finding that a person*
22 *committed such an act.*

23 (3) *Any attempt to commit any of the offenses specified in this*
24 *section.*

25 (4) *Any offense committed or attempted in any other state or*
26 *against the laws of the United States which, if committed or*
27 *attempted in this state, would have been punishable as one or more*
28 *of the offenses specified in this section.*

29 SEC. 178. Section 4990.44 is added to the Business and
30 Professions Code, to read:

31 4990.44. (a) *The board may delegate to its executive officer*
32 *the authority to adopt a proposed default decision where an*
33 *administrative action to revoke a license has been filed and the*
34 *licensee has failed to file a notice of defense or to appear at the*
35 *hearing and a proposed default decision revoking the license has*
36 *been issued.*

37 (b) *The board may delegate to its executive officer the authority*
38 *to adopt a proposed settlement agreement where an administrative*
39 *action to revoke a license has been filed by the board and the*

1 licensee has agreed to the revocation or surrender of his or her
2 license.

3 (c) The executive officer shall, at scheduled board meetings,
4 report to the board the number of proposed default decisions or
5 proposed settlement agreements adopted pursuant to this section.

6 SEC. 179. Section 4990.45 is added to the Business and
7 Professions Code, to read:

8 4990.45. (a) Notwithstanding Section 11415.60 of the
9 Government Code, the board may enter into a settlement with a
10 licensee or applicant in lieu of the issuance of an accusation or
11 statement of issues against that licensee or applicant, as applicable.

12 (b) The settlement shall include language identifying the factual
13 basis for the action being taken and a list of the statutes or
14 regulations violated.

15 (c) A person who enters a settlement pursuant to this section is
16 not precluded from filing a petition, in the timeframe permitted by
17 law, to modify the terms of the settlement or petition for early
18 termination of probation, if probation is part of the settlement.

19 (d) Any settlement against a licensee executed pursuant to this
20 section shall be considered discipline and a public record and
21 shall be posted on the applicable board's Internet Web site. Any
22 settlement against an applicant executed pursuant to this section
23 shall be considered a public record and shall be posted on the
24 applicable board's Internet Web site.

25 (e) The executive officer shall, at scheduled board meetings,
26 report to the board the number of proposed settlement agreements
27 adopted pursuant to this section.

28 SEC. 180. Section 4990.46 is added to the Business and
29 Professions Code, to read:

30 4990.46. (a) The license of a licensee shall be suspended
31 automatically during any time that the licensee is incarcerated
32 after conviction of a felony, regardless of whether the conviction
33 has been appealed. The board shall, immediately upon receipt of
34 the certified copy of the record of conviction, determine whether
35 the license of the licensee has been automatically suspended by
36 virtue of his or her incarceration, and if so, the duration of that
37 suspension. The board shall notify the licensee in writing of the
38 license suspension and of his or her right to elect to have the issue
39 of penalty heard as provided in subdivision (d).

1 (b) Upon receipt of the certified copy of the record of conviction,
2 if after a hearing before an administrative law judge from the
3 Office of Administrative Hearings it is determined that the felony
4 for which the licensee was convicted was substantially related to
5 the qualifications, functions, or duties of a licensee, the board
6 shall suspend the license until the time for appeal has elapsed, if
7 no appeal has been taken, or until the judgment of conviction has
8 been affirmed on appeal or has otherwise become final, and until
9 further order of the board.

10 (c) Notwithstanding subdivision (b), a conviction of a charge
11 of violating any federal statute or regulation or any statute or
12 regulation of this state, regulating dangerous drugs or controlled
13 substances, or a conviction of Section 187, 261, 262, or 288 of the
14 Penal Code, shall be conclusively presumed to be substantially
15 related to the qualifications, functions, or duties of a licensee and
16 no hearing shall be held on this issue. However, upon its own
17 motion or for good cause shown, the board may decline to impose
18 or may set aside the suspension when it appears to be in the interest
19 of justice to do so, with due regard to maintaining the integrity of,
20 and confidence in, the practice regulated by the board.

21 (d) (1) Discipline may be ordered against a licensee in
22 accordance with the statutes and regulations of the board when
23 the time for appeal has elapsed, the judgment of conviction has
24 been affirmed on appeal, or an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent
26 order under Section 1203.4 of the Penal Code allowing the person
27 to withdraw his or her plea of guilty and to enter a plea of not
28 guilty, setting aside the verdict of guilty, or dismissing the
29 accusation, complaint, information, or indictment.

30 (2) The issue of penalty shall be heard by an administrative law
31 judge from the Office of Administrative Hearings. The hearing
32 shall not be had until the judgment of conviction has become final
33 or, irrespective of a subsequent order under Section 1203.4 of the
34 Penal Code, an order granting probation has been made
35 suspending the imposition of sentence; except that a licensee may,
36 at his or her option, elect to have the issue of penalty decided
37 before those time periods have elapsed. Where the licensee so
38 elects, the issue of penalty shall be heard in the manner described
39 in subdivision (b) at the hearing to determine whether the
40 conviction was substantially related to the qualifications, functions,

1 or duties of a licensee. If the conviction of a licensee who has made
2 this election is overturned on appeal, any discipline ordered
3 pursuant to this section shall automatically cease. Nothing in this
4 subdivision shall prohibit the board from pursuing disciplinary
5 action based on any cause other than the overturned conviction.

6 (e) The record of the proceedings resulting in a conviction,
7 including a transcript of the testimony in those proceedings, may
8 be received in evidence.

9 (f) Any other provision of law setting forth a procedure for the
10 suspension or revocation of a license issued by the board shall not
11 apply to proceedings conducted pursuant to this section.

12 SEC. 181. Section 4990.47 is added to the Business and
13 Professions Code, to read:

14 4990.47. (a) Except as otherwise provided, any proposed
15 decision or decision issued in accordance with the procedures set
16 forth in Chapter 5 (commencing with Section 11500) of Part 1 of
17 Division 3 of Title 2 of the Government Code, that contains any
18 finding of fact that the licensee engaged in any act of sexual contact
19 with a patient, as defined in subdivision (c) of Section 729, or any
20 finding that the licensee has committed a sex offense, shall contain
21 an order revoking the license. The proposed decision shall not
22 contain any order staying the revocation of the licensee.

23 (b) As used in this section, the term sex offense shall mean any
24 of the following:

25 (1) Any offense for which registration is required by Section
26 290 of the Penal Code or a finding that a person committed such
27 an act.

28 (2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1,
29 or 647(a) or (d) of the Penal Code or a finding that a person
30 committed such an act.

31 (3) Any attempt to commit any of the offenses specified in this
32 section.

33 (4) Any offense committed or attempted in any other state or
34 against the laws of the United States which, if committed or
35 attempted in this state, would have been punishable as one or more
36 of the offenses specified in this section.

37 SEC. 182. Section 4990.48 is added to the Business and
38 Professions Code, to read:

39 4990.48. (a) Except as otherwise provided, with regard to an
40 individual who is required to register as a sex offender pursuant

1 to Section 290 of the Penal Code, or the equivalent in another
2 state or territory, under military law, or under federal law, the
3 board shall be subject to the following requirements:

4 (1) The board shall deny an application by the individual for
5 licensure in accordance with the procedures set forth in Chapter
6 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
7 2 of the Government Code.

8 (2) If the individual is licensed under this chapter, the board
9 shall promptly revoke the license of the individual in accordance
10 with the procedures set forth in Chapter 5 (commencing with
11 Section 11500) of Part 1 of Division 3 of Title 2 of the Government
12 Code. The board shall not stay the revocation and place the license
13 on probation.

14 (3) The board shall not reinstate or reissue the individual's
15 license. The board shall not issue a stay of license denial nor place
16 the license on probation.

17 (b) This section shall not apply to any of the following:

18 (1) An individual who has been relieved under Section 290.5 of
19 the Penal Code of his or her duty to register as a sex offender, or
20 whose duty to register has otherwise been formally terminated
21 under California law or the law of the jurisdiction that requires
22 his or her registration as a sex offender.

23 (2) An individual who is required to register as a sex offender
24 pursuant to Section 290 of the Penal Code solely because of a
25 misdemeanor conviction under Section 314 of the Penal Code.
26 However, nothing in this paragraph shall prohibit the board from
27 exercising its discretion to discipline a licensee under any other
28 provision of state law based upon the licensee's conviction under
29 Section 314 of the Penal Code.

30 (3) Any administrative adjudication proceeding under Chapter
31 5 (commencing with Section 11500) of Part 1 of Division 3 of Title
32 2 of the Government Code that is fully adjudicated prior to January
33 1, 2008. A petition for reinstatement of a revoked or surrendered
34 license shall be considered a new proceeding for purposes of this
35 paragraph, and the prohibition against reinstating a license to an
36 individual who is required to register as a sex offender shall be
37 applicable.

38 SEC. 183. Section 4990.49 is added to the Business and
39 Professions Code, to read:

1 4990.49. (a) Notwithstanding any other provision of law
2 making a communication between a licensee and his or her patients
3 a privileged communication, those provisions shall not apply to
4 investigations or proceedings conducted by the board. Members
5 of the board, deputies, employees, agents, the office of the Attorney
6 General, and representatives of the board shall keep in confidence
7 during the course of investigations the names of any patients whose
8 records are reviewed and may not disclose or reveal those names,
9 except as is necessary during the course of an investigation, unless
10 and until proceedings are instituted. The authority under this
11 subdivision to examine records of patients in the office of a licensee
12 is limited to records of patients who have complained to the board
13 about that licensee.

14 (b) Notwithstanding any other provision of law, the Attorney
15 General and his or her investigative agents, and the board and its
16 investigators and representatives may inquire into any alleged
17 violation of the laws under the jurisdiction of the board or any
18 other federal or state law, regulation, or rule relevant to the
19 practice regulated by the board, whichever is applicable, and may
20 inspect documents relevant to those investigations in accordance
21 with the following procedures:

22 (1) Any document relevant to an investigation may be inspected,
23 and copies may be obtained, where a patient provides written
24 authorization.

25 (2) Any document relevant to the business operations of a
26 licensee, and not involving medical records attributable to
27 identifiable patients, may be inspected and copied where relevant
28 to an investigation of a licensee.

29 (c) In all cases where documents are inspected or copies of
30 those documents are received, their acquisition or review shall be
31 arranged so as not to unnecessarily disrupt the medical and
32 business operations of the licensee or of the facility where the
33 records are kept or used.

34 (d) Where certified documents are lawfully requested from
35 licensees in accordance with this section by the Attorney General
36 or his or her agents or deputies, or investigators of any board, the
37 documents shall be provided within 10 business days of receipt of
38 the request, unless the licensee is unable to provide the certified
39 documents within this time period for good cause, including, but
40 not limited to, physical inability to access the records in the time

1 allowed due to illness or travel. Failure to produce requested
2 certified documents or copies thereof, after being informed of the
3 required deadline, shall constitute unprofessional conduct. A board
4 may use its authority to cite and fine a licensee for any violation
5 of this section. This remedy is in addition to any other authority
6 of the board to sanction a licensee for a delay in producing
7 requested records.

8 (e) Searches conducted of the office or medical facility of any
9 licensee shall not interfere with the recordkeeping format or
10 preservation needs of any licensee necessary for the lawful care
11 of patients.

12 (f) The licensee shall cooperate with the board in furnishing
13 information or assistance as may be required, including, but not
14 limited to, participation in an interview with investigators or
15 representatives of the board.

16 (g) This section shall not apply to a licensee who does not have
17 access to, and control over, certified medical records or other
18 types of documents that belong to or are controlled by a health
19 facility or clinic.

20 SEC. 184. Section 4990.50 is added to the Business and
21 Professions Code, to read:

22 4990.50. (a) (1) Notwithstanding any other provision of law,
23 a licensee who fails or refuses to comply with a request for the
24 certified medical records of a patient that is accompanied by that
25 patient's written authorization for release of records to a board
26 together with a notice citing this section and describing the
27 penalties for failure to comply with this section shall be required
28 to pay to the board a civil penalty of up to one thousand dollars
29 (\$1,000) per day for each day that the documents have not been
30 produced after the 15th day, up to ten thousand dollars (\$10,000),
31 unless the licensee is unable to provide the documents within this
32 time period for good cause.

33 (2) A health care facility shall comply with a request for the
34 certified medical records of a patient that is accompanied by that
35 patient's written authorization for release of records to a board
36 together with a notice citing this section and describing the
37 penalties for failure to comply with this section. Failure to provide
38 the authorizing patient's certified medical records to the board
39 within 15 days of receiving the request, authorization, and notice
40 shall subject the health care facility to a civil penalty, payable to

1 the board, of up to one thousand dollars (\$1,000) per day for each
2 day that the documents have not been produced after the 15th day,
3 up to ten thousand dollars (\$10,000), unless the health care facility
4 is unable to provide the documents within this time period for good
5 cause. This paragraph shall not require health care facilities to
6 assist the board in obtaining the patient's authorization. The board
7 shall pay the reasonable costs of copying the certified medical
8 records, but shall not be required to make that payment prior to
9 the production of the medical records.

10 (b) (1) A licensee who fails or refuses to comply with a court
11 order, issued in the enforcement of a subpoena, mandating the
12 release of records to the board, shall pay to the board a civil
13 penalty of up to one thousand dollars (\$1,000) per day for each
14 day that the documents have not been produced after the date by
15 which the court order requires the documents to be produced, up
16 to ten thousand dollars (\$10,000), unless it is determined that the
17 order is unlawful or invalid. Any statute of limitations applicable
18 to the filing of an accusation by the board shall be tolled during
19 the period the licensee is out of compliance with the court order
20 and during any related appeals.

21 (2) Any licensee who fails or refuses to comply with a court
22 order, issued in the enforcement of a subpoena, mandating the
23 release of records to a board is guilty of a misdemeanor punishable
24 by a fine payable to the board not to exceed five thousand dollars
25 (\$5,000). The fine shall be added to the licensee's renewal fee if
26 it is not paid by the next succeeding renewal date. Any statute of
27 limitations applicable to the filing of an accusation by the board
28 shall be tolled during the period the licensee is out of compliance
29 with the court order and during any related appeals.

30 (3) A health care facility that fails or refuses to comply with a
31 court order, issued in the enforcement of a subpoena, mandating
32 the release of patient records to the board, that is accompanied
33 by a notice citing this section and describing the penalties for
34 failure to comply with this section, shall pay to the board a civil
35 penalty of up to one thousand dollars (\$1,000) per day for each
36 day that the documents have not been produced, up to ten thousand
37 dollars (\$10,000), after the date by which the court order requires
38 the documents to be produced, unless it is determined that the
39 order is unlawful or invalid. Any statute of limitations applicable
40 to the filing of an accusation by the board against a licensee shall

1 be tolled during the period the health care facility is out of
2 compliance with the court order and during any related appeals.

3 (4) Any health care facility that fails or refuses to comply with
4 a court order, issued in the enforcement of a subpoena, mandating
5 the release of records to the board is guilty of a misdemeanor
6 punishable by a fine payable to the board not to exceed five
7 thousand dollars (\$5,000). Any statute of limitations applicable
8 to the filing of an accusation by the healing arts board against a
9 licensee shall be tolled during the period the health care facility
10 is out of compliance with the court order and during any related
11 appeals.

12 (c) Multiple acts by a licensee in violation of subdivision (b)
13 shall be punishable by a fine not to exceed five thousand dollars
14 (\$5,000) or by imprisonment in a county jail not exceeding six
15 months, or by both that fine and imprisonment. Multiple acts by
16 a health care facility in violation of subdivision (b) shall be
17 punishable by a fine not to exceed five thousand dollars (\$5,000),
18 shall be reported to the State Department of Public Health, and
19 shall be considered as grounds for disciplinary action with respect
20 to licensure, including suspension or revocation of the license or
21 certificate.

22 (d) A failure or refusal of a licensee to comply with a court
23 order, issued in the enforcement of a subpoena, mandating the
24 release of records to the healing arts board constitutes
25 unprofessional conduct and is grounds for suspension or revocation
26 of his or her license.

27 (e) Imposition of the civil penalties authorized by this section
28 shall be in accordance with the Administrative Procedure Act
29 (Chapter 5 (commencing with Section 11500) of Division 3 of Title
30 2 of the Government Code). Any civil penalties paid to, or received
31 by, the board pursuant to this section shall be deposited into the
32 fund administered by the board.

33 (f) For purposes of this section, "certified medical records"
34 means a copy of the patient's medical records authenticated by
35 the licensee or health care facility, as appropriate, on a form
36 prescribed by the licensee's board.

37 (g) For purposes of this section, a "health care facility" means
38 a clinic or health facility licensed or exempt from licensure
39 pursuant to Division 2 (commencing with Section 1200) of the
40 Health and Safety Code.

1 (h) If a board complies with Section 1684.1, 2225.5, or 2969,
2 that board shall not be subject to the requirements of this section.

3 (i) This section shall not apply to a licensee who does not have
4 access to, or control over, certified medical records or other types
5 of documents that belong to or are controlled by a health facility
6 or clinic.

7 SEC. 185. Section 4990.51 is added to the Business and
8 Professions Code, to read:

9 4990.51. (a) Notwithstanding any other provision of law, any
10 employer of a licensee shall report to the board the suspension or
11 termination for cause, or any resignation in lieu of suspension or
12 termination for cause, of any licensee in its employ within 15
13 business days. The report shall not be made until after the
14 conclusion of the review process specified in Section 52.3 of Title
15 2 of the California Code of Regulations and *Skelly v. State*
16 *Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This
17 required reporting shall not constitute a waiver of confidentiality
18 of medical records. The information reported or disclosed shall
19 be kept confidential except as provided in subdivision (c) of Section
20 800 and shall not be subject to discovery in civil cases.

21 (b) The information to be reported by the employer shall include
22 the name and license number of the licensee involved, a
23 description of the facts and circumstances of the suspension or
24 termination for cause, any resignation in lieu of suspension or
25 termination for cause, and any other relevant information deemed
26 appropriate by the employer.

27 (c) The board shall be entitled to inspect and copy the following
28 documents in the record for any suspension or termination for
29 cause, or any resignation in lieu of suspension or termination for
30 cause, resulting in action that is required to be reported pursuant
31 to this section:

32 (1) Any statement for suspension or termination of the licensee.

33 (2) Any document or exhibits relevant to the suspension or
34 termination.

35 (d) If, during the investigation by the board of the cause for the
36 termination or suspension or resignation of the licensee, it is found
37 that there has been a violation of existing state or federal law, the
38 board shall report the violation to the appropriate agency.

39 (e) For purposes of this section, "suspension or termination for
40 cause" or "resignation in lieu of suspension or termination for

1 cause" is defined as resignation, suspension, or termination from
2 employment for any of the following reasons:

3 (1) Use of controlled substances or alcohol to the extent that it
4 impairs the licensee's ability to safely practice.

5 (2) Unlawful sale of a controlled substance or other prescription
6 items.

7 (3) Patient or client abuse, neglect, physical harm, or sexual
8 contact with a patient or client.

9 (4) Gross negligence or incompetence.

10 (5) Theft from a patient or client, any other employee, or the
11 employer.

12 (f) As used in this section, the following definitions apply:

13 (1) "Gross negligence" means a substantial departure from the
14 standard of care, which, under similar circumstances, would have
15 ordinarily been exercised by a competent licensee, and which has
16 or could have resulted in harm to the consumer. An exercise of so
17 slight a degree of care as to justify the belief that there was a
18 conscious disregard or indifference for the health, safety, or
19 welfare of the consumer shall be considered a substantial departure
20 from the standard of care.

21 (2) "Incompetence" means the lack of possession of, and the
22 failure to exercise that degree of learning, skill, care, and
23 experience ordinarily possessed by, a responsible licensee.

24 (3) "Willful" means a knowing and intentional violation of a
25 known legal duty.

26 (g) (1) Willful failure of an employer to make a report required
27 by this section is punishable by an administrative fine not to exceed
28 one hundred thousand dollars (\$100,000) per violation.

29 (2) Any failure of an employer, other than willful failure, to
30 make a report required by this section is punishable by an
31 administrative fine not to exceed fifty thousand dollars (\$50,000).

32 (h) The board shall investigate the circumstances underlying
33 any report received pursuant to this section within 30 days to
34 determine if an interim suspension order or temporary restraining
35 order should be issued. The board shall otherwise provide timely
36 disposition of the reports received pursuant to this section.

37 (i) The board shall send to the licensee a copy of the report
38 along with the reasons for the filing of the report and notice
39 advising the licensee of his or her right to submit additional
40 statements or other information to the board.

1 (j) Pursuant to Section 43.8 of the Civil Code, no person shall
2 incur any civil penalty as a result of making any report required
3 by this article.

4 (k) No report is required under this section where a report of
5 the action taken is already required under Section 805.

6 SEC. 186. Section 4990.52 is added to the Business and
7 Professions Code, to read:

8 4990.52. Unless otherwise provided, on or after July 1, 2013,
9 the board shall post on its Internet Web site the following
10 information, including the name and license number, in its
11 possession, custody, or control regarding every licensee for which
12 the board licenses:

13 (a) With regard to the status of every license, whether or not
14 the licensee or former licensee is in good standing, subject to a
15 temporary restraining order, subject to an interim suspension
16 order, subject to a restriction or cease practice ordered pursuant
17 to Section 23 of the Penal Code, or subject to any of the
18 enforcement actions described in Section 803.1.

19 (b) With regard to prior discipline of a licensee, whether or not
20 the licensee or former licensee has been subject to discipline by
21 the board or by the board of another state or jurisdiction, as
22 described in Section 803.1.

23 (c) Any felony conviction of a licensee reported to the board.

24 (d) All current accusations filed by the Attorney General,
25 including those accusations that are on appeal. For purposes of
26 this paragraph, "current accusation" means an accusation that
27 has not been dismissed, withdrawn, or settled, and has not been
28 finally decided upon by an administrative law judge and the board
29 unless an appeal of that decision is pending.

30 (e) Any malpractice judgment or arbitration award imposed
31 against a licensee and reported to the board.

32 (f) Any hospital disciplinary action imposed against a licensee
33 that resulted in the termination or revocation of a licensee's
34 hospital staff privileges for a medical disciplinary cause or reason
35 pursuant to Section 4990.50 or 805.

36 (g) Any misdemeanor conviction of a licensee that results in a
37 disciplinary action or an accusation that is not subsequently
38 withdrawn or dismissed.

39 (h) Appropriate disclaimers and explanatory statements to
40 accompany the above information, including an explanation of

1 what types of information are not disclosed. These disclaimers
2 and statements shall be developed by the board and shall be
3 adopted by regulation.

4 (i) The information provided on the Internet shall be in
5 accordance with the California Public Records Act (Chapter 3.5
6 (commencing with Section 6250) of Division 7 of Title 1 of the
7 Government Code) and the Information Practices Act of 1977
8 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4
9 of Division 3 of the Civil Code) and shall comply with the
10 Department of Consumer Affairs Guidelines for Access to Public
11 Records.

12 (j) Information provided on the Internet may not include
13 personal information, unless otherwise provided pursuant to this
14 chapter, including the home telephone number, date of birth, or
15 social security number. The information may not include the
16 licensee's address, but may include the city and county of the
17 licensee's address of record.

18 SEC. 187. Section 4990.53 is added to the Business and
19 Professions Code, to read:

20 4990.53. (a) Unless otherwise provided, if a licensee possesses
21 a license or is otherwise authorized to practice in any state other
22 than California or by any agency of the federal government and
23 that license or authority is suspended or revoked outright, the
24 California license of the licensee shall be suspended automatically
25 for the duration of the suspension or revocation, unless terminated
26 or rescinded as provided in subdivision (c). The board shall notify
27 the licensee of the license suspension and of his or her right to
28 have the issue of penalty heard as provided in this section.

29 (b) Upon its own motion or for good cause shown, the board
30 may decline to impose or may set aside the suspension when it
31 appears to be in the interest of justice to do so, with due regard
32 to maintaining the integrity of, and confidence in, the specific
33 healing art.

34 (c) The issue of penalty shall be heard by an administrative law
35 judge sitting alone or with a panel of the board, in the discretion
36 of the board. A licensee may request a hearing on the penalty and
37 that hearing shall be held within 90 days from the date of the
38 request. If the order suspending or revoking the license or authority
39 to practice is overturned on appeal, any discipline ordered
40 pursuant to this section shall automatically cease. Upon a showing

1 to the administrative law judge or panel by the licensee that the
2 out-of-state action is not a basis for discipline in California, the
3 suspension shall be rescinded. If an accusation for permanent
4 discipline is not filed within 90 days of the suspension imposed
5 pursuant to this section, the suspension shall automatically
6 terminate.

7 (d) The record of the proceedings that resulted in the suspension
8 or revocation of the licensee's out-of-state license or authority to
9 practice, including a transcript of the testimony therein, may be
10 received in evidence.

11 (e) This section shall not apply to a licensee who maintains his
12 or her primary practice in California, as evidenced by having
13 maintained a practice in this state for not less than one year
14 immediately preceding the date of suspension or revocation.
15 Nothing in this section shall preclude a licensee's license from
16 being suspended pursuant to any other provision of law.

17 (f) This section shall not apply to a licensee whose license has
18 been surrendered, whose only discipline is a medical staff
19 disciplinary action at a federal hospital and not for medical
20 disciplinary cause or reason as that term is defined in Section 805,
21 or whose revocation or suspension has been stayed, even if the
22 licensee remains subject to terms of probation or other discipline.

23 (g) This section shall not apply to a suspension or revocation
24 imposed by a state that is based solely on the prior discipline of
25 the licensee by another state.

26 (h) The other provisions of this article setting forth a procedure
27 for the suspension or revocation of a licensee's license or
28 certificate shall not apply to summary suspensions issued pursuant
29 to this section. If a summary suspension has been issued pursuant
30 to this section, the licensee may request that the hearing on the
31 penalty conducted pursuant to subdivision (c) be held at the same
32 time as a hearing on the accusation.

33 (i) A board that complies with Section 2310 shall not be subject
34 to the requirements of this section.

35 SEC. 188. Section 4992.33 of the Business and Professions
36 Code is amended to read:

37 4992.33. (a) The board shall revoke any license issued under
38 this chapter upon a decision made in accordance with the
39 procedures set forth in Chapter 5 (commencing with Section 11500)
40 of Part 1 of Division 3 of Title 2 of the Government Code, that

1 contains any finding of fact that the licensee or registrant engaged
2 in any act of sexual contact, as defined in Section 729, when that
3 act is with a patient, or with a former patient when the relationship
4 was terminated primarily for the purpose of engaging in that act.
5 The revocation shall not be stayed by the administrative law judge
6 or the board.

7 (b) *Except as otherwise provided, any proposed decision or*
8 *decision issued under this chapter in accordance with the*
9 *procedures set forth in Chapter 5 (commencing with Section 11500)*
10 *of Part 1 of Division 3 of Title 2 of the Government Code, that*
11 *contains any finding of fact that the licensee has committed a sex*
12 *offense, shall contain an order revoking the license. The proposed*
13 *decision or decision shall not contain any order staying the*
14 *revocation of the licensee.*

15 (c) *As used in this section, the term sex offense shall mean any*
16 *of the following:*

17 (1) *Any offense for which registration is required by Section*
18 *290 of the Penal Code or a finding that a person committed such*
19 *an act.*

20 (2) *Any offense described in Section 243.4(a)–(d), 261.5, 313.1,*
21 *or 647(a) or (d) of the Penal Code or a finding that a person*
22 *committed such an act.*

23 (3) *Any attempt to commit any of the offenses specified in this*
24 *section.*

25 (4) *Any offense committed or attempted in any other state or*
26 *against the laws of the United States which, if committed or*
27 *attempted in this state, would have been punishable as one or more*
28 *of the offenses specified in this section.*

29 SEC. 189. *Section 12529.8 is added to the Government Code,*
30 *to read:*

31 12529.8. (a) *Any healing arts board described in Division 2*
32 *(commencing with Section 500) of, the Business and Professions*
33 *Code may utilize the model prescribed in Sections 12529 to*
34 *12529.6, inclusive, for the investigation and prosecution of some*
35 *or all of its enforcement actions and may utilize the services of the*
36 *Department of Justice Health Quality Enforcement Section or the*
37 *licensing section. If a board elects to proceed pursuant to this*
38 *section and utilizes the services of the licensing section, the*
39 *Department of Justice shall assign attorneys to work on location*

1 at the licensing unit of the Division of Investigation of the
2 Department of Consumer Affairs.

3 (b) The report requirements contained in Section 12529.7 shall
4 apply to any healing arts board that utilizes those provisions for
5 enforcement.

6 (c) This section shall not apply to any healing arts board listed
7 in subdivision (a) of Section 12529.

8 SEC. 190. (a) It is the intent of the Legislature that the
9 Department of Consumer Affairs shall, on or before December
10 31, 2012, establish an enterprise information technology system
11 necessary to electronically create and update healing arts license
12 information, track enforcement cases, and allocate enforcement
13 efforts pertaining to healing arts licensees. The Legislature intends
14 the system to be designed as an integrated system to support all
15 business automation requirements of the department's licensing
16 and enforcement functions.

17 (b) The Legislature also intends the department to enter into
18 contracts for telecommunication, programming, data analysis,
19 data processing, and other services necessary to develop, operate,
20 and maintain the enterprise information technology system.

21 SEC. 191. No reimbursement is required by this act pursuant
22 to Section 6 of Article XIII B of the California Constitution for
23 certain costs that may be incurred by a local agency or school
24 district because, in that regard, this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 However, if the Commission on State Mandates determines that
31 this act contains other costs mandated by the state, reimbursement
32 to local agencies and school districts for those costs shall be made
33 pursuant to Part 7 (commencing with Section 17500) of Division
34 4 of Title 2 of the Government Code.

35 ~~SECTION 1. Section 1623 is added to the Business and~~
36 ~~Professions Code, to read:~~

37 ~~1623. (a) Notwithstanding any other provision of law, the~~
38 ~~board may contract with a collection agency for the purpose of~~
39 ~~collecting outstanding fees, fines, or cost recovery amounts from~~
40 ~~any person who owes that money to the board, and, for those~~

1 ~~purposes, may provide to the collection agency the personal~~
2 ~~information of that person, including his or her birth date, telephone~~
3 ~~number, and social security number. The contractual agreement~~
4 ~~shall provide that the collection agency may use or release personal~~
5 ~~information only as authorized by the contract, and shall provide~~
6 ~~safeguards to ensure that the personal information is protected~~
7 ~~from unauthorized disclosure. The contractual agreement shall~~
8 ~~hold the collection agency liable for the unauthorized use or~~
9 ~~disclosure of personal information received or collected under this~~
10 ~~section.~~

11 ~~(b) The board shall not use a collection agency to recover~~
12 ~~outstanding fees, fines, or cost recovery amounts until the person~~
13 ~~has exhausted all appeals and the decision is final.~~

Attachment C:

Senate Committee on Business, Professions, and Economic Development Committee Analysis

Senate Bill 544 (Price) Professions and Vocations: Regulatory Boards

As Amended: April 25, 2011

**Written by: Rosielyn Pulmano,
Consultant**

hearing Date: May 2, 2011

Bill No: SB 544

**SENATE COMMITTEE ON BUSINESS, PROFESSIONS
AND ECONOMIC DEVELOPMENT**
Senator Curren D. Price, Jr., Chair

Bill No: SB 544 Author: Price
As Amended: April 14, 2011 Fiscal: Yes

SUBJECT: Professions and vocations: regulatory boards

SUMMARY: Enacts the Consumer Health Protection Enforcement Act that includes various provisions affecting the investigation and enforcement of disciplinary actions against licensees of healing arts boards.

Existing law:

- 1) Establishes the Department of Consumer Affairs (DCA) which oversees more than 40 boards, bureaus, committees, commissions and other programs which license and regulate more than 100 businesses and 200 professional categories, including doctors, nurses, dentists, engineers, architects, contractors, cosmetologists and automotive repair facilities, and other diverse industries.
- 2) Establishes the Office of Attorney General (AG) for the prosecution of cases against licensees of DCA's regulatory boards and bureaus.
- 3) Establishes the Office of Administrative Hearings charged with hearing administrative law cases, pursuant to the Administrative Procedures Act (APA), brought by the AG's Office on behalf of DCA's regulatory boards and bureaus.
- 4) Requires specified boards within the DCA to disclose on the Internet information on their respective licensees, including information on the status of every license, suspensions and revocations of licenses issued and other related enforcement actions.
- 5) Provides under the Medical Practice Act that the Medical Board of California (MBC) shall disclose certain information about physicians and surgeons, including information on whether the licensee is in good standing, subject to a temporary restraining order, interim suspension order, or any other enforcement actions, as specified.
- 6) Allows the Director of the DCA to audit and review inquiries, complaints, and disciplinary proceedings regarding licensees of the MBC, and the California Board of Podiatric Medicine. Allows the Director to make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, and submit a report to the Legislature on the findings of the audit and review.

- 7) Establishes within the DCA, the Division of Investigation (DOI), to investigate alleged misconduct by licensees of boards. Allows the Director of the DCA to employ such investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law. States Legislative intent that inspectors used by boards are not required to be employees of the DOI, but may be either employees, or under contract to the boards.
- 8) Allows state departments and agencies to formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding, and specifies that the settlement may be on any terms the parties determine are appropriate. States that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.
- 9) States that a board or an administrative law judge may issue an interim suspension order suspending any licensee or imposing license restrictions, as specified.
- 10) Requires a physician and surgeon's certificate to be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed.
- 11) States that any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor. Defines sexual contact as sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.
- 12) Establishes the Sex Offender Registration Act which requires specified persons for the rest of his or her life while residing in California, or while attending school or working in California, to register, as specified.
- 13) Prohibits a physician and surgeon from including, or permitting to include the following in a civil dispute settlement agreement: a provision that prohibits another party to the dispute from contacting or cooperating with the MBC; a provision that prohibits another party to the dispute from filing a complaint with the MBC; and, a provision that requires another party to the dispute to withdraw a complaint he or she has filed with the MBC. States that such provisions are void as against public policy, and its violation is subject to disciplinary action by the MBC.
- 14) Provides in the Medical Practice Act that the AG's Office and his or her investigative agents, and the MBC or the California Board of Podiatric Medicine may inquire into any alleged

violation of the Medical Practice Act or any other federal or state law, and may inspect documents relevant to those investigations according to specified procedures. Requires that the names of any patients on those records that are reviewed to remain confidential. Allows any document relevant to an investigation to be inspected, and copies may be obtained, where patient consent is given.

- 15) Specifies, for physicians and surgeons, dentists, and psychologists, penalties for failure to produce medical records requested pursuant to a patient's written authorization and a court order mandating release of a record. Specifies penalties for health care facilities that fail to produce medical records.
- 16) Requires any employer of a vocational nurse, psychiatric technician, or respiratory care therapist to report to the appropriate board the suspension or termination for cause of any licensed vocational nurse, psychiatric technician or respiratory care therapist in its employ. Defines suspension or termination for cause as suspension or termination from employment for any of the following reasons: (a) use of controlled substances or alcohol, as specified; (b) unlawful sale of controlled substances or other prescription items; (c) patient or client abuse, neglect, physical harm, or sexual contact with a patient or client; (d) falsification of medical records; (e) gross negligence or incompetence and (f) theft from patients or clients, other employees, or the employer. Makes failure to report punishable by an administrative fine not to exceed \$10,000 per violation.
- 17) Requires peer review reporting by a peer review body, as defined, of specified actions taken against or undertaken by a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, or dentist.
- 18) Allows a board to order a licentiate to be examined by one or more physicians whenever it appears that any person holding a license, certificate or permit may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate. States that if a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods: revoking the licentiate's certificate or license; suspending the licentiate's right to practice; placing the licentiate on probation; and taking any other action the licensing agency deems proper.
- 19) Provides that a hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. Defines an accusation as a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged.
- 20) Establishes the federal Health Care Quality Improvement Act, administered by the U. S. Department of Health and Human Services to manage the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank which collects and releases certain information relating to the professional competence and conduct of health care professionals.

- 21) Specifies in the Medical Practice Act that the conviction of a charge violating any federal or state statute or regulation regulating dangerous drugs or controlled substance constitutes unprofessional conduct.
- 22) Requires the clerk of court to report any judgment in excess of \$30,000 that is related to rendering unprofessional services by specified licensees; and to transmit felony preliminary hearing transcript against a physician and surgeon.
- 23) Requires the district attorney, city attorney, or other prosecuting agency to notify the MBC, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners of any filings charging a felony against a licensee, as specified.
- 24) Establishes a drug diversion program for osteopathic physicians and surgeons, registered nurses, dentists, pharmacists, physical therapists, physician assistants, and veterinarians.
- 25) Establishes a vertical enforcement and prosecution model for investigations of cases against physician and surgeons and other healing arts licensees.
- 26) Provides for a listing of general provisions applicable to other boards under the DCA which shall also be applicable to the Chiropractic Board which are not considered inconsistent with the Chiropractic Initiative Act.

This bill:

- 1) Establishes the Consumer Health Protection Enforcement Act. States Legislative findings and declarations on the need to timely investigate and prosecute licensed health care professionals who have violated the law, and the importance of providing healing arts boards with the regulatory tools and authorities necessary to reduce the timeframe for investigating and prosecuting violations of law by healing arts practitioners between 12 and 18 months.
- 2) Expands the current authority of the Director of the DCA to audit the MBC, and the California Board of Podiatric Medicine to include all healing arts boards. Clarifies that the recommendations of the Director to the healing arts boards pursuant to the audit and review are for the consideration of the healing arts boards. Allows a designee of the Director to perform the audit and review.
- 3) Requires a state agency if it has knowledge that a person it is investigating is licensed by a board to notify the board that it is conducting an investigation against one of its licensees. States that the notification of investigation to the board shall include the name, address, and, if known, the professional license type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. Indicates that the state agency shall cooperate with the board in providing any requested information. Requires a board to maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this provision, and prohibits a board from sharing, selling, or transferring the information to any third party unless it is otherwise authorized by federal or state law.

- 4) Requires all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a board to provide records to the board upon request prior to receiving payment from the board for the cost of providing the records. States that these records include, but are not limited to, confidential records, medical records, and records related to closed or open investigations.
- 5) Prohibits a licensee of a board from including or permitting to be included any of the following provisions in an agreement to settle a civil litigation action filed by a consumer arising from the licensee's practice, whether the agreement is made before or after the filing of an action:
 - a) A provision that prohibits another party to the dispute from contacting or cooperating with the board;
 - b) A provision that prohibits another party to the dispute from filing a complaint with the board; or
 - c) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.States that any agreement that contains any of these provisions is void as against public policy, and constitutes unprofessional conduct.
- 6) Expands the current authority of the Director of the DCA to audit the MBC, and the California Board of Podiatric Medicine to include all healing arts boards. Clarifies that the recommendations of the Director to the healing arts boards pursuant to the audit and review are for the consideration of the healing arts boards. Allows a designee of the Director to perform the audit and review.
- 7) States that investigators used by the healing arts boards shall not be required to be employees of the DOI and the healing arts boards may contract for investigative services provided by the AG.
- 8) Establishes within the DOI the Health Quality Enforcement Unit to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards.
- 9) Requires each healing arts board, within DCA, to report annually to the DCA and the Legislature, not later than October 1 of each year on specific information, including information relating to complaints, accusations filed, citations issued, and number of disciplinary actions. Sunsets this report requirement on October 1, 2016.
- 10) Provides that the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration, as specified, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board.
- 11) Specifies that the following constitutes unprofessional conduct:
 - a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances. States that the record of the conviction is conclusive evidence of the unprofessional conduct; and that a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction. Allows discipline to be ordered against a licensee, as specified.
 - b) A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances.

- c) The use or prescribing for or administering to himself or herself of any controlled substance or the use of any of the dangerous drugs, as specified, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination, thereof. States that a violation of this provision is a misdemeanor punishable by a fine of up to \$10,000, imprisonment in the county jail of up to 6 months, or both the fine and imprisonment.

12) Makes it unprofessional conduct for any licensee for failure to comply with the following:

- a) Furnish information in a timely manner, as specified.
- b) Cooperate and participate in any investigation or other regulatory or disciplinary proceeding pending against the licensee. States that this provision shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges.

13) Requires the clerk of the court to do the following:

- a) Report to a healing arts board any judgment for a crime committed or for any death or personal injury in excess of \$30,000, for which the licensee is responsible due to negligence, error or omission in practice, or rendering unauthorized professional services.
- b) Transmit any felony preliminary hearing transcript concerning a defendant licensee of a healing arts board.

14) Requires the district attorney, city attorney, other prosecuting agency, or clerk of the court to notify the appropriate healing arts boards if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the healing arts board.

15) Requires the AG's Office to ensure that subsequent reports and subsequent disposition information authorized to be issued by any board, as specified, are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

16) Requires the AG's Office to do the following:

- a) Serve, or submit to a healing arts board for service, an accusation within 60 calendar days of receipt from the healing arts board.
- b) Serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.
- c) Set a hearing date within three days of receiving a notice of defense, unless the healing arts board gives the AG instruction otherwise.

- 17) Includes issuing a limited or restricted license in the action that existing law allows a healing arts board to take against a licentiate whose ability to practice may be impaired because of mental or physical illness.
- 18) Requires each healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank (NPDB) prior to any of the following:
 - a) Granting a license to an applicant who is currently residing in another state.
 - b) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state.
 - c) Granting a petition for reinstatement of a revoked or surrendered license.
- 19) Allows a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the NPDB prior to issuing any license.
- 20) Requires a healing arts board to charge a fee to cover the actual cost to conduct the queries.
- 21) Specifies that it is a public offense, punishable by a fine not to exceed \$100,000 or imprisonment, to engage in any practice including healing arts practice without a current and valid license. States that this provision applies to a licensee who supervises the practice of any person who does not hold a current and valid license to practice.
- 22) For specified healing arts boards, allows a healing arts board to delegate to its executive officer or executive director the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.
- 23) For specified healing arts boards, allows a healing arts board to delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts board and the licensee has agreed to the revocation or surrender his or her license.
- 24) For specified healing arts boards, allows a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant. Requires the settlement to include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated. Specifies that a person who enters a settlement is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement. States that any settlement executed against a licensee shall be considered discipline, and a public record to be posted on the applicable board's Internet Website.
- 25) For specified healing arts boards, requires the automatic suspension of any licensee who is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. Requires the healing arts board to notify the licensee in writing of the suspension

and of his or her right to elect to have the issue of penalty heard, as specified.

- 26) For specified healing arts boards, provides that a decision issued by an administrative law judge that contains a finding that a licensee or registrant has engaged in any act of sexual exploitation, as defined, with a patient, or has committed an act or been convicted of a sex offense as defined, shall contain an order of revocation. Specifies that the revocation shall not be stayed by the administrative law judge.
- 27) For specified healing arts boards, specifies certain requirements for healing arts board when dealing with any applicant or licensee who is required to register as a sex offender.
- 28) For specified healing arts boards, allows the AG and his or her investigative agents, and a healing arts board and its investigators and representatives to inquire into any alleged violation of the laws under the jurisdiction of the healing arts board or any other federal or state law, regulation, or rule relevant to the practice regulated by the healing arts board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:
 - a) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.
 - b) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.
- 29) For specified healing arts boards, specifies that where certified documents are requested from licensees in accordance with Item #28) above, by the AG, or his or her agents or deputies, or any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause. States that good cause includes, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Makes failure to produce requested certified documents or copies thereof, after being informed of the required deadline, unprofessional conduct.
- 30) For specified healing arts boards, states that any provision of law making a communication between a licensee of a healing arts board and his or her patients a privileged communication shall not apply to investigations or proceedings conducted by a healing arts board. Requires the names of any patients whose records are reviewed to be confidential, unless specified. States that the authority to examine records of patients in the office of a licensee is limited to records of patients who have complained to the healing arts board about that licensee.
- 31) For specified healing arts boards, specifies that a licensee who fails or refuses to comply with a request for the certified medical records of a patient, that is accompanied by that patient's written authorization for release of records to a healing arts board, within 15 days of receiving the request and authorization, shall pay to the healing arts board a civil penalty of up to \$1,000 per day for each day that the documents have not been produced after the 15th day, up to \$10,000, unless the licensee is unable to provide the documents within this time period for good cause.

- 32) For specified healing arts boards, requires a health facility to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a healing arts board together with a notice citing this section and describing the penalties for failure to comply with this requirement. Specifies that failure to provide the authorizing patient's certified medical records to the healing arts board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to \$10,000, unless the health care facility is unable to provide the documents within this time period for good cause. Requires healing arts boards to pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.
- 33) For specified healing arts boards, states that a licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board, shall pay to the healing arts board a civil penalty of up to \$1,000 per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to \$10,000, unless it is determined that the order is unlawful or invalid. Indicates that any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals. Indicates that any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed \$5,000, as specified. Indicates that multiple acts by a licensee in violation of this provision is punishable by a fine not to exceed \$5,000 or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment. A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.
- 34) For specified healing arts boards, provides that a health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to a healing arts board, that is accompanied by a notice citing this requirement and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to \$1,000 per day for each day that the documents have not been produced, up to \$10,000, after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Indicates that any health care facility that fails or refuses to comply is guilty of a misdemeanor punishable by a fine payable to the board not to exceed \$5,000. Indicates that multiple acts by a health care facility in violation of this provision is punishable by a fine not to exceed \$5,000, shall be reported to the State Department of Public Health, and considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.
- 35) For specified healing arts boards, specifies that the provisions requiring the production of medical records do not apply to a licensee who does not have access to and control over certified medical records.

- 36) For specified healing arts boards, requires any employer of a health care licensee to report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any health care licensee in its employ within 15 business days, as specified. Indicates that this reporting requirement does not constitute a waiver of confidentiality of medical records, and that the information reported or disclosed shall be kept confidential and not subject to discovery in civil cases. States that no person shall incur any civil penalty as a result of making this report.
- 37) Defines, for purposes of Item #36) above, resignation, suspension or termination for cause as any of the following reasons:
- a) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.
 - b) Unlawful sale of a controlled substance or other prescription items.
 - c) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.
 - d) Gross negligence or incompetence.
 - e) Theft from a patient or client, any other employee, or the employer.
- 38) Defines, for purposes of Item #36) above, gross negligence as a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent health care licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care.
- 39) Defines incompetence for purposes of Item #36) above, as the lack of possession of and the failure to exercise that degree of learning, skill, care and experience ordinarily possessed by a responsible health care licensee.
- 40) States that a willful failure of an employer to make a report required in Item #36) above is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation. Defines willful as knowing and intentional violation of a known legal duty. States that any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed \$50,000.
- 41) For specified healing arts boards, provides that on or after July 1, 2013, every healing arts board shall post on the Internet specified information in its possession, custody, or control regarding every licensee for which the board licenses, including whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice order, as specified, or subject to any of the enforcement actions, as specified; whether or not the licensee or former licensee has been subject to discipline by the healing arts board or by the board of another state or jurisdiction, as described; any felony conviction of a licensee reported to the healing arts board; all current accusations filed by the AG's Office; and any malpractice judgment or

arbitration award.

- 42) For specified healing arts boards, provides that if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, as specified. Requires the board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard, as provided.
- 43) Specifies that it is the intent of the Legislature, through a request in 2012 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the Pharmacists Recovery Program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that pharmacists and intern pharmacists participating in the program are appropriately monitored, and the public is protected from pharmacists and intern pharmacists who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2013. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. Provides that it is the intent of the Legislature that the audit shall be paid for with funds from the Pharmacy Board Contingent Fund.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. **Purpose.** The Author is the Sponsor of this measure. The Author states that this bill provides healing arts boards several tools to improve their enforcement process and ensure patient safety. According to the author, some of DCA's healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner, and are taking an average of three years or more to investigate and prosecute these cases. The author points out that this is an unacceptable timeframe given that the highest priority of these boards is the protection of the public.
2. **Background.** On July 11, 2009, the *Los Angeles Times*, in conjunction with Pro-Publica, a nonprofit investigative news agency, published an article entitled "*When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer*," charging that the BRN, which oversees California's more than 350,000 nurses, often takes years to act on complaints of egregious misconduct. The article indicated that nurses with histories of drug abuse, negligence, violence, and incompetence continue to provide care, and BRN often took more than three years on average to investigate and discipline errant nurses. The article also pointed out that complaints often take a circuitous route through several clogged bureaucracies; the BRN failed to act against nurses who have been sanctioned by others and failed to use its authority to immediately suspend dangerous nurses from practicing; there were failures in the probation monitoring of troubled nurses; there is a lack of reporting requirement for hospitals to report nurses who have been fired or suspended for harming a patient or other serious

misconduct similar to what is required of vocational nurses, psychiatric technicians and respiratory care therapists; and, nurses convicted of crimes, including sex offenses and attempted murder continue to be licensed. On July 25, 2009, the *LA Times* published another article on the failures of BRN's drug diversion program. This article pointed out that participants in the program continue to practice while intoxicated, stole drugs from the bedridden and falsified records to cover their tracks. Moreover, more than half of those participating in drug diversion did not complete the program, and even those who were labeled as "public risk" or are considered dangerous to continue to treat patients did not trigger immediate action or public disclosure by BRN. The article further pointed out that because the program is confidential, it is impossible to know how many enrollees relapse or harm patients. But the article points out that a review of court and regulatory records filed since 2002, as well as interviews with diversion participants, regulators and experts suggests that dozens of nurses have not upheld their end of the bargain and oversight is lacking. These revelations, including other articles revealing lengthy enforcement timeframes against problem nurses who continue to practice and provide care to the detriment of patients, led Governor Schwarzenegger to replace four members of the BRN and appoint members to two long-time vacancies.

On July 27, 2009, DCA convened a meeting for the purpose of taking testimony and evidence relevant to the BRN enforcement program. BRN's discussion focused on its proposals that were contained in the "*Enforcement Report On the Board of Registered Nursing*." The report pointed out several barriers to BRN's enforcement process, but specifically indicated that for the board's diversion program, when a substance abuse case is referred to the diversion program, the investigation is placed on hold while the licensee decides if he/she wants to enter diversion. This practice allows the licensee to delay final disposition of the case. In addition, there is limited communication between the diversion program and the enforcement program which can delay investigation of licensees who are unsuccessfully diverted and are terminated from the program, and that the BRN lacks a number of enforcement tools, including the ability to automatically suspend licensees pending a hearing.

On August 17, 2009, this Committee held an informational hearing entitled "*Creating a Seamless Enforcement Program for Consumer Boards*" and investigated many of the problems pointed out by the *LA Times*, as well as others related to the BRN and other healing arts boards. A Background Paper was prepared for the hearing which pointed out many of the existing problems and made specific recommendations for improving the enforcement programs of the healing arts boards. This bill codifies many of the recommendations listed in the Background Paper for the informational hearing and well as other recommendations proposed by the DCA.

3. **Previous Legislation.** SB 1111 (Negrete McLeod) of 2010, contained many of the provisions that are codified in this bill. SB 1111 failed passage in this Committee.
4. **The Following Provisions have General Application to All the Healing Arts Boards.**
 - a) **Access to Records/Documents from Governmental Agencies.** Requires a state agency, upon receiving a request from a board, to provide all records in the custody of the agency including but not limited to confidential reports, medical records and records related to closed or open investigations. Requires a healing arts board to maintain the confidentiality of any personal identifying information.

Justification. When a regulatory program conducts an investigation on one of its licensees, there can be significant delays caused by the amount of time it takes to secure records from various state agencies. This proposal would solve this problem by requiring these agencies to release information relevant to investigations, upon the request of a board.

- b) **Payment to Agencies for Record/Documents Received.** Requires all local and state law enforcement agencies, state and local governments, state agencies and licensed health care facilities, and employers of any licensee of a board to provide records requested prior to receiving payment from the board.

Justification. Only a small number of external governmental agencies charges boards for producing records (i.e., Federal courts, several Los Angeles county agencies). However, under current practices, procedures involved in receiving approval for and completing the payment can delay delivery of the requested records.

- c) **Prohibition of Gag Clauses in Civil Litigation Action.** Prohibits a healing arts licensee from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with or filing a complaint with a board based on any action arising from his or her practice.

Justification. Currently, physicians and surgeons are prohibited from including gag clauses in civil dispute settlements. AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. There is no reason why other healing arts professionals should not be subject to the same prohibition which would prevent them from including a "gag clause" in a malpractice settlement and thus prevent a board from receiving information about a practitioner who may have violated the law. The use of gag clauses still persists. Gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses can cause delays and thwart a board's effort to investigate possible cases of misconduct, thereby preventing the board from performing its most basic function – protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as healing arts professional.

- d) **Director's Authority to Audit Enforcement Programs of Health Boards.** Existing law authorizes the Director of DCA to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California (MBC) and the California Board of Podiatric Medicine. This bill allows the Director to audit and review the aforementioned activities for any of the healing arts boards. The Director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

Justification. There does not appear to be any reason why the Director should only be limited to auditing and taking specific actions on behalf of consumers for the MBC and the

Podiatric Board. The Director should be authorized to audit and review any healing arts boards as necessary, and allow the Director to make recommendations for changes to the board's disciplinary or enforcement system.

- e) **Allow Health Boards to Contract for Investigative Services provided by the Department of Justice.** Allows a healing arts board to contract with the Department of Justice to provide investigative services as determined necessary by the Executive Officer.

Justification. Healing arts boards should be provided with the greatest flexibility in obtaining investigative services and in completing cases in a timely manner. By allowing healing arts boards to contract with the Department of Justice, or to utilize the investigative services of the DOI, they will be provided with the broadest opportunity to move cases forward in a more expeditious manner. The AG's Office made this recommendation since it also believes that more difficult criminal-type cases could be investigated and prosecuted by their Office.

- f) **Create Within the Division of Investigation (DOI) a Health Quality Enforcement Unit.** Creates within DOI a special unit titled the "Health Quality Enforcement Unit" to focus on health care quality cases and to work closely with the AG's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

Justification. Creating a Health Quality Enforcement Unit to focus on health care quality cases will create expertise in the investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

- g) **Annual Enforcement Reports by Boards to the Department and Legislature.** Requires healing arts boards to report annually, by October 1, to the DCA and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation for alcohol or drug abuse.

Justification. Currently, the MBC reports annually to the DCA and the Legislature certain enforcement actions taken against physicians and surgeons. There is no reason why other healing arts boards should not be subject to the same requirements in submitting an annual enforcement report both to the DCA and the Legislature.

- h) **Conviction of Sexual Misconduct – Substantially Related Crime.** Provides that a conviction of sexual misconduct or a felony requiring registration as a registered sex offender shall be considered a crime substantially related to the qualifications, functions, or duties of a board license.

Justification. Existing law provides that for physicians and surgeons, dentists and other health professionals, a conviction of sexual misconduct or a felony requiring registration as a registered sex offender is considered a crime substantially related to the qualifications, functions, or duties of a board licensee. There is no reason why other health professionals who have been convicted of sexual misconduct, or have been required to register as a sex offender pursuant to a felony conviction, should not be subject to the same standard and

finding that such a crime is substantially related to the qualifications, functions, or duties of a board licensee.

- i) **Unprofessional Conduct for Drug Related Offense.** Specifies that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct.

Justification. The Medical Practice Act provides that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct. There is no reason why other health professionals should not be subject to the same requirements regarding certain drug related offenses which would be considered as unprofessional conduct on the part of the practitioner.

- j) **Unprofessional Conduct for Failure to Cooperate With Investigation of Board.** Specifies that failure to furnish information in a timely manner to the board or cooperate in any disciplinary investigation constitutes unprofessional conduct.

Justification. This requirement was recommended by the AG's Office. According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the board. This refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required their licensees to cooperate with investigations being conducted by disciplinary authorities. The AG argues that the enactment of a statutory requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

- k) **Reporting by Licensee of Disciplinary Action.** Requires a healing arts licensee to submit a written report for any disciplinary action taken by another licensing authority or authority of this state or of another state or an agency of the federal government and any indictment or information charging a felony against the licensee or any conviction of a crime.

Justification. Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she been convicted of a felony or misdemeanor. There is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

- l) **Report of Crime or Personal Injury Judgment by Clerk of Court.** Requires that the clerk of the court provide notice to a healing arts board for which the licensee is licensed, if there is a judgment for a crime committed or for any death or personal injury in excess of \$30,000, for which the licensee is responsible due to their negligence, error or omission in

practice, or his or her rendering unauthorized professional services.

Justification. There is no reason the clerk of the court should not report a judgment for a crime or for personal injury to any of the other healing arts boards. Most healing arts boards are currently covered under this provision.

- m) **Report of Felony Charges by DA, City Attorney, or Clerk of Court.** Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Justification. There is no reason why all the other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

- n) **Report of Preliminary Hearing Transcript of Felony by Clerk of Court.** Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Justification. There is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

- o) **Notification of Subsequent Reports and Subsequent Disposition Information by DOJ.** Requires the Department of Justice to provide notification within 30 days of subsequent reports and subsequent disposition information or other updates of licensees to boards.

Justification. While all new fingerprints are performed electronically, not all records at the DOJ are kept electronically for licensees who were fingerprinted in the past. Retrieving non-electronic records adds unnecessary time to investigations. The DCA is not in a position to recommend how exactly the DOJ can reduce the amount of time it takes to complete subsequent arrest and conviction notices, but believes that a benchmark should be set. This would speed up the time it takes to receive some arrest and conviction notices and will allow boards to take action against licensees sooner.

- p) **Enforcement Timeframes for the Attorney General's Office.** Requires the AG's Office to serve an accusation within 60-calendar days after receipt of a request for accusation from a board; serve a default decision within 5 days following the time period allowed for the filing of a Notice of Defense and to set a hearing date within three days of receiving a Notice of Defense, unless instructed otherwise by the board.

Justification. There are delays in the prosecution of cases at the AG's Office that are contributing to the lengthy enforcement and disciplinary process that can take on average up to 2 to 3 years. According to statistics provided by the AG's Office, the average time for the AG to file an accusation for a board is taking from 5 to 8 months, and to complete prosecution can take on average about 400 days. Concerns have also been raised about the time it takes the AG to prepare a proposed default decision. The filing of a default decision is made once a licensee has failed to file a "notice of defense" when an accusation has been served on him or her. If the licensee fails to file a notice of defense within a specified timeframe, he or she is subject to a default judgment because of a failure to appear or make a defense of the disciplinary case. In 2004-2005 it was taking the AG

almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. However, the filing of a proposed default decision is "not rocket science" and should only take a matter of days.

- q) **Clarifies that a board has an option to issue a limited or restricted license to a licensee whose ability to practice may be impaired because of mental or physical illness.**

Justification. Existing law allows healing arts boards to revoke, suspend, place on probation or take any other appropriate action against a licensee if the licensee's ability to practice his or her profession safely is impaired because of mental or physical illness affecting competency. According to the Legislative Counsel, the Americans with Disabilities Act prohibits discrimination against disabled persons by public entities, and that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, including a public entity that administers a licensing program. Although healing arts boards are authorized to issue a probationary license to licensees with physical or mental illness, some licensees disfavor the use of the term probationary license because of the negative implication associated with probation. The clarification contained in this bill does not require a healing arts board to issue limited or restricted license, but instead enumerates that these are options for a healing arts board to take against a licensee with physical or mental illness affecting competency to practice.

- r) **Checking Information Maintained by the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).** Requires healing arts boards to check the NPDB and the HIPDB under the following conditions: (1) Prior to granting a license to an applicant who is currently residing in another state; (2) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state; (3) Granting a petition for reinstatement of a revoked or surrendered license. Allows a healing arts board to query the NPDB prior to issuing any license. Allows a healing arts board to charge a fee to cover the actual costs to conduct the search.

Justification. There is no reason for boards not to check the NPDB or other national professional or council databases to find out whether applicants or licensees have been sanctioned or disciplined by other states prior to granting or renewing of a license.

For background purposes, the NPDB and HIPDB, managed by the Health Resources and Services Administration of the U.S. Department of Health and Human Services, serves as an electronic repository of information on adverse licensure actions, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists, and other practitioners. The legislation that led to the creation of the NPDB was enacted because the U.S. Congress believed that the increasing occurrence of medical malpractice litigation and the need to improve the quality of medical care had become nationwide problems that warranted greater efforts than any individual State could undertake. The intent is to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from

State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. The information reported to these databanks is not public information.

One of the articles published by the *LA Times* pointed out that these databanks were missing critical cases, including those who have harmed patients in California. The *LA Times* asserted that there has been sporadic reporting to these databanks, and state boards, hospitals and other entities could be missing information necessary to ensure the protection of the public.

- s) **Unlicensed Practice – Public Crime.** Specifies that it is a public offense, punishable by a fine not to exceed \$100,000 or imprisonment, to engage in any practice, including healing arts practice, without a current and valid license.

Justification. Unlicensed practice presents a serious threat to public health and safety. However, it can be difficult for a board to get a district attorney to prosecute these cases criminally because the penalties are often significantly less than the cost to prosecute the case. While district attorneys do prosecute the most egregious cases, the inconsistent prosecution of these cases diminishes the deterrent effect. If the penalty for unlicensed practice is substantially increased, the deterrent will be increased two-fold; not only will the punishment be more severe, but district attorneys will be more likely to prosecute these cases.

- t) **Allow Healing Arts Boards to Utilize the Vertical Enforcement and Prosecution Model.** Expands the use of the vertical enforcement and prosecution model for cases handled by all other health boards.

Justification. Allowing healing arts boards to utilize the vertical enforcement and prosecution model that currently applies to physicians and surgeons could be beneficial especially for complex types of actions.

- u) **Intent Language for a New Information Technology System.** Provides that it is the intent of the Legislature that the DCA shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees.

Justification. DCA's current licensing and enforcement database systems are antiquated and impede the boards' abilities to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. Implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. The Governor's 2011-2012 Budget appropriated funds for the implementation of this system.

5. The Following Provisions Have Been Placed Into Individual Practice Acts of Healing Arts Boards.

- a) **Allow Executive Officers (EO) to Adopt Default Decisions and Stipulated Settlements.** Allows a healing arts board to delegate to the executive officer the authority to adopt a proposed default decision in an administrative action to revoke a license if a licensee fails to file a notice of defense, appear at the hearing, or has agreed to surrender his or her license. Require the EO to report to the board the number of default decisions and stipulated settlements adopted. Requires that a stipulated settlement give notice to licensees, to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. Allows a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

Justification. According to the AG's Office, a majority of filed cases settle and the receipt of a Notice of Defense can trigger either settlement discussions or the issuance of a Default Decision. Stipulated settlements are a more expeditious and less costly method of case resolution. The EO of the board can provide summary reports of all settlements to the board and the board can provide constant review and feedback to the executive officer so that policies can be established and adjusted as necessary. Also, there have been instances of undue delays between when a fully-signed settlement has been forwarded to the board's headquarters and when it has been placed on the board's agenda for a vote. Delegating this authority to the executive officer will result in a final disposition of these matters much more quickly. The fact that the BRN, for example, has reduced the number of its annual meetings has only increased the need for this.

According to the Center for Public Interest Law (CPIL), it is taking the AG too long to prepare a proposed default decision. In 2004-2005, it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. As argued by CPIL, filing a proposed default decision is "not rocket science" and should only take a matter of hours.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- Psychology Board of California
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy

- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

- b) **Automatic Suspension of License While Incarcerated.** Provides that the license of a healing arts licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed, and requires the board to notify the licensee of the suspension and of his or her right to a specified (due process) hearing.

Justification. Existing law allows physicians and surgeons and podiatrists to be suspended while incarcerated and there is no reason why other healing arts professionals should not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent a healing arts licensee from practicing while in prison or while released pending appeal of a conviction. Years may pass before a convicted licensee's license can be revoked. There have been instances in which health practitioners had felony records and yet continued to have spotless licenses even while serving time behind bars.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

- c) **Mandatory Revocation for Sexual Acts and Registration as Sex Offender.** States that a decision issued by an administrative law judge that contains a finding that a healing arts practitioner engaged in any act of sexual contact with a patient, or any finding that the licensee has committed a sex offense, as defined, shall contain an order of revocation. Also, adds a new section that would require the board to deny a license to an applicant or revoke the license of a licensee who has been required to register as a sex offender.

Justification. Mandatory revocation of a license for acts of sexual exploitation

currently applies to physician and surgeons, psychologists, respiratory care therapists, marriage and family therapists, and clinical social workers. There is no reason why these provisions should not apply to other healing arts licensees.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Medical Board of California (Sex Offense Provision Only)
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Psychology (Sex Offense Provision Only)
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

d) Access to Medical Records/Documents Pursuant to Board Investigations.

Authorizes the AG and his or her investigative agents and healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. Provides that any document relevant to an investigation may be inspected, and copies may be obtained where patient written authorization is given. Imposes civil and criminal penalties for licensees or health facilities for failure to comply with a patient's medical record request or with a court order mandating release of record.

Justification. Provisions authorizing the AG and its investigative agents and boards to inquire into any alleged violations of the laws under the board's jurisdiction and to inspect documents subject to specified procedures currently exists for physicians and surgeons. Furthermore, existing law requires physicians and surgeons, dentists, and psychologists to produce medical records accompanied by a patient's written authorization and pursuant to a court order (subpoena), and prescribes penalties for failure to produce the records. When a board or the AG is trying to obtain important documents and medical records pursuant to a disciplinary action of a licensee, requirements for obtaining these documents and records should be consistent with those of other health care practitioners. Language has been included which protects those licensees who may not be responsible for medical records or have no access or control over these records. Also, medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to a board; and, (2) the board or the AG has sought a court order and the court

has issued a subpoena mandating the release of records. Under both circumstances penalties would apply if the records are not supplied by those who have both possession and control over the records. There is no reason why the requirement for obtaining important medical records and documents pursuant to an investigation by a board should not uniformly apply to all healing arts boards.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

- e) **Employer of Health Care Practitioner Reporting Requirements.** Requires any employer of a healing arts licensee to report to the respective board the suspension or termination for cause, as defined (serious violations of professional practice), or resignation in lieu of suspension or termination, of any healing arts licensee in its employ. Requires the information reported to be confidential and not subject to discovery in civil cases, and to include the facts and circumstances of the suspension, termination or resignation. Requires a healing arts board to investigate the circumstances underlying the report within 30 days to determine if an interim suspension order or temporary restraining order should be issued.

Justification. Currently employers of vocational nurses, psychiatric technicians and respiratory care therapists are required to report to the respective boards the suspension or termination for cause of these health care practitioners. The MBC, the Board of Podiatric Medicine, Board of Behavioral Sciences, Board of Psychology and the Dental Board also have more extensive reporting requirements for peer review bodies and hospitals which are specified in Section 805 of the B&P Code. There is no reason why the remaining healing arts boards should not have similar reporting requirements for those licensees who have been suspended or terminated from employment for serious disciplinary reasons.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- The State Board of Optometry

- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

- f) **Information Provided on the Internet.** Requires healing arts boards to disclose the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the healing arts board or by the board of another state or jurisdiction. Prohibits the disclosure of personal information, including home telephone number, date of birth, or social security number.

Justification. Although a number of boards, including healing arts boards, are required to post the aforementioned information regarding a licensee, there are other healing arts boards that do not. One of the issues which has been raised by the media is that the public is unaware of problem licensees, whether they have had prior disciplinary action taken against them, or whether their license is currently in good standing. They cited instances in which they looked up on the Internet, or on the particular health board's Website and never saw prior disciplinary or criminal convictions of the health care practitioner. This provision ensures the uniformity of information about the status of licensees that are posted on the Internet.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Psychology
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

- g) **Automatic Suspension of License if Another State or Agency Revokes or Suspends the Licensee.** Requires the automatic suspension of a licensee if another regulatory/licensing authority of this state, another state or an agency of the federal government suspends or revokes the license of a healing arts practitioner. Specifies due process provisions.

Justification. There are certain health boards which require automatic suspension of a license base on the action taken by another jurisdiction or state. To further protect consumers, all health care boards should be allowed to automatically suspend the license of anyone whose license with the federal, state, or another regulatory agency has been suspended or revoked.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Psychology
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

h) Bureau of State Audits Review of the Pharmacists Recovery Program in 2012.

Justification. To ensure full implementation of SB 1441 standards and address problems encountered with the Maximus audit and drug testing requirements, this audit ensures that the Pharmacists Recovery Program is protecting the public and rehabilitating licensees.

6. Oppose Unless Amended. The California Nurses Association (CNA) has taken an oppose unless amended position on the following provisions of this bill:

- a) Access to records. CNA states that the bill's proposal to require state agencies, state and local governments, law enforcement agencies, health care facilities, and employers to turn over records pertaining to licensees is broad, and raises privacy concerns.
- b) Reporting of Charges. CNA is concern that licensees are being required to report charges to the board, particularly when there is not a subsequent conviction as this raises due process concerns.
- c) Alcohol and Unprofessional Conduct. CNA's concern is how this bill will be implemented.

- d) Restricted or limited license. CNA states it is unclear as to how or why the board would implement a limited or restricted license for registered nurses.
- e) Required Actions Against Sex offenders. CNA states it is unclear why this bill would give a sex offender who is required to be a sex offender because of a misdemeanor conviction [of indecent exposure] an exemption from the requirement to deny licensure application, or to revoke licensure.
- f) Internet Disclosures. These provisions are overly broad, the necessity of the postings is unclear, and the disclosures would be punitive and unfair toward licensees.
- g) Attorney General Timeframes. It is unclear if the timelines are realistic and can actually be implemented.
- h) Supervising Unlicensed Practice. As employees, registered nurses generally do not make decisions on the hiring of other nurses; and do not generally have control over who the employer requires a nurse to supervise. CNA states that this language should be amended to apply to facilities or independent practitioners who employ persons unlawfully engaging in unlicensed practice, or who knowingly aid and abet unlicensed practice.

SUPPORT AND OPPOSITION:

Support: None on file as of April 27, 2011

Oppose Unless Amended:

California Nurses Association

Oppose:

Non on file as of April 27, 2011.

Consultant: Rosielyn Pulmano

Attachment D:

Letter Addressed to Senator Price Regarding Senate Bill 544



April 28, 2011

The Honorable Curren D. Price, Jr.
Chair, Business, Professions and Economic Development Committee
California State Senate
State Capitol, Room 2053
Sacramento, CA 95814

Subject: Senate Bill 544 (Price): April 14, 2011 Amended Version

Dear Senator Price:

Thank you for introducing Senate Bill 544 as amended. The enactment of the Consumer Health Protection Enforcement Act will provide the Dental Board of California (Board) with the additional tools and authorities necessary to reduce the timeframe for investigating and prosecuting violations of the Dental Practice Act (Act).

The success of reducing the timeframes for investigation and prosecution of violations is directly related to the ability of the Board to hire the allocated Consumer Protection Enforcement Initiative (CPEI) positions. The Board is currently unable to fill six (6) vacant positions due to the Governor's Executive Order relative to hiring, therefore some contingency provision may be necessary. Additionally, while the Board may intend to reduce the timeframe of investigating and prosecuting a case, it will be unable to control the ability of the Department of Justice to meet the necessary timeframes.

Since the Board does not meet until the end of May, this letter does not reflect an official Board position, rather it identifies provisions contained within the bill that: (1) may require additional clarification, (2) are duplicative of current provisions in the Act, and (3) may fiscally impact the Board's operations. Additionally, the Board has previously taken positions on similar provisions contained within Senate Bill 1111 (Negrete McLeod) from the 2009-2010 Legislative Session and the Consumer Protection Enforcement Initiative issued by the Department of Consumer Affairs (Department).

Additional Clarification Requested:

The Legislative findings and declarations specify that it is the Legislature's intent to reduce the timeframe for investigating and prosecuting violations of the law to between 12 and 18 months. However, it may be necessary to clarify if the 12 to 18 month timeframe begins at the time a complaint is filed with the Board, or if it begins from the time a complaint is found to warrant an investigation.

Business and Professions Code Sections 40 and 42 require state agencies to immediately provide records requested by the Board prior to payment. However, the proposed addition does not define "immediate". Existing law, Business and Professions Code Section 1684.1, requires licensees to provide records requested by the Board within 15 days of receipt of the request or face a civil penalty. Additionally, what recourse is there for a state agency's non-compliance with the Board's request for records.

Business and Professions Code Section 726 specifies that the commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of healing arts board. The bill also specifies that these provisions do not apply to sexual contact between a licensee and their spouse or person in an equivalent domestic relationship when the licensee provides medical treatment, other than psychotherapeutic treatment, to their spouse or equivalent domestic partner. However, the proposed amendments do not define an "equivalent domestic relationship".

Business and Professions Code Section 1688.1 authorizes the Board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant. It is unclear who has the responsibility of writing the settlement language. Currently the Deputy Attorney General and the paralegal assigned to the case draft the settlement language.

The proposed additions of Business and Professions Code Sections 1947.1 through 1947.8 pertain to the Dental Hygiene Committee of California (DHCC). The DHCC administers its own enforcement program and is autonomous from the Dental Board except when deciding scope of practice issues. However, the proposed language refers to the "board" in these sections rather than "committee" as used throughout Business and Professions Code Sections 1900 through 1966.6.

The proposed addition of Business and Professions Code Section 1947.6 requires any employer of a licensee to report the suspension or termination for cause of any licensee in its employ. The bill defines suspension or termination for cause as suspension or termination from employment for gross negligence or incompetence as well as other specified reasons. The determination of a licensee committing gross negligence or incompetence is typically made through the Board's enforcement process and not determined by an employer.

Duplication in the Dental Practice Act:

The bill proposes the addition of Business and Professions Code Section 1688.4 relative to the denial, revocation, or suspension of a license to an individual who is required to register as a sex offender. The proposed language is duplicative of existing law, Business and Professions Code Section 1687.

Fiscal Impact on the Board:

Requiring the Board to query the National Practitioner Data Bank (NPDB) will cause significant fiscal impact on the operations of the Board. The NPDB may only be queried through the use of a credit card; the Board currently uses a Cal-Card to query the NPDB for applicants. Each year the use of the Cal-Card is suspended from June 1 until the passage of a budget. During previous years when the budget has not passed until September or October, the applicant's licensure has been delayed for several months due to the inability of the Board to obtain NPDB information. Each query of the NPDB costs \$4.75. With an estimated 1,200 queries per year, this provision will require a staffing augmentation.

Requiring the Board to post specified information regarding licensees on the Internet on or after July 1, 2013 will require additional work of existing staff. While the Board currently provides most of this information on its web site, the license verification web site will need to be modified to accommodate the additional information to be disclosed. This will require approximately eighty (80) additional hours of analytical and computer programming staff time to compile the information, modify the Board's web site, and add the necessary information to the web site. The additional 80 hours will likely result in overtime pay to existing staff. Once the web site is updated, the work load associated with maintenance would be minor and absorbable.

Previous Board Positions:

Business and Professions Code Section 116 provides that the Director of the Department or his or her designee may audit and review the enforcement programs of all the healing arts boards. At its February 25, 2010 meeting, the Board reviewed the proposed Consumer Protection Enforcement Initiative and discussed the proposed

authority of the Director or designee to audit and review the Board's enforcement program. The Board discussed the possibility of the Director's audit and review to be limited to closed cases. The Board agreed that the Board's disciplinary process should be allowed to function independently, but be subject to review once cases are closed.

Absent Board discussions regarding mandatory revocation for a sex offense and prohibition of gag orders in settlements for civil litigation, we are still evaluating the affects these provisions will have and will provide a report with additional information as soon as possible. We respectfully request to respond at a later date.

Thank you for the opportunity to provide comments regarding Senate Bill 544. If you have any questions or concerns, please feel free to contact me at your convenience.

Respectfully,

A handwritten signature in dark ink, appearing to read 'Richard E. DeCuir', with a stylized flourish at the end.

Richard E. DeCuir
Executive Officer

cc: Members of the Senate Business, Professions, and Economic Development Committee

Bill Gage, Chief Consultant, Senate Business, Professions, and Economic Development Committee

Members of the Dental Board of California

Brian Stiger, Senior Chief Deputy Director and Acting Director, Department of Consumer Affairs

Richard Woonacott, Deputy Director, Division of Legislative and Policy Review, Department of Consumer Affairs

AGENDA ITEMS 13-18

Committee Reports



MEMORANDUM

DATE	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	Agenda Items 13-18: Committee Reports

Committee Chairs will give verbal reports.

AGENDA ITEM 19

Portfolio



MEMORANDUM

DATE	May 3, 2011
TO	Dental Board of California
FROM	Donna Kantner, Manager, Licensing and Examination Unit Dental Board of California
SUBJECT	Item 19: Update from Subcommittee Regarding Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

Background:

AB 1524 was passed by the Legislature in 2010 creating a new format of clinical examination for California dental students, generally known as the "Portfolio" exam. The Board was required to develop regulatory language in order for the bill to pass. Now begins the process of creating a structure for the exam through development of standardized criteria for assessment and grading of applicants' competency, training and calibration of examiners, and a process by which the Board will independently monitor and audit the portfolio examination.

The Board has contracted with COMIRA, Inc. for psychometric services to spearhead the development and implementation of the content and structure, common standards, standardized assessment and grading criteria, a Portfolio Examination Application and Candidate Handbook, selection criteria for each school's competency examiners and to ensure that the process is suitable for statistical analyses.

Update:

On April 14, 2011, COMIRA, Executive Officer Richard DeCuir, Board President Dr. John Bettinger, Exam Committee Chair Dr. Stephen Casagrande and I met with representatives of the six California dental schools regarding the examination development. COMIRA stated that all six schools will be engaged in the process to ensure the exam is reliable, valid and consistent with the requirements of Business and Professions Code Section 139 relative to examination development and validation. COMIRA stated that the tasks specified in the contract result in a timeline that extends into 2012. Participants agreed that this is an opportunity to lead the nation into an examination process that cares for patients in the same way that a practitioner would normally proceed with patient care.

Drs. Bettinger and Casagrande will further elaborate on the status of the Portfolio implementation.

AGENDA ITEM 20(a)

EFCS Report Permits and Website



MEMORANDUM

DATE	May 3, 2011
TO	Dental Board of California
FROM	Suzanne McCormick, DDS Board Liaison to the Elective Facial Cosmetic Surgery Permit Credentialing Committee
SUBJECT	Agenda Item 20A: Discussion and Possible Action To Accept the EFCS Permit Credentialing Committee Recommendation for Issuance of Permit and Changes to the Board's Website to Clarify the Permit Application Process

Background

The Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee met on April 27, 2011 via teleconference. Committee members and staff participated in Rancho Mirage, Redlands, Poway, Sacramento, and San Diego locations. There was no public in attendance.

In closed session, the Committee reviewed one application (Applicant Dr. AA) for an unlimited permit and recommended tabling it until the applicant could provide further documentation.

In addition to application review, the Committee discussed changes to the website which it hopes will clarify the application process for the Elective Facial Cosmetic Surgery Permit until regulations can be developed. The revised language is included in this packet for the Board's review.

The next meeting of the EFCS Permit Credentialing Committee is scheduled for July 13, 2011.

Action Requested

The Committee requests that the Dental Board accept the Committee's recommended changes to the website which will clarify the application process for the Elective Facial Cosmetic Surgery Permit.

PROPOSED CHANGES TO THE DENTAL BOARD WEBSITE

5/20/2011

Licensed Dentists

ELECTIVE FACIAL COSMETIC SURGERY PERMITS

Business and Professions Code, Section 1638.1, states a person licensed pursuant to Section 1634 who wishes to perform elective facial cosmetic surgery shall first apply for and receive a permit to perform elective facial cosmetic surgery from the board.

APPLYING FOR AN ELECTIVE FACIAL COSMETIC SURGERY PERMIT

The primary requirements for a permit to perform Elective Facial Cosmetic Surgery are defined in Business and Professions Code, Section 1638.1.

The Committee recommends that the applicant first choose either Pathway A or Pathway B by which the application is being made.

The requirements for an Elective Facial Cosmetic Surgery Permit include, but may not be limited to submitting the following documentation:

1. ~~A completed application form.~~
2. ~~Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.~~
3. ~~Proof that the applicant has satisfied the criteria specified in either subparagraph (A) or (B) of Section 1638.1(e)(2).~~
4. ~~Submit to the board a letter from the program director of the accredited residency program, or from the director of a postresidency fellowship program accredited by the Commission on Dental Accreditation of the American Dental Association.~~
5. ~~Submit to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform. The Committee recommends that you submit no more than 30 operative reports. Applicants may request that their permit be limited to specific categories of procedures (Category I and/or II), as specified on the application. As a result, operative reports submitted should be reflective and supportive of the permit category for which the applicant is applying.~~
6. ~~Documentation showing the surgical privileges the applicant possesses at any licensed general acute care hospital and any licensed outpatient surgical facility in this state.~~
7. ~~Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.~~
8. ~~An application fee of \$500.00~~

PATHWAY A: THE REQUIREMENTS FOR AN ELECTIVE FACIAL COSMETIC SURGERY PERMIT INCLUDE, BUT MAY NOT BE LIMITED TO SUBMITTING THE FOLLOWING DOCUMENTATION:

1. A completed application form.
2. Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.
3. Proof of certification, or a candidate for certification, by the American Board of Oral and Maxillofacial Surgery.
4. A letter from the program director of the accredited residency program, or from the director of a postresidency fellowship program accredited by the Commission on Dental Accreditation of the American Dental Association.

5. Submit to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform. The Committee recommends that you submit no more than 30 operative reports. Applicants may request that their permit be limited to specific categories of procedures (Category I and/or II), as specified on the application. As a result, operative reports submitted should be reflective and supportive of the permit category for which the applicant is applying. In addition, operative reports should be clear and dark enough to be reproduced. The Committee recommends that the applicant organize the reports submitted, grouping the procedures by category I and category II and provide the Committee with an index of the reports. A sample index is provided.
6. Documentation showing the surgical privileges the applicant possesses at any licensed general acute care hospital and any licensed outpatient surgical facility in this state.
7. Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.
8. An application fee of \$500.00

Pathway B: The requirements for an Elective Facial Cosmetic Surgery Permit include, but may not be limited to submitting the following documentation:

1. A completed application form.
2. Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.
3. Submit to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform. The Committee recommends that you submit no more than 30 operative reports. Applicants may request that their permit be limited to specific categories of procedures (Category I and/or II), as specified on the application. As a result, operative reports submitted should be reflective and supportive of the permit category for which the applicant is applying. In addition, operative reports should be clear and dark enough to be reproduced. The Committee recommends that the applicant organize the reports submitted, grouping the procedures by category I and category II and provide the Committee with an index of the reports. A sample index is provided. Submitting the operative reports in an organized way will ensure the application process moves along quickly.
4. Proof that the applicant has been granted privileges by the medical staff at a licensed general acute care hospital to perform the surgical procedures [cosmetic contouring of the osteocartilaginous facial structure, which may include, but is not limited to, rhinoplasty and otoplasty and/or cosmetic soft tissue contouring or rejuvenation, which may include, but is not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation], at that hospital.
5. Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.
6. An application fee of \$500.00

RENEWING YOUR PERMIT

An Elective Facial Cosmetic Surgery Permit expires when the permit holder license expires and must be renewed every two years. Every six years, prior to renewal of the permit holder's license and permit, the permit holder shall submit evidence acceptable to the credentialing committee that he or she has maintained continued competence to perform the procedures authorized by the permit.

PERMIT HOLDERS HOLDING A LIMITED ELECTIVE FACIAL COSMETIC SURGERY (EFCS) PERMIT AND WANTING TO UPGRADE PRIVILEGES TO UNLIMITED.

The requirements to upgrade a limited Elective Facial Cosmetic Surgery Permit to an unlimited permit include, but may not be limited to submitting the following documentation:

1. A completed application.
2. Submit to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform. The Committee

recommends that you submit no more than 30 operative reports. Applicants seeking an unlimited permit should submit operative reports that are reflective and supportive of the permit category for which the applicant is applying. In addition, operative reports should be clear and dark enough to be reproduced. The Committee recommends that the applicant organize the reports submitted, grouping the procedures by category I and category II and provide the Committee with an index of the reports. A sample index is provided. Submitting the operative reports in an organized way will ensure the application process moves along quickly.

3. An application fee of \$500.00

If the Committee grants a new unlimited permit, the permit holder's prior limited permit number will be cancelled and a new permit number will be issued.

For more information, contact the Dental Board at (916) 263-2300.

SAMPLE

Name: _____ Index of Operative Reports

Operative Report	Surgery Type	Procedure(s)	Date	Position
1	Soft Tissue			
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16	Osteocartilaginous			
17				
18				
19				
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AGENDA ITEM 20(b)

EFCS Report Appointments



MEMORANDUM

DATE	May 5, 2011
TO	Dental Board of California
FROM	Karen Fischer, Coordinator Elective Facial Cosmetic Surgery Permit Program
SUBJECT	Agenda Item 20B: Discussion and Possible Action Regarding Consideration of the Subcommittee's Recommendation to Appoint a Member to the Elective Facial Cosmetic Surgery Permit Credentialing Committee

Background

On January 25, 2011, Dr. Suzanne McCormick, Board Liaison to the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee received notification that Nestor Karas, DDS, MD, who had most recently been serving as Chair of the Credentialing Committee, resigned. Dr. Karas was one of the first members appointed to the Committee at its inception in 2007, and was a key participant in the development of SB 438, the legislation that created the Elective Facial Cosmetic Surgery Permit program.

At the February 2011 meeting, Board President Dr. Bettinger, appointed a subcommittee (Drs. McCormick and Whitcher) to review the applications, to interview the candidates, and to report back to the Board at its May meeting with a recommendation to fill the vacancy on the Elective Facial Cosmetic Surgery Permit Credentialing Committee.

The requirements of candidacy for this position are (1) an oral and maxillofacial surgeon who is licensed by the Medical Board of California, and is Board certified by the American Board of Oral and Maxillofacial Surgeons, and (2) active status on the staff of a licensed general acute care hospital in the state.

A summary of the steps taken to solicit input into filling the vacancy in accordance with Business & Professions Code section 1638.1(3) follows:

"The Board shall solicit from the following organizations input and recommendations regarding members to be appointed to the credentialing committee:

- The Medical Board of California

- The California Dental Association
- The California Association of Oral and Maxillofacial Surgeons
- The California Medical Association
- The California Society of Plastic Surgeons”

A letter was sent certified mail to the above mentioned organizations on February 22, 2011. There was a follow-up letter similarly mailed on April 4, 2011, followed by telephone calls and emails.

Two organizations responded, each with one recommendation: The California Association of Oral and Maxillofacial Surgeons, and The California Society of Plastic Surgeons. The Medical Board of California, the California Medical Association, and the California Dental Association replied that they had no recommendation at this time.

The candidate information was forwarded to the subcommittee for review. Drs. McCormick and Witcher will report their findings at the May 2011 Board meeting.

ACTION REQUESTED

Accept the Subcommittee's recommendation to fill the vacancy on the Elective Facial Cosmetic Surgery Permit Credentialing Committee.

AGENDA ITEM 21

Record Retention



MEMORANDUM

DATE	April 28, 2011
TO	Dental Board of California
FROM	Donna Kantner, Manager, Licensing and Examination Unit Dental Board of California
SUBJECT	Item 21: Discussion and Possible Action Regarding Subcommittee Report on Record Retention of Inactive Patient Records

Background:

Currently there is no law or regulation that specifies the length of time that patient records must be kept on file. Staff is unable to provide clear direction to licensees since there is no statute or regulation in this area.

At its February 24-25, 2011 meeting, Dr. Bettinger appointed a subcommittee of Dr. Olinger and Dr. Morrow to research the issue and report back at the Board's next meeting.

Attached is the report of the subcommittee which includes the following recommendations:

1. Require that records be maintained for at least 7 years from the date an adult patient was last seen.
2. For an unemancipated minor patient, dental records must be maintained for at least one year after the minor has reached the age of 18 years and not less than seven years from the date the patient was last seen.

Any recommendation accepted by the Board would require either a statutory or regulatory change to implement.

Requested Action:

Staff requests that the Board discuss the recommendations of the Subcommittee and make a decision to accept, reject or take no action on the recommendations.

If recommendations are accepted, staff will need to seek legislation or pursue regulations to implement the change.

- 1. The American Health Information Management Association (AHIMA) provided the following information regarding California law and regulations for retention of medical records: (No information was available regarding dental records)**

Hospitals must maintain medical records for a minimum of seven years following patient discharge, except for minors. Records of minors must be maintained for at least one year after a minor has reached age 18, but in no event for less than seven years. (Calif. Code Regs. Tit. 22 Sections 70751 (c) and 71551 (c))

Acute psychiatric hospitals, skilled nursing facilities and primary care clinics must maintain medical records and x-rays for a minimum of seven years following patient discharge, except for minors. Records of minors must be maintained for at least one year after a minor has reached age 18, but in no event for less than seven years. (Calif. Code Regs. Tit. 22 Section 73543 (a); 74731 (a); 75055 (a); 75343 (a); 77143 (a))

- 2. The American Dental Association provided the following information:**

"State laws and participating provider contracts generally specify the time following the last patient visit that records must be maintained. There is usually a different requirement for the retention of records of children; these records must be kept for a certain period after the child reaches the age of majority. HIPAA also affects recordkeeping requirements for offices that are covered by generally requiring that such offices maintain patient records for six (6) years and two (2) years after a patient's death. The office's professional liability insurance company will likely have recommendations about retention."

- 3. The California Dental Association Practice Support Center provided the following information:**

"State law does not define the period for which a dentist must maintain patient records after the patient discontinues treatment with the dentist. Records of unemancipated minors shall be kept at least one year after the minor has reached the age of 18 years, and in any case, not less than seven years. It is best for you to contact your professional liability carrier for its recommendation. Ideally, all dental records, active and inactive, should be maintained indefinitely. Records must be kept for seven years after a dental practice ceases operations."

4. The Dentist Insurance Company (California) provided the following information:

"The California Dental Board does not address how long a dentist must maintain patient records after the patient discontinues treatment. Ideally, all dental records (active/inactive, radiographs and models) should be maintained indefinitely as they are your best defense in the event of a claim or lawsuit. TDIC recommends disposing of inactive patients' records after:

- Ten (10) years from the date an adult patient was last seen.
- Ten (10) years from the minor patient's last treatment or seven (7) years past the patient's 18th birthday (age 25), whichever is longer.
- A patient who has not returned for treatment within 24 months is considered inactive.

Report from Subcommittee for Retention of Dental Records (Dr. Olinger and Dr. Morrow)

It is the Subcommittee for Retention of Dental Records recommendation that dental records must be retained for at least seven (7) years from the date an adult patient was last seen. For an unemancipated minor patient, dental records must be maintained for at least one (1) year after the minor has reached the age of 18 years, and in any case, not less than seven (7) years from the date the patient was last seen. Other entities may require retention of records for a longer period of time. Ideally, all dental records, active and inactive, should be maintained indefinitely.

AGENDA ITEM 22

Continuing Competency



MEMORANDUM

DATE	April 22, 2011
TO	Dental Board Members
FROM	Karen Fischer, Administrative Analyst Dental Board of California
SUBJECT	Agenda Item 22: Discussion and Possible Action to Conduct a Feasibility Study for a Continuing Competency Program

Background

Each month, the Department of Consumer Affairs (DCA) Director conducts a teleconference with Board/Bureau Presidents/ Chairs to discuss the areas of interest and/or concern. The April 2011 teleconference was devoted to the discussion of continuing competency. There were presentations given by Mr. David Swankin, CEO of the Citizen Advocacy Center, and Dr. Martin Crane, former Chair of the Federation of State Medical Boards (FSMD). Mr. Swankin spoke about the history and progress of implementing continuing competency programs and models for implementation. Dr. Crane gave an overview of the FSMB maintenance of licensure model and how this model might be transferable to other healing arts professions. Teleconference participants had the opportunity to ask questions of both the presenters.

This item has been placed on the agenda to see if the Board is interested in researching the feasibility of implementing a Continuing Competency Program.