



**PHYSICIAN ASSISTANT BOARD**  
2005 Evergreen Street, Suite 1100, Sacramento, CA 95815  
P (916) 561-8780 F (916) 263-2671 | [www.pac.ca.gov](http://www.pac.ca.gov)



**MEETING NOTICE**  
**July 11, 2016**  
**PHYSICIAN ASSISTANT BOARD**  
**2005 Evergreen Street – Hearing Room #1150**  
**Sacramento, CA 95815**  
**9:00 A.M. – 5:00 P.M.**

**AGENDA**

**(Please see below for Webcast information)**

**EXCEPT “TIME CERTAIN”\* ITEMS, ALL TIMES ARE APPROXIMATE AND SUBJECT TO CHANGE**

1. Call to Order by President (Sachs)
2. Roll Call/Establishment of a Quorum (Caldwell)
3. Approval of January 11, 2016, Meeting Minutes (Sachs)
4. Acceptance of May 16, 2016, Specialty Training Program Review Committee Meeting Minutes (Sachs)
5. Public Comment on items not on the Agenda (Sachs) (Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a).])
6. Reports
  - a. President’s Report (Sachs)
    - 1) Introduction of new Board member Jennifer Carlquist, PA.
    - 2) CAPA October 2016 Conference
    - 3) Discussions between the American Academy of Physician Assistants and National Commission on Certification of Physician Assistants regarding possible changes to the national recertification model for Physician Assistants.
    - 4) Remembrance of Michael Scarano, former CAPA legal counsel
  - b. Executive Officer’s Report (Mitchell)
    - 1) BreEZe Implementation: Update
    - 2) CURES: Update
    - 3) End of Life Options Act: Update
  - c. Licensing Program Activity Report (Winslow)
    - 1) Statistics Regarding Licenses Issued and Renewed/Current Licenses
  - d. Diversion Program Activity Report (Winslow)
    - 1) Statistics Regarding Program Participants
  - e. Enforcement Program Activity Report (Forsyth)
    - 1) Statistics Regarding Enforcement Actions Initiated/Taken and Probationers
7. Department of Consumer Affairs
  - a. Update on Departmental Activities (Christine Lally)
8. Discussion on Possible Changes to October 17, 2016 Board Meeting Date and Location (Sachs)
9. Regulations
  - a. Update on Rulemaking to Amend Title 16, California Code of Regulations Section 1399.540 – Limitation on Medical Services: Related to the use of electronic signatures for the delegation of services agreement. (Schildge/Butu)

- b. Discussion and possible action to initiate a rulemaking to repeal Title 16, California Code of Regulations sections 1399.531 and 1399.532 – Board Requirements for Approving Specialty Training for Physician Assistants. (Schieldge/Butu)

**\*TIME CERTAIN 10:00 AM – Regulation Hearing**

- 10. a. Regulatory Hearing on Proposed Language for Reporting of Physician Assistant Supervision, Section 1399.546 of Division 13.8 of Title 16 of the California Code of Regulations (Sachs)
- b. Discussion and Possible Action to Amend Title 16, California Code of Regulations section 1399.546 – Reporting of Physician Assistant Supervision

**11. CLOSED SESSION:**

- a. Pursuant to Section 11126(c)(3) of the Government Code, the Board will move into closed session to deliberate on disciplinary matters.
- b. Pursuant to Government Code section 11126(a) (1) the Board will meet in closed session to consider the possible selection, appointment or employment of an Executive Officer, including the appointment or employment of an Interim Executive Officer or Acting Executive Officer.

**RETURN TO OPEN SESSION**

- 12. Executive Officer Recruitment and Selection Process (Grant/Alexander)
  - a. Announcement regarding action taken to appoint or employ an Executive Officer.
- 13. Lunch break will be taken at some point during the day's meeting.
- 14. The Education/Workforce Development Advisory Committee: Update (Grant/Alexander)
  - a. Presentation by the Health Professions Education Foundation regarding scholarship and loan repayments for health professional students and graduates. (Norlyn S. Aspreo)
  - b. Update on the approval of the UCSF-Fresno postgraduate physician assistant training program.
  - c. Update and possible action regarding next steps in seeking possible legislation to offer tax deductions for preceptors.
- 15. Discussion and possible action to approve proposed updates to the Delegation of Services Agreement Questions and Answers regarding acceptance of electronic signatures (Grant).
- 16. Developments since the February 2015 United States Supreme Court decision in North Carolina State Board of Dental Examiners v. Federal Trade Commission (FTC): Update (Schieldge/Butu)
- 17. Update regarding Medical Board of California activities (Bishop)
- 18. Budget Update (Forsyth/Rumboao)
- 19. The Legislative Committee (Hazelton/Earley)
  - a. Legislation of Interest to the Physician Assistant Board: AB 1566, AB 1707, AB 2193, AB 2701, SB 482, SB 960, SB 1140, SB 1155, SB 1195, SB 1217, and SB 1334.
- 20. Agenda Items for Next Meeting (Sachs)
- 21. Adjournment (Sachs)

Note: Agenda discussion and report items are subject to action being taken on them during the meeting by the Board at its discretion. Action may be taken on any item on the agenda. All times when stated are approximate and subject to change without prior notice at the discretion of the Board unless listed as "time certain". The meeting may be canceled without notice. For meeting verification, call (916) 561-8780 or access the Board's website at <http://www.pac.ca.gov>. Public comments will be taken on agenda items at the time the item is heard and prior to the Board taking any action on said items. Agenda items may be taken out of order and total time allocated for public comment on particular issues may be limited at the discretion of the President.

While the Board intends to webcast this meeting, it may not be possible to webcast the meeting due to limitations on resources. The webcast can be located at [www.dca.ca.gov](http://www.dca.ca.gov). If you would like to ensure participation, please plan to attend at the physical location.

Notice: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Anita Winslow at (916) 561-8782 or email [Anita.Winslow@mbc.ca.gov](mailto:Anita.Winslow@mbc.ca.gov) send a written request to the Physician Assistant Board, 2005 Evergreen Street, Suite 1100, Sacramento, California 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the request.

Agenda

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**PHYSICIAN ASSISTANT BOARD**

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## **Update to Agenda Item 3**

Agenda item 3 was inadvertently listed as approving the January 11, 2016 Meeting Minutes. The January 2016 meeting minutes were previously approved at the April 18, 2016 Board meeting.

Because the agenda did not reflect the approval of the April 18, 2016 meeting minutes the Board will be unable to approve them at this meeting. Therefore, the April 18, 2016 meeting minutes will be reviewed and approved at the October 17, 2016 Board meeting.

Agenda

Item

4



**SPECIALTY TRAINING PROGRAM REVIEW COMMITTEE**  
**Meeting Minutes**  
**May 16, 2016**  
**10:00 A.M. – 12:00 P.M.**

**1. OPEN SESSION - Roll Call & Establishment of a Quorum**

Mr. Grant called the meeting to order at 10:00 am. Roll call was taken and members were present at the locations listed below

Board Members participating in the teleconference were:

Sonya Earley, PA  
Jed Grant, PA-C  
Xavier Martinez

Xavier Martinez  
4995 Murphy Canyon Rd, #207  
San Diego, CA 92123

Jed Grant, PA-C  
2005 Evergreen St., #1120  
Sacramento, CA 95815

Sonya Earley  
2020 Zonal Ave, IRD Bldg, Rm 628  
Los Angeles, CA 90638

Staff Present:  
Kristy Schieldge, Senior Staff Counsel,  
Lynn Forsyth, Enforcement Analyst

**2. Public Comment on items not on the Agenda**

There was no public comment at this time.

**3. Review, Discussion and Possible Action to Approve or Deny Application for Post-Graduate Specialty Training Program Pursuant to Title 16, California Code of Regulations Section 1399.532, (Requirements for An Approved Program for the Specialty Training of Physician Assistants):**

Mr. Grant indicated that Mr. Fred Wu, Program Director, UCSF Fresno Medical Education Program had submitted a letter dated April 19, 2016 applying for approval of their PA postgraduate residency program.

Mr. Grant indicated that the Community Regional Medical Center in Fresno, California is affiliated with the University of California, San Francisco (UCSF) School of Medicine. Mr. Grant indicated that the program offers an 18-month postgraduate residency that accepts two emergency medicine PA (EMPA) residents per year. The curriculum is based from the Model of the Clinical Practice of Emergency Medicine and the Society of Emergency Medicine Physician Assistants (SEMPA).

Mr. Martinez asked why ARC-PA wasn't approving the programs and during the following discussion it was stated that the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA) post-graduate accreditation process is in abeyance.

Ms. Schieldge had questioned whether the Committee had enough information from the Program to make a decision at that time and Ms. Schieldge had recommended that the Committee might want to consider seeking additional information from the Program prior to moving forward with an approval. Ms. Schieldge also raised concerns about setting precedent for other programs that may want to seek similar approval.

Following a discussion regarding the recommendation from Ms. Schieldge, the Committee decided against holding off the approval of the program.

During the discussion it was also mentioned that other emergency medicine postgraduate residency programs have not gone before the Board for approval.

Motion to approve the Application for University of California, San Francisco (UCSF) School of Medicine. Community Regional Medical Center in Fresno, CA was made.

M/Earley S/Martinez

<b>Member</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
Sonya Earley	X				
Jed Grant	X				
Xavier Martinez	X				

Motion passes.

#### **4. Adjournment**

With no further business the teleconference was adjourned at 10:35 A.M.

Agenda

Item

6.a.3

# Morgan Lewis

## Willard K. Tom

Partner  
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June 2, 2016

Mr. Denni Woodmansee, MS, PA-C  
Chair, Board of Directors  
National Commission on Certification of Physician Assistants  
12000 Findley Road, Suite 100  
Johns Creek, GA 30097

Dear Mr. Woodmansee:

I am writing on behalf of the American Academy of PAs (AAPA) to express antitrust concerns regarding the proposal by the National Commission on Certification of Physician Assistants (NCCPA) to change PA maintenance of certification requirements in ways that are not supported by objective evidence, are not necessary to advance legitimate health and safety objectives, and would have the likely effect of excluding highly qualified PAs from practice.

To avoid antitrust issues, certification organizations need to take an objective, evidence-based approach.<sup>1</sup> Restrictions on competition should be tailored to meet the legitimate aims to be accomplished, and should not be broader than necessary to accomplish those ends.<sup>2</sup> Thus, for example, a court refused to dismiss antitrust claims against a trade association that allegedly established industry standards that were not based on objective (i.e., scientifically justified) criteria and were used to stifle competition.<sup>3</sup>

The Supreme Court has made clear that even prestigious standard-setting organizations whose work is widely relied on by governmental agencies could be viewed as facilitating, or even held liable for, antitrust violations when they allowed their processes to be used for anticompetitive ends. For example, in *Allied Tube & Conduit Corp. v. Indian Head, Inc.*,<sup>4</sup> the makers of steel conduit used to enclose electrical cables misused the processes of the National Fire Protection Association to exclude the use of plastic conduit for similar uses. The Association's National

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<sup>1</sup> See, e.g., *Radiant Burners, Inc. v. People Gas Light & Coke Co.*, 364 U.S. 656, 658 (1961) (standards must be objective).

<sup>2</sup> See, e.g., *United States v. Realty Multi-List*, 629 F.2d 1351, 1375 (5th Cir. 1980) ("reasonably necessary to the accomplishment of the legitimate goals and narrowly tailored to that end"); *Thompson v. Metro. Multi-List, Inc.*, 934 F.2d 1566, 1581-82 (same).

<sup>3</sup> *Am. Inst. of Intra-dermal Cosmetics v. Soc. of Permanent Cosmetic Prof.'s*, 2013 U.S. Dist. LEXIS 58138 at \*20-23 (C.D. Cal. 2013).

<sup>4</sup> 486 U.S. 492 (1988).

## Morgan, Lewis & Bockius LLP

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Mr. Denni Woodmansee, MS, PA-C  
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Electrical Code was widely respected and routinely adopted into law by a substantial number of state and local governments. Nonetheless, the misuse of the Association for anticompetitive ends was held to be subject to antitrust liability. And in *American Society of Mechanical Engineers v. Hydrolevel Corp.*,<sup>5</sup> the Association itself was held to be liable for a member's use of his position within the Association to exclude a competitor's product.

These principles have often been applied in the health care arena where members of one or more related professions use standard-setting organizations to exclude or limit other practitioners of the same or related professions. This was the situation in the case that the Federal Trade Commission won in the Supreme Court last year, *North Carolina State Board of Dental Examiners v. FTC*.<sup>6</sup> There, a state agency majority-controlled by practicing dentists used the agency's authority to exclude competition from non-dentist providers of teeth whitening services. The FTC held this to be an antitrust violation, and its decision was upheld by the Eleventh Circuit and the Supreme Court.

Similarly, in *Teledoc, Inc. v. Texas Medical Board*,<sup>7</sup> the court denied a motion to dismiss an antitrust complaint against the Texas Medical Board. The Board, largely composed of market participants, had promulgated a rule to require a face-to-face examination prior to issuing a prescription, thus inhibiting competition from distant providers who rendered services by telephone or online. And in *National Athletic Trainers' Association v. American Physical Therapy Association*, the court denied a motion to dismiss a claim that a physical therapist association committed an antitrust violation by setting rules and standards with the intent to exclude athletic trainers from the relevant market for manual therapy.<sup>8</sup>

The FTC has made clear that antitrust concerns are not limited to the simple case in which members of one profession control a majority of a certifying organization and use that majority to exclude competition from another profession. The scenarios can vary both as to the nature of the restraint and the manner in which control is exercised. In FTC staff guidance issued last year, the staff used, as examples, restraints involving outright exclusion, limitations on the number of new licenses, a prohibition on advertising, and deterrence of price competition.<sup>9</sup> Other situations that have encountered regulatory scrutiny or court challenge have involved the misuse of insurance programs and peer review programs,<sup>10</sup> and denial of membership in an organization without a factual basis.<sup>11</sup>

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<sup>5</sup> 456 U.S. 556 (1982).

<sup>6</sup> 135 S. Ct. 1101 (2015).

<sup>7</sup> 2015 WL 9674633 (2015).

<sup>8</sup> 2008 U.S. Dist. LEXIS 70131, at \*1-6,\*35-41 (N.D. Tex. 2008).

<sup>9</sup> FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants at 5 (Oct. 2015), *available at* [https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active supervision of state boards.pdf](https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active%20supervision%20of%20state%20boards.pdf).

<sup>10</sup> *In re AFSC*, 116 FTC 399 (1993).

<sup>11</sup> *Zuckerman v. Yount*, 362 F. Supp. 858, 863 (N.D. Ill. 1973).

Similarly, there are a variety of scenarios in which market participation by the decision-makers can be suspect. Different members of a board can have different anticompetitive motives for excluding a particular type of competitor. For example, physicians may wish to limit and control the scope of practice of PAs, while PAs practicing in certain specialties may have an incentive to limit competition from generalist PAs or PAs whose specialization does not line up with their own. The FTC guidance made clear that a certifying organization could be under the effective control of market participants with an incentive to limit competition under a wide variety of circumstances including:

- A sufficient number of members to prevent meeting supermajority requirements, thereby exercising a veto,
- De facto deference by non-market participants to the market participants,
- De facto exercise of the organization's power by the market participants.<sup>12</sup>

Among the areas that have been of particular interest to the FTC in recent years have been restrictions on non-physician health care providers. In March 2014, for example, the FTC's Office of Policy Planning released a report on the regulation of advanced practice nurses. Among the key findings of the report were:

- "APRN scope of practice limitations should be narrowly tailored to address well-founded health and safety concerns, and should not be more restrictive than patient protection requires. Otherwise, such limits can deny health care consumers the benefits of competition, without providing significant countervailing benefits.
- "To promote competition in health care markets, it may be important to scrutinize relevant safety and quality evidence to determine whether or where legitimate safety concerns exist and, if so, whether physician supervision requirements or other regulatory interventions are likely to address them."<sup>13</sup>

The report further noted that "licensure is, by its nature, a process that establishes the conditions for entry into an occupation. As a threshold matter, any regulation or law that establishes entry conditions for an occupation tends to reduce the supply of individuals otherwise willing to provide the services associated with that occupation."<sup>14</sup> While certainly acknowledging the need for appropriate licensure, the report noted that "licensure and scope of practice regulations may sometimes restrict competition unnecessarily, which can be detrimental to health care consumers and have broader public health consequences."<sup>15</sup> Accordingly, the report recommended that decision-makers consider:

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<sup>12</sup> FTC Staff Guidance, *supra* note 9, at 7-9.

<sup>13</sup> Office of Policy Planning, Federal Trade Commission, POLICY PERSPECTIVES: COMPETITION AND THE REGULATION OF ADVANCED PRACTICE NURSES at 4 (Mar. 2014), *available at* <https://www.ftc.gov/system/files/documents/reports/policy-perspectives-competition-regulation-advanced-practice-nurses/140307aprnpolicypaper.pdf>.

<sup>14</sup> *Id.* at 12.

<sup>15</sup> *Id.* at 14.

- “Do those particular regulations actually provide the intended benefits – such as improvements in health care outcomes or a reduced risk of harm from poor-quality services – or are there good grounds to think they are likely to provide those benefits?  
. . . .
- “When consumer benefits are slight, insubstantial, or highly speculative, a regulation that imposes non-trivial impediments to competition is not justified.  
. . . .
- “Are the regulations narrowly tailored to serve the state’s policy priorities? When particular regulatory restrictions address well-founded consumer protection concerns but – at the same time – appear likely to harm competition, consider whether the regulations are narrowly tailored to address those concerns without undue harm to competition, or whether less restrictive alternatives are available.”<sup>16</sup>

The FTC reiterated these themes in a February 10, 2016 letter to a member of the Senate of West Virginia:<sup>17</sup>

- “[W]e urge the West Virginia legislature to avoid restrictions on APRN practice that are not narrowly tailored to address well-founded patient safety concerns.”
- “[E]ven well-intentioned laws and regulations may entail unnecessary, unintended, or overbroad restrictions on competition.”
- “We recommend that you examine carefully purported safety justifications . . . in light of the pertinent evidence, evaluate whether such justifications are well founded, and consider whether less restrictive alternatives would protect patients without imposing undue burdens on competition and on patients’ access to basic health care services.”
- “From a competition standpoint, occupational regulation can be especially worrisome when regulatory authority is delegated to a board composed of members of the occupation it regulates. The risk is that the board will make regulatory decisions that serve the private economic interests of its members and not the policies of the state.”

The FTC has sounded similar themes in Congressional testimony relating to occupational licensing in general.<sup>18</sup>

Accordingly, in light of the absence of objective, rigorous evidence demonstrating a relationship between the recertification testing elements (in either the NCCPA proposal or the current NCCPA

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<sup>16</sup> *Id.* at 17.

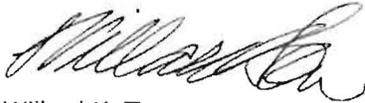
<sup>17</sup> Available at [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-senate-west-virginia-concerning-competitive-impact-wv-senate-bill-516-regulation/160212westvirginiacomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-senate-west-virginia-concerning-competitive-impact-wv-senate-bill-516-regulation/160212westvirginiacomment.pdf).

<sup>18</sup> See Prepared Statement of the Fed. Trade Comm’n on License to Compete: Occupational Licensing and the State Action Doctrine before the S. Comm. on the Judiciary, 114th Cong. (Feb. 2, 2016), available at [https://www.ftc.gov/system/files/documents/public\\_statements/912743/160202occupationallicensing.pdf](https://www.ftc.gov/system/files/documents/public_statements/912743/160202occupationallicensing.pdf).

Mr. Denni Woodmansee, MS, PA-C  
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recertification regime) and patient outcomes or patient safety, and in light of the anticompetitive implications of its current proposal, we urge NCCPA to (1) withdraw that proposal, (2) undertake rigorous and replicable research to determine what adjustments should be made to the current recertification regime, and (3) come forward with such proposed adjustments when it has solid, objective evidence justifying its requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Willard K. Tom". The signature is fluid and cursive, with a large initial "W" and "T".

Willard K. Tom

cc: NCCPA Board of Directors  
AAPA Board of Directors

Agenda

Item

6.b.2

# Registration & Usage Stats

AGENDA ITEM 6.b.2

•	<b>Registered Users:</b> As of 6/15/2016	→	<b>125, 413</b>
▪	<b>Role</b>		
	➤ Prescribers	→	87,694
	➤ Dispensers	→	35,702
	➤ LEAs	→	1,100
	➤ Delegates	→	776
	➤ DOJ Admins	→	10
	➤ DOJ Analysts	→	88
	➤ Regulatory Board	→	43
▪	<b>License Type</b>		
	➤ Doctor of Podiatric Medicine	→	542
	➤ Registered Nurse Practitioner/Nurse Midwife	→	4,302
	➤ Medical Doctor	→	43,852
	➤ Naturopathic Doctor	→	62
	➤ Osteopathic Doctor	→	2,949
	➤ Physician Assistant	→	3,582
	➤ Doctor of Optometry	→	392
	➤ Pharmacist	→	25,275
	➤ Doctor of Dental Surgery/Dental Medicine	→	4,408
	➤ Doctor of Veterinary Medicine	→	723
▪	<b>Other</b>		
	➤ Users without a license type	→	39,326



# Registration & Usage Stats, Cont'd.

•	Number of PARs Run: 5/15/2016 - 6/15/2016	→	683,371
▪	<b>Role</b>		
➤	Prescribers	→	268,306
➤	Dispensers	→	414,258
➤	LEAs	→	62
➤	Delegates	→	283
➤	DOJ Admins	→	96
➤	DOJ Analysts	→	56
➤	Regulatory Board	→	310
▪	<b>License Type</b>		
➤	Doctor of Podiatric Medicine	→	269
➤	Registered Nurse Practitioner/Nurse Midwife	→	34,263
➤	Medical Doctor	→	171,201
➤	Naturopathic Doctor	→	1
➤	Osteopathic Doctor	→	18,559
➤	Physician Assistant	→	37,198
➤	Doctor of Optometry	→	4
➤	Pharmacist	→	411,149
➤	Doctor of Dental Surgery/Dental Medicine	→	928
➤	Doctor of Veterinary Medicine	→	38
▪	<b>Other</b>		
➤	Users without a license type	→	9,761



# Registration & Usage Stats, Cont'd.

• Times System was accessed: 5/15/2016 - 6/15/2016 → 702,048

▪ **Role**

➤ Prescribers	→	292,522
➤ Dispensers	→	404,598
➤ LEAs	→	878
➤ Delegates	→	532
➤ DOJ Admins	→	532
➤ DOJ Analysts	→	2,600
➤ Regulatory Board	→	386

▪ **License Type**

➤ Doctor of Podiatric Medicine	→	436
➤ Registered Nurse Practitioner/Nurse Midwife	→	34,206
➤ Medical Doctor	→	183,054
➤ Naturopathic Doctor	→	22
➤ Osteopathic Doctor	→	22,456
➤ Physician Assistant	→	42,133
➤ Doctor of Optometry	→	78
➤ Pharmacist	→	400,759
➤ Doctor of Dental Surgery/Dental Medicine	→	3,422
➤ Doctor of Veterinary Medicine	→	352

▪ **Other**

➤ Users without a license type	→	15,130
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Item

6.b.3



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## INFORMATION BULLETIN

### CALIFORNIA END OF LIFE OPTION ACT

Assembly Bill AB 15 (Eggman, Chapter 1) establishes the California End of Life Option Act ((Act), commencing at Health and Safety Code section 443)), which becomes effective June 9, 2016 and will remain in effect until January 1, 2026.

The Act gives a mentally competent, adult California resident who has been diagnosed with a terminal disease the legal right to ask for and receive a prescription from his or her physician to hasten death, as long as specific criteria is met.

The Act establishes specific requirements which must be satisfied and procedures which the terminally ill individual must follow in making such a request. The Act also sets forth the attending physician and consulting physician's responsibility to independently determine that the individual has a terminal disease with a prognosis of six months and is qualified to and possesses the capacity to independently make an informed decision. The Act also prescribes specified forms to request an aid-in-dying drug and to comply with the requirements set forth in the Act.

A copy of the Act is included with this information bulletin.

#### **PHYSICIAN ASSISTANTS**

The Physician Assistant Practice Act and its accompanying regulations allows for many medical services to be delegated by a supervising physician to a physician assistant.

However, specific requirements of the End of Life Option Act (Act) may only be performed by the patient's attending physician and not delegated to a physician assistant.

For example, only the patient's attending physician may receive a written request seeking to obtain a prescription for an aid-in-dying drug. The patient's attending physician shall directly, and not through a designee, receive all of the required number of requests pursuant to Health and Safety Code Section 443.3(a).

Health and Safety Code section 443.1(c) states that "attending physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease."

Therefore, physician assistants are not authorized to carryout the provisions of the Act.

## **SUPERVISING PHYSICIAN REPOSIBILITIES**

Supervising physicians have specific requirements established by the Act that may not be delegated to physician assistants. Your supervising physician should refer to the Medical Board of California or the Osteopathic Medical Board of California for specific information about compliance with the Act.

### **IMPORTANT POINTS TO CONSIDER:**

The mission of the Physician Assistant Board is to protect and serve consumers through licensing, education, and enforcement of the Physician Assistant laws and regulations.

We urge you and your supervising physician to become familiar with all applicable laws pertaining to the Act.

You may wish to visit the Medical Board of California's website at [www.mbc.ca.gov](http://www.mbc.ca.gov) or the Osteopathic Medical Board of California's website at [www.ombc.ca.gov](http://www.ombc.ca.gov) for additional information about the Act.

Additionally, pursuant to Health and Safety Code section 443.9(b), attending physicians must complete an attending physician followup form within 30 calendar days following the death of a patient from ingesting the aid-in-dying drug or any other cause and submit it to the California Department of Public Health. For further information on this topic, please visit the CDPH website at: [www.cdph.ca.gov](http://www.cdph.ca.gov).

You may also wish to speak with your own legal counsel concerning your compliance with laws governing this practice.

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### **Assembly Bill No. 15 CHAPTER 1**

An act to add and repeal Part 1.85 (commencing with Section 443) of Division 1 of the Health and Safety Code, relating to end of life.

[ Approved by Governor October 05, 2015. Filed with Secretary of State October 05, 2015. ]

### **LEGISLATIVE COUNSEL'S DIGEST**

#### **AB 15, Eggman. End of life.**

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill, until January 1, 2026, would enact the End of Life Option Act authorizing an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for a drug prescribed pursuant to these provisions for the purpose of ending his

or her life. The bill would establish the procedures for making these requests. The bill would also establish specified forms to request an aid-in-dying drug, under specified circumstances, an interpreter declaration to be signed subject to penalty of perjury, thereby creating a crime and imposing a state-mandated local program, and a final attestation for an aid-in-dying drug. This bill would require specified information to be documented in the individual's medical record, including, among other things, all oral and written requests for an aid-in-dying drug.

This bill would prohibit a provision in a contract, will, or other agreement from being conditioned upon, or affected by, a person making or rescinding a request for the above-described drug. The bill would prohibit the sale, procurement, or issuance of any life, health, or annuity policy, health care service plan contract, or health benefit plan, or the rate charged for any policy or plan contract, from being conditioned upon or affected by the request. The bill would prohibit an insurance carrier from providing any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the individual or his or her attending physician at the behest of the individual. The bill would also prohibit any communication from containing both the denial of treatment and information as to the availability of aid-in-dying drug coverage.

This bill would provide a person, except as provided, immunity from civil or criminal liability solely because the person was present when the qualified individual self-administered the drug, or the person assisted the qualified individual by preparing the aid-in-dying drug so long as the person did not assist with the ingestion of the drug, and would specify that the immunities and prohibitions on sanctions of a health care provider are solely reserved for conduct of a health care provider provided for by the bill. The bill would make participation in activities authorized pursuant to its provisions voluntary, and would make health care providers immune from liability for refusing to engage in activities authorized pursuant to its provisions. The bill would also authorize a health care provider to prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under the act while on the premises owned or under the management or direct control of that prohibiting health care provider, or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

This bill would make it a felony to knowingly alter or forge a request for drugs to end an individual's life without his or her authorization or to conceal or destroy a withdrawal or rescission of a request for a drug, if it is done with the intent or effect of causing the individual's death. The bill would make it a felony to knowingly coerce or exert undue influence on an individual to request a drug for the purpose of ending his or her life, to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without their knowledge or consent. By creating a new crime, the bill would impose a state-mandated local program. The bill would provide that nothing in its provisions is to be construed to authorize ending a patient's life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute, among other things, suicide or homicide.

This bill would require physicians to submit specified forms and information to the State Department of Public Health after writing a prescription for an aid-in-dying drug and after the death of an individual who requested an aid-in-dying drug. The bill would authorize the Medical Board of California to update those forms and would require the State Department of Public Health to publish the forms on its Internet Web site. The bill

would require the department to annually review a sample of certain information and records, make a statistical report of the information collected, and post that report to its Internet Web site.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

Vote: MAJORITY Appropriation: NO Fiscal Committee: YES Local Program: YES

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

**SECTION 1.** Part 1.85 (commencing with Section 443) is added to Division 1 of the Health and Safety Code, to read:

### **PART 1.85. End of Life Option Act**

**443.** This part shall be known and may be cited as the End of Life Option Act.

**443.1.** As used in this part, the following definitions shall apply:

- (a) "Adult" means an individual 18 years of age or older.
- (b) "Aid-in-dying drug" means a drug determined and prescribed by a physician for a qualified individual, which the qualified individual may choose to self-administer to bring about his or her death due to a terminal disease.
- (c) "Attending physician" means the physician who has primary responsibility for the health care of an individual and treatment of the individual's terminal disease.
- (d) "Attending physician checklist and compliance form" means a form, as described in Section 443.22, identifying each and every requirement that must be fulfilled by an attending physician to be in good faith compliance with this part should the attending physician choose to participate.
- (e) "Capacity to make medical decisions" means that, in the opinion of an individual's attending physician, consulting physician, psychiatrist, or psychologist, pursuant to Section 4609 of the Probate Code, the individual has the ability to understand the nature and consequences of a health care decision, the ability to understand its

significant benefits, risks, and alternatives, and the ability to make and communicate an informed decision to health care providers.

(f) "Consulting physician" means a physician who is independent from the attending physician and who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding an individual's terminal disease.

(g) "Department" means the State Department of Public Health.

(h) "Health care provider" or "provider of health care" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of this code; and any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of this code.

(i) "Informed decision" means a decision by an individual with a terminal disease to request and obtain a prescription for a drug that the individual may self-administer to end the individual's life, that is based on an understanding and acknowledgment of the relevant facts, and that is made after being fully informed by the attending physician of all of the following:

(1) The individual's medical diagnosis and prognosis.

(2) The potential risks associated with taking the drug to be prescribed.

(3) The probable result of taking the drug to be prescribed.

(4) The possibility that the individual may choose not to obtain the drug or may obtain the drug but may decide not to ingest it.

(5) The feasible alternatives or additional treatment opportunities, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(j) "Medically confirmed" means the medical diagnosis and prognosis of the attending physician has been confirmed by a consulting physician who has examined the individual and the individual's relevant medical records.

(k) "Mental health specialist assessment" means one or more consultations between an individual and a mental health specialist for the purpose of determining that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

(l) "Mental health specialist" means a psychiatrist or a licensed psychologist.

(m) "Physician" means a doctor of medicine or osteopathy currently licensed to practice medicine in this state.

(n) "Public place" means any street, alley, park, public building, any place of business or assembly open to or frequented by the public, and any other place that is open to the public view, or to which the public has access.

(o) "Qualified individual" means an adult who has the capacity to make medical decisions, is a resident of California, and has satisfied the requirements of this part in order to obtain a prescription for a drug to end his or her life.

(p) "Self-administer" means a qualified individual's affirmative, conscious, and physical act of administering and ingesting the aid-in-dying drug to bring about his or her own death.

(q) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, result in death within six months.

**443.2.** (a) An individual who is an adult with the capacity to make medical decisions and with a terminal disease may make a request to receive a prescription for an aid-in-dying drug if all of the following conditions are satisfied:

(1) The individual's attending physician has diagnosed the individual with a terminal disease.

(2) The individual has voluntarily expressed the wish to receive a prescription for an aid-in-dying drug.

(3) The individual is a resident of California and is able to establish residency through any of the following means:

(A) Possession of a California driver license or other identification issued by the State of California.

(B) Registration to vote in California.

(C) Evidence that the person owns or leases property in California.

(D) Filing of a California tax return for the most recent tax year.

(4) The individual documents his or her request pursuant to the requirements set forth in Section 443.3.

(5) The individual has the physical and mental ability to self-administer the aid-in-dying drug.

(b) A person shall not be considered a "qualified individual" under the provisions of this part solely because of age or disability.

(c) A request for a prescription for an aid-in-dying drug under this part shall be made solely and directly by the individual diagnosed with the terminal disease and shall not be made on behalf of the patient, including, but not limited to, through a power of attorney, an advance health care directive, a conservator, health care agent, surrogate, or any other legally recognized health care decisionmaker.

**443.3.** (a) An individual seeking to obtain a prescription for an aid-in-dying drug pursuant to this part shall submit two oral requests, a minimum of 15 days apart, and a

written request to his or her attending physician. The attending physician shall directly, and not through a designee, receive all three requests required pursuant to this section.

(b) A valid written request for an aid-in-dying drug under subdivision (a) shall meet all of the following conditions:

(1) The request shall be in the form described in Section 443.11.

(2) The request shall be signed and dated, in the presence of two witnesses, by the individual seeking the aid-in-dying drug.

(3) The request shall be witnessed by at least two other adult persons who, in the presence of the individual, shall attest that to the best of their knowledge and belief the individual is all of the following:

(A) An individual who is personally known to them or has provided proof of identity.

(B) An individual who voluntarily signed this request in their presence.

(C) An individual whom they believe to be of sound mind and not under duress, fraud, or undue influence.

(D) Not an individual for whom either of them is the attending physician, consulting physician, or mental health specialist.

(c) Only one of the two witnesses at the time the written request is signed may:

(1) Be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the individual's estate upon death.

(2) Own, operate, or be employed at a health care facility where the individual is receiving medical treatment or resides.

(d) The attending physician, consulting physician, or mental health specialist of the individual shall not be one of the witnesses required pursuant to paragraph (3) of subdivision (b).

**443.4.** (a) An individual may at any time withdraw or rescind his or her request for an aid-in-dying drug, or decide not to ingest an aid-in-dying drug, without regard to the individual's mental state.

(b) A prescription for an aid-in-dying drug provided under this part may not be written without the attending physician directly, and not through a designee, offering the individual an opportunity to withdraw or rescind the request.

**443.5.** (a) Before prescribing an aid-in-dying drug, the attending physician shall do all of the following:

(1) Make the initial determination of all of the following:

(A) (i) Whether the requesting adult has the capacity to make medical decisions.

(ii) If there are indications of a mental disorder, the physician shall refer the individual for a mental health specialist assessment.

(iii) If a mental health specialist assessment referral is made, no aid-in-dying drugs shall be prescribed until the mental health specialist determines that the individual has the capacity to make medical decisions and is not suffering from impaired judgment due to a mental disorder.

(B) Whether the requesting adult has a terminal disease.

(C) Whether the requesting adult has voluntarily made the request for an aid-in-dying drug pursuant to Sections 443.2 and 443.3.

(D) Whether the requesting adult is a qualified individual pursuant to subdivision (o) of Section 443.1.

(2) Confirm that the individual is making an informed decision by discussing with him or her all of the following:

(A) His or her medical diagnosis and prognosis.

(B) The potential risks associated with ingesting the requested aid-in-dying drug.

(C) The probable result of ingesting the aid-in-dying drug.

(D) The possibility that he or she may choose to obtain the aid-in-dying drug but not take it.

(E) The feasible alternatives or additional treatment options, including, but not limited to, comfort care, hospice care, palliative care, and pain control.

(3) Refer the individual to a consulting physician for medical confirmation of the diagnosis and prognosis, and for a determination that the individual has the capacity to make medical decisions and has complied with the provisions of this part.

(4) Confirm that the qualified individual's request does not arise from coercion or undue influence by another person by discussing with the qualified individual, outside of the presence of any other persons, except for an interpreter as required pursuant to this part, whether or not the qualified individual is feeling coerced or unduly influenced by another person.

(5) Counsel the qualified individual about the importance of all of the following:

(A) Having another person present when he or she ingests the aid-in-dying drug prescribed pursuant to this part.

(B) Not ingesting the aid-in-dying drug in a public place.

(C) Notifying the next of kin of his or her request for an aid-in-dying drug. A qualified individual who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

(D) Participating in a hospice program.

(E) Maintaining the aid-in-dying drug in a safe and secure location until the time that the qualified individual will ingest it.

(6) Inform the individual that he or she may withdraw or rescind the request for an aid-in-dying drug at any time and in any manner.

(7) Offer the individual an opportunity to withdraw or rescind the request for an aid-in-dying drug before prescribing the aid-in-dying drug.

(8) Verify, immediately before writing the prescription for an aid-in-dying drug, that the qualified individual is making an informed decision.

(9) Confirm that all requirements are met and all appropriate steps are carried out in accordance with this part before writing a prescription for an aid-in-dying drug.

(10) Fulfill the record documentation required under Sections 443.8 and 443.19.

(11) Complete the attending physician checklist and compliance form, as described in Section 443.22, include it and the consulting physician compliance form in the individual's medical record, and submit both forms to the State Department of Public Health.

(12) Give the qualified individual the final attestation form, with the instruction that the form be filled out and executed by the qualified individual within 48 hours prior to the qualified individual choosing to self-administer the aid-in-dying drug.

(b) If the conditions set forth in subdivision (a) are satisfied, the attending physician may deliver the aid-in-dying drug in any of the following ways:

(1) Dispensing the aid-in-dying drug directly, including ancillary medication intended to minimize the qualified individual's discomfort, if the attending physician meets all of the following criteria:

(A) Is authorized to dispense medicine under California law.

(B) Has a current United States Drug Enforcement Administration (USDEA) certificate.

(C) Complies with any applicable administrative rule or regulation.

(2) With the qualified individual's written consent, contacting a pharmacist, informing the pharmacist of the prescriptions, and delivering the written prescriptions personally, by mail, or electronically to the pharmacist, who may dispense the drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual and with the designation delivered to the pharmacist in writing or verbally.

(c) Delivery of the dispensed drug to the qualified individual, the attending physician, or a person expressly designated by the qualified individual may be made by personal delivery, or, with a signature required on delivery, by United Parcel Service, United States Postal Service, Federal Express, or by messenger service.

**443.6.** Before a qualified individual obtains an aid-in-dying drug from the attending physician, the consulting physician shall perform all of the following:

- (a) Examine the individual and his or her relevant medical records.
- (b) Confirm in writing the attending physician's diagnosis and prognosis.
- (c) Determine that the individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision.
- (d) If there are indications of a mental disorder, refer the individual for a mental health specialist assessment.
- (e) Fulfill the record documentation required under this part.
- (f) Submit the compliance form to the attending physician.

**443.7.** Upon referral from the attending or consulting physician pursuant to this part, the mental health specialist shall:

- (a) Examine the qualified individual and his or her relevant medical records.
- (b) Determine that the individual has the mental capacity to make medical decisions, act voluntarily, and make an informed decision.
- (c) Determine that the individual is not suffering from impaired judgment due to a mental disorder.
- (d) Fulfill the record documentation requirements of this part.

**443.8.** All of the following shall be documented in the individual's medical record:

- (a) All oral requests for aid-in-dying drugs.
- (b) All written requests for aid-in-dying drugs.
- (c) The attending physician's diagnosis and prognosis, and the determination that a qualified individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision, or that the attending physician has determined that the individual is not a qualified individual.
- (d) The consulting physician's diagnosis and prognosis, and verification that the qualified individual has the capacity to make medical decisions, is acting voluntarily, and has made an informed decision, or that the consulting physician has determined that the individual is not a qualified individual.
- (e) A report of the outcome and determinations made during a mental health specialist's assessment, if performed.
- (f) The attending physician's offer to the qualified individual to withdraw or rescind his or her request at the time of the individual's second oral request.

(g) A note by the attending physician indicating that all requirements under Sections 443.5 and 443.6 have been met and indicating the steps taken to carry out the request, including a notation of the aid-in-dying drug prescribed.

**443.9.** (a) Within 30 calendar days of writing a prescription for an aid-in-dying drug, the attending physician shall submit to the State Department of Public Health a copy of the qualifying patient's written request, the attending physician checklist and compliance form, and the consulting physician compliance form.

(b) Within 30 calendar days following the qualified individual's death from ingesting the aid-in-dying drug, or any other cause, the attending physician shall submit the attending physician followup form to the State Department of Public Health.

**443.10.** A qualified individual may not receive a prescription for an aid-in-dying drug pursuant to this part unless he or she has made an informed decision. Immediately before writing a prescription for an aid-in-dying drug under this part, the attending physician shall verify that the individual is making an informed decision.

**443.11.**

(a) A request for an aid-in-dying drug as authorized by this part shall be in the following form:

REQUEST FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A  
HUMANE AND DIGNIFIED MANNER I,  
....., am an adult of sound mind and a  
resident of the State of California.

I am suffering from ....., which my attending physician has  
determined is in its terminal phase and which has been medically  
confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of  
the aid-in-dying drug to be prescribed and potential associated risks,  
the expected result, and the feasible alternatives or additional treatment  
options, including comfort care, hospice care, palliative care, and pain  
control.

I request that my attending physician prescribe an aid-in-dying drug that  
will end my life in a humane and dignified manner if I choose to take it,  
and I authorize my attending physician to contact any pharmacist about  
my request.

INITIAL ONE:

..... I have informed one or more members of my family of my  
decision and taken their opinions into consideration.

..... I have decided not to inform my family of my decision.

..... I have no family to inform of my decision.

I understand that I have the right to withdraw or rescind this request at any time.

I understand the full import of this request and I expect to die if I take the aid-in-dying drug to be prescribed. My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this request voluntarily, without reservation, and without being coerced.

Signed:.....

Dated:.....

### DECLARATION OF WITNESSES

We declare that the person signing this request:

- (a) is personally known to us or has provided proof of identity;
- (b) voluntarily signed this request in our presence;
- (c) is an individual whom we believe to be of sound mind and not under duress, fraud, or undue influence; and
- (d) is not an individual for whom either of us is the attending physician, consulting physician, or mental health specialist.

.....Witness 1/Date

.....Witness 2/Date

NOTE: Only one of the two witnesses may be a relative (by blood, marriage, registered domestic partnership, or adoption) of the person signing this request or be entitled to a portion of the person's estate upon death. Only one of the two witnesses may own, operate, or be employed at a health care facility where the person is a patient or resident.

(b) (1) The written language of the request shall be written in the same translated language as any conversations, consultations, or interpreted conversations or consultations between a patient and his or her attending or consulting physicians.

(2) Notwithstanding paragraph (1), the written request may be prepared in English even when the conversations or consultations or interpreted conversations or consultations were conducted in a language other than English if the English language form includes an attached interpreter's declaration that is signed under penalty of perjury. The interpreter's declaration shall state words to the effect that:

I, (INSERT NAME OF INTERPRETER), am fluent in English and (INSERT TARGET LANGUAGE).

On (insert date) at approximately (insert time), I read the "Request for an Aid-In-Dying Drug to End My Life" to (insert name of individual/patient) in (insert target language).

Mr./Ms. (insert name of patient/qualified individual) affirmed to me that he/she understood the content of this form and affirmed his/her desire to sign this form under his/her own power and volition and that the request to sign the form followed consultations with an attending and consulting physician.

I declare that I am fluent in English and (insert target language) and further declare under penalty of perjury that the foregoing is true and correct.

Executed at (insert city, county, and state) on this (insert day of month) of (insert month), (insert year).

X\_\_\_\_\_Interpreter signature

X\_\_\_\_\_Interpreter printed name

X\_\_\_\_\_Interpreter address

(3) An interpreter whose services are provided pursuant to paragraph (2) shall not be related to the qualified individual by blood, marriage, registered domestic partnership, or adoption or be entitled to a portion of the person's estate upon death. An interpreter whose services are provided pursuant to paragraph (2) shall meet the standards promulgated by the California Healthcare Interpreting Association or the National Council on Interpreting in Health Care or other standards deemed acceptable by the department for health care providers in California.

(c) The final attestation form given by the attending physician to the qualified individual at the time the attending physician writes the prescription shall appear in the following form:

FINAL ATTESTATION FOR AN AID-IN-DYING DRUG TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER I, \_\_\_\_\_, am an adult of sound mind and a resident of the State of California.

I am suffering from \_\_\_\_\_, which my attending physician has determined is in its terminal phase and which has been medically confirmed.

I have been fully informed of my diagnosis and prognosis, the nature of the aid-in-dying drug to be prescribed and potential associated risks, the expected result, and the feasible alternatives or additional treatment options, including comfort care, hospice care, palliative care, and pain

control.

I have received the aid-in-dying drug and am fully aware that this aid-in-dying drug will end my life in a humane and dignified manner.

INITIAL ONE:

..... I have informed one or more members of my family of my decision and taken their opinions into consideration.

..... I have decided not to inform my family of my decision.

..... I have no family to inform of my decision.

My attending physician has counseled me about the possibility that my death may not be immediately upon the consumption of the drug.

I make this decision to ingest the aid-in-dying drug to end my life in a humane and dignified manner. I understand I still may choose not to ingest the drug and by signing this form I am under no obligation to ingest the drug. I understand I may rescind this request at any time.

Signed:.....

Dated:.....

Time:.....

(1) Within 48 hours prior to the individual self-administering the aid-in-dying drug, the individual shall complete the final attestation form. If aid-in-dying medication is not returned or relinquished upon the patient's death as required in Section 443.20, the completed form shall be delivered by the individual's health care provider, family member, or other representative to the attending physician to be included in the patient's medical record.

(2) Upon receiving the final attestation form the attending physician shall add this form to the medical records of the qualified individual.

**443.12.** (a) A provision in a contract, will, or other agreement executed on or after January 1, 2016, whether written or oral, to the extent the provision would affect whether a person may make, withdraw, or rescind a request for an aid-in-dying drug is not valid.

(b) An obligation owing under any contract executed on or after January 1, 2016, may not be conditioned or affected by a qualified individual making, withdrawing, or rescinding a request for an aid-in-dying drug.

**443.13.** (a) (1) The sale, procurement, or issuance of a life, health, or annuity policy, health care service plan contract, or health benefit plan, or the rate charged for a policy or plan contract may not be conditioned upon or affected by a person making or rescinding a request for an aid-in-dying drug.

(2) Pursuant to Section 443.18, death resulting from the self-administration of an aid-in-dying drug is not suicide, and therefore health and insurance coverage shall not be exempted on that basis.

(b) Notwithstanding any other law, a qualified individual's act of self-administering an aid-in-dying drug shall not have an effect upon a life, health, or annuity policy other than that of a natural death from the underlying disease.

(c) An insurance carrier shall not provide any information in communications made to an individual about the availability of an aid-in-dying drug absent a request by the individual or his or her attending physician at the behest of the individual. Any communication shall not include both the denial of treatment and information as to the availability of aid-in-dying drug coverage. For the purposes of this subdivision, "insurance carrier" means a health care service plan as defined in Section 1345 of this code or a carrier of health insurance as defined in Section 106 of the Insurance Code.

**443.14.** (a) Notwithstanding any other law, a person shall not be subject to civil or criminal liability solely because the person was present when the qualified individual self-administers the prescribed aid-in-dying drug. A person who is present may, without civil or criminal liability, assist the qualified individual by preparing the aid-in-dying drug so long as the person does not assist the qualified person in ingesting the aid-in-dying drug.

(b) A health care provider or professional organization or association shall not subject an individual to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating in good faith compliance with this part or for refusing to participate in accordance with subdivision (e).

(c) Notwithstanding any other law, a health care provider shall not be subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for participating in this part, including, but not limited to, determining the diagnosis or prognosis of an individual, determining the capacity of an individual for purposes of qualifying for the act, providing information to an individual regarding this part, and providing a referral to a physician who participates in this part. Nothing in this subdivision shall be construed to limit the application of, or provide immunity from, Section 443.16 or 443.17.

(d) (1) A request by a qualified individual to an attending physician to provide an aid-in-dying drug in good faith compliance with the provisions of this part shall not provide the sole basis for the appointment of a guardian or conservator.

(2) No actions taken in compliance with the provisions of this part shall constitute or provide the basis for any claim of neglect or elder abuse for any purpose of law.

(e) (1) Participation in activities authorized pursuant to this part shall be voluntary. Notwithstanding Sections 442 to 442.7, inclusive, a person or entity that elects, for reasons of conscience, morality, or ethics, not to engage in activities authorized pursuant to this part is not required to take any action in support of an individual's decision under this part.

(2) Notwithstanding any other law, a health care provider is not subject to civil, criminal, administrative, disciplinary, employment, credentialing, professional discipline, contractual liability, or medical staff action, sanction, or penalty or other liability for refusing to participate in activities authorized under this part, including, but not limited to, refusing to inform a patient regarding his or her rights under this part, and not referring an individual to a physician who participates in activities authorized under this part.

(3) If a health care provider is unable or unwilling to carry out a qualified individual's request under this part and the qualified individual transfers care to a new health care provider, the individual may request a copy of his or her medical records pursuant to law.

**443.15.** (a) Subject to subdivision (b), notwithstanding any other law, a health care provider may prohibit its employees, independent contractors, or other persons or entities, including other health care providers, from participating in activities under this part while on premises owned or under the management or direct control of that prohibiting health care provider or while acting within the course and scope of any employment by, or contract with, the prohibiting health care provider.

(b) A health care provider that elects to prohibit its employees, independent contractors, or other persons or entities, including health care providers, from participating in activities under this part, as described in subdivision (a), shall first give notice of the policy prohibiting participation under this part to the individual or entity. A health care provider that fails to provide notice to an individual or entity in compliance with this subdivision shall not be entitled to enforce such a policy against that individual or entity.

(c) Subject to compliance with subdivision (b), the prohibiting health care provider may take action, including, but not limited to, the following, as applicable, against any individual or entity that violates this policy:

(1) Loss of privileges, loss of membership, or other action authorized by the bylaws or rules and regulations of the medical staff.

(2) Suspension, loss of employment, or other action authorized by the policies and practices of the prohibiting health care provider.

(3) Termination of any lease or other contract between the prohibiting health care provider and the individual or entity that violates the policy.

(4) Imposition of any other nonmonetary remedy provided for in any lease or contract between the prohibiting health care provider and the individual or entity in violation of the policy.

(d) Nothing in this section shall be construed to prevent, or to allow a prohibiting health care provider to prohibit, any other health care provider, employee, independent contractor, or other person or entity from any of the following:

(1) Participating, or entering into an agreement to participate, in activities under this part, while on premises that are not owned or under the management or direct control of the prohibiting provider or while acting outside the course and scope of the participant's

duties as an employee of, or an independent contractor for, the prohibiting health care provider.

(2) Participating, or entering into an agreement to participate, in activities under this part as an attending physician or consulting physician while on premises that are not owned or under the management or direct control of the prohibiting provider.

(e) In taking actions pursuant to subdivision (c), a health care provider shall comply with all procedures required by law, its own policies or procedures, and any contract with the individual or entity in violation of the policy, as applicable.

(f) For purposes of this section:

(1) "Notice" means a separate statement in writing advising of the prohibiting health care provider policy with respect to participating in activities under this part.

(2) "Participating, or entering into an agreement to participate, in activities under this part" means doing or entering into an agreement to do any one or more of the following:

(A) Performing the duties of an attending physician as specified in Section 443.5.

(B) Performing the duties of a consulting physician as specified in Section 443.6.

(C) Performing the duties of a mental health specialist, in the circumstance that a referral to one is made.

(D) Delivering the prescription for, dispensing, or delivering the dispensed aid-in-dying drug pursuant to paragraph (2) of subdivision (b) of, and subdivision (c) of, Section 443.5.

(E) Being present when the qualified individual takes the aid-in-dying drug prescribed pursuant to this part.

(3) "Participating, or entering into an agreement to participate, in activities under this part" does not include doing, or entering into an agreement to do, any of the following:

(A) Diagnosing whether a patient has a terminal disease, informing the patient of the medical prognosis, or determining whether a patient has the capacity to make decisions.

(B) Providing information to a patient about this part.

(C) Providing a patient, upon the patient's request, with a referral to another health care provider for the purposes of participating in the activities authorized by this part.

(g) Any action taken by a prohibiting provider pursuant to this section shall not be reportable under Sections 800 to 809.9, inclusive, of the Business and Professions Code. The fact that a health care provider participates in activities under this part shall not be the sole basis for a complaint or report by another health care provider of unprofessional or dishonorable conduct under Sections 800 to 809.9, inclusive, of the Business and Professions Code.

(h) Nothing in this part shall prevent a health care provider from providing an individual with health care services that do not constitute participation in this part.

**443.16.** (a) A health care provider may not be sanctioned for any of the following:

(1) Making an initial determination pursuant to the standard of care that an individual has a terminal disease and informing him or her of the medical prognosis.

(2) Providing information about the End of Life Option Act to a patient upon the request of the individual.

(3) Providing an individual, upon request, with a referral to another physician.

(b) A health care provider that prohibits activities under this part in accordance with Section 443.15 shall not sanction an individual health care provider for contracting with a qualified individual to engage in activities authorized by this part if the individual health care provider is acting outside of the course and scope of his or her capacity as an employee or independent contractor of the prohibiting health care provider.

(c) Notwithstanding any contrary provision in this section, the immunities and prohibitions on sanctions of a health care provider are solely reserved for actions of a health care provider taken pursuant to this part. Notwithstanding any contrary provision in this part, health care providers may be sanctioned by their licensing board or agency for conduct and actions constituting unprofessional conduct, including failure to comply in good faith with this part.

**443.17.** (a) Knowingly altering or forging a request for an aid-in-dying drug to end an individual's life without his or her authorization or concealing or destroying a withdrawal or rescission of a request for an aid-in-dying drug is punishable as a felony if the act is done with the intent or effect of causing the individual's death.

(b) Knowingly coercing or exerting undue influence on an individual to request or ingest an aid-in-dying drug for the purpose of ending his or her life or to destroy a withdrawal or rescission of a request, or to administer an aid-in-dying drug to an individual without his or her knowledge or consent, is punishable as a felony.

(c) For purposes of this section, "knowingly" has the meaning provided in Section 7 of the Penal Code.

(d) The attending physician, consulting physician, or mental health specialist shall not be related to the individual by blood, marriage, registered domestic partnership, or adoption, or be entitled to a portion of the individual's estate upon death.

(e) Nothing in this section shall be construed to limit civil liability.

(f) The penalties in this section do not preclude criminal penalties applicable under any law for conduct inconsistent with the provisions of this section.

**443.18.** Nothing in this part may be construed to authorize a physician or any other person to end an individual's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this part shall not, for any purposes, constitute suicide, assisted suicide, homicide, or elder abuse under the law.

**443.19.** (a) The State Department of Public Health shall collect and review the information submitted pursuant to Section 443.9. The information collected shall be confidential and shall be collected in a manner that protects the privacy of the patient, the patient's family, and any medical provider or pharmacist involved with the patient under the provisions of this part. The information shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(b) On or before July 1, 2017, and each year thereafter, based on the information collected in the previous year, the department shall create a report with the information collected from the attending physician followup form and post that report to its Internet Web site. The report shall include, but not be limited to, all of the following based on the information that is provided to the department and on the department's access to vital statistics:

(1) The number of people for whom an aid-in-dying prescription was written.

(2) The number of known individuals who died each year for whom aid-in-dying prescriptions were written, and the cause of death of those individuals.

(3) For the period commencing January 1, 2016, to and including the previous year, cumulatively, the total number of aid-in-dying prescriptions written, the number of people who died due to use of aid-in-dying drugs, and the number of those people who died who were enrolled in hospice or other palliative care programs at the time of death.

(4) The number of known deaths in California from using aid-in-dying drugs per 10,000 deaths in California.

(5) The number of physicians who wrote prescriptions for aid-in-dying drugs.

(6) Of people who died due to using an aid-in-dying drug, demographic percentages organized by the following characteristics:

(A) Age at death.

(B) Education level.

(C) Race.

(D) Sex.

(E) Type of insurance, including whether or not they had insurance.

(F) Underlying illness.

(c) The State Department of Public Health shall make available the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician followup form, as described in Section 443.22, by posting them on its Internet Web site.

**443.20.** A person who has custody or control of any unused aid-in-dying drugs prescribed pursuant to this part after the death of the patient shall personally deliver the

unused aid-in-dying drugs for disposal by delivering it to the nearest qualified facility that properly disposes of controlled substances, or if none is available, shall dispose of it by lawful means in accordance with guidelines promulgated by the California State Board of Pharmacy or a federal Drug Enforcement Administration approved take-back program.

**443.21.** Any governmental entity that incurs costs resulting from a qualified individual terminating his or her life pursuant to the provisions of this part in a public place shall have a claim against the estate of the qualified individual to recover those costs and reasonable attorney fees related to enforcing the claim.

**443.215.** This part shall remain in effect only until January 1, 2026, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2026, deletes or extends that date.

**443.22.** (a) The Medical Board of California may update the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician followup form, based on those provided in subdivision (b). Upon completion, the State Department of Public Health shall publish the updated forms on its Internet Web site.

(b) Unless and until updated by the Medical Board of California pursuant to this section, the attending physician checklist and compliance form, the consulting physician compliance form, and the attending physician followup form shall be in the following form:

PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE INSERTED

**SEC. 2.** The Legislature finds and declares that Section 1 of this act, which adds Section 443.19 to the Health and Safety Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

(a) Any limitation to public access to personally identifiable patient data collected pursuant to Section 443.19 of the Health and Safety Code as proposed to be added by this act is necessary to protect the privacy rights of the patient and his or her family.

(b) The interests in protecting the privacy rights of the patient and his or her family in this situation strongly outweigh the public interest in having access to personally identifiable data relating to services.

(c) The statistical report to be made available to the public pursuant to subdivision (b) of Section 443.19 of the Health and Safety Code is sufficient to satisfy the public's right to access.

**SEC. 3.** The provisions of this part are severable. If any provision of this part or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

**SEC. 4.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Agenda

Item

6.c

**BreEze  
 Physician Assistant Board  
 Annual Statistical Program Data  
 04/11/2016 - 06/30/2016**

**INITIAL APPLICATIONS RECEIVED**

License Type	Count
9501	258

**INITIAL LICENSES ISSUED**

License Type	Count
9501	221
PA	221

**LICENSES RENEWED**

License Type	Count
<b>ALL STATUS</b>	
9501	1,196
PA	1,196
<b>CURRENT STATUS</b>	
9501	1,190
PA	1,190
<b>CURRENT INACTIVE</b>	
9501	5
PA	5

STATE DEPARTMENT OF CONSUMER AFFAIRS  
BREEZE SYSTEM

LICENSING POPULATION REPORT  
PHYSICIAN ASSISTANT BOARD  
AS OF 7/1/2016



Prepared By: PAAWINS

Parameters Selected

License Type(s): 9501

License Rank(s): PA

Status: 20,22,23,24,25

STATUS CODES

License Type	20	21	22	23	24	25	31	40	45	46	48	50	51	60	62	63	65	80	85	90	98	99	Total	
<b>9501</b>	10,725	0	3	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	10,731
PA	10,725	0	3	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	10,731
	10,725	0	3	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	10,731

20 Current  
21 CurrentInactive  
22 CurrTmp RamSupp  
23 Curr LimtdPract

24 Current Probation  
25 Current Conditional  
31 Fam Supp Suspended  
40 Withdrawn

45 Delinquent  
46 Surrender  
48 Suspension  
50 Cancelled

51 Retired  
60 Denied Renewal  
62 Vol Surrender  
63 Surrendered

65 Revoked  
80 Deceased  
85 Closed  
90 Conversion

98 Error  
99 Deleted

Agenda

Item

6.d

**PHYSICIAN ASSISTANT BOARD  
DIVERSION PROGRAM**

**ACTIVITY REPORT**

California licensed physician assistants participating in the Physician Assistant Board drug and alcohol diversion program:

	As of July 1, 2016	As of July 1, 2015	As of July 1, 2014
Voluntary referrals	05	03	03
Board referrals	09	09	10
Total number of participants	14	12	13

**HISTORICAL STATISTICS**  
(Since program inception: 1990)

Total intakes into program as of July 1, 2016:	139
Closed Cases as of July 1, 2016	
• Participant expired:	01
• Successful completion:	46
• Dismissed for failure to receive benefit:	04
• Dismissed for non-compliance:	27
• Voluntary withdrawal:	22
• Not eligible:	22
Total closed cases:	122

**OTHER DCA BOARD DIVERSION PROGRAM PARTICIPANTS**  
(As of March 31, 2016)

Dental Board of California:	20
Osteopathic Medical Board of California:	10
Board of Pharmacy:	61
Physical Therapy Board of California:	24
Board of Registered Nursing:	424
Veterinary Board of California:	6

Agenda

Item

6.e

**PHYSICIAN ASSISTANT BOARD  
ENFORCEMENT ACTIVITY REPORT**

**April 1, 2016 to June 30, 2016**

**Disciplinary Decisions**

License Denied .....	0
Probation .....	3
Public Reprimand/Reproval .....	0
Revocation .....	1
Surrender .....	4
Probationary Licenses Issued.....	1
Petition for Reinstatement Denied .....	0
Petition for Reinstatement Granted .....	0
Petition for Termination of Prob Denied .....	0
Petition for Termination of Prob Granted... ..	0
Other .....	0

**Accusation/Statement of Issues**

Accusation Filed.....	6
Accusation Withdrawn .....	0
Statement of Issues Filed .....	0
Statement of Issues Withdrawn.....	0
Petition to Revoke Probation Filed .....	0
Petition to Compel Psychiatric Exam.....	0
Interim Suspension Orders (ISO)/PC23 .....	1

**Office of Attorney General Cases**

Cases initiated. ....	4
Pending Cases. ....	46

**Citation and Fines**

Pending from previous FY .....	5
Issued .....	12
Closed .....	1
Withdrawn .....	0
Sent to AG/noncompliance .....	0
Pending .....	0
Initial Fines Issued .....	\$3,250.00
Modified Fines Due .....	\$0.00
Fines Received .....	\$250.00

**Current Probationers**

Active.....	49
Tolled.....	5

**COMPLAINTS**

Total Received .....	128
Closed W/O Investigation .....	0
Assigned for Investigation .....	140

Agenda

Item

8

## 2016 CALENDAR

### January

SU	M	TU	W	TH	F	SA
					H	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	H	19	20	M	M	23
24	25	26	27	28	29	30
31						

### February

SU	M	TU	W	TH	F	SA
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	H	16	17	18	19	20
21	22	23	24	25	26	27
28	29					

### March

SU	M	TU	W	TH	F	SA
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	H		

### April

SU	M	TU	W	TH	F	SA
						1 2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

### May

SU	M	TU	W	TH	F	SA
1	2	3	4	M	M	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	H	31				

### June

SU	M	TU	W	TH	F	SA
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

### July

SU	M	TU	W	TH	F	SA
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	M	M	30
31						

### August

SU	M	TU	W	TH	F	SA
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

### September

SU	M	TU	W	TH	F	SA
				1	2	3
4	H	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

### October

SU	M	TU	W	TH	F	SA
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	X	18	19	20	21	22
23	24	25	26	M	M	29
30	31					

### November

SU	M	TU	W	TH	F	SA
		1	2	3	4	5
6	7	8	9	10	H	12
13	14	15	16	17	18	19
20	21	22	23	H	H	26
27	28	29	30			

### December

SU	M	TU	W	TH	F	SA
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

H - Holiday

M - Medical Board Meetings Dates: October 27 & 28.

Agenda

Item

9.a

### **1399.540 Limitation on Medical Services**

- (a) A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant.
- (b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.
- (c) The board or Medical Board of California or their representative may require proof or demonstration of competence from any physician assistant for any tasks, procedures or management he or she is performing.
- (d) A physician assistant shall consult with a physician regarding any task, procedure or diagnostic problem which the physician assistant determines exceeds his or her level of competence or shall refer such cases to a physician.

Agenda

Item

9.b

**DISCUSSION AND POSSIBLE ACTION TO INITIATE A RULEMAKING TO  
REPEAL TITLE 16, CALIFORNIA CODE OF REGULATIONS  
SECTIONS 1399.531 AND 1399.532 – BOARD REQUIREMENTS FOR APPROVING  
SPECIALITY TRAINING FOR PHYSICIAN ASSISTANTS**

**Discussion**

At the April 18, 2016 Board meeting, there was general consensus that the Board may wish to examine repealing Title 16, California Code of Regulations section 1399.531 - Curriculum Requirements for an Approved Program for Primary Care Physician Assistants and section 1399.532 - Requirements for an Approved Program for the Specialty Training of Physician Assistants.

The Board currently delegates authority to ARC-PA to approve physician assistant training programs. Does the Board wish to continue to set curriculum standards for primary care physician assistant training programs, or, is it more appropriate to delegate to ARC-PA the authority to review and establish the curriculum standards?

Post-graduate specialty physician assistant training programs approved under section 1399.532 provide training to licensed physician assistants to enhance their current skills. The Board does not issue an additional license to individuals who participate in specialty physician assistant training programs.

Since post-graduate specialty physician assistant training programs are training licensed physician assistants and those students are subject to the same requirements as licensees who have not participated in a post-graduate specialty program is there a need to continue to approve these types of programs?

**Regulations**

**1399.531.** Curriculum Requirements for an Approved Program for Primary Care Physician Assistants.

(a) The curriculum of a program for instruction of primary care physician assistants shall include adequate theoretical instruction in or shall require as prerequisites to entry into the program the following basic education core:

- (1) Chemistry
- (2) Mathematics, which includes coursework in algebra
- (3) English
- (4) Anatomy and Physiology
- (5) Microbiology
- (6) Sociology or cultural anthropology
- (7) Psychology

All instruction in the basic education core shall be at the junior college level or its equivalent with the exception of chemistry which may be at the junior college or high school level.

(b) The curriculum of an educational program shall also include or require as prerequisites adequate theoretical and clinical instruction which includes direct patient contact where appropriate, in the following clinical science core:

- (1) Community Health and Preventive Medicine

- (2) Mental Health
- (3) History taking and physical diagnosis
- (4) Management of common diseases (acute, chronic, and emergent) including first aid
- (5) Concepts in clinical medicine and surgery, such as:
  - growth and development
  - nutrition
  - aging
  - infection
  - allergy and sensitivity
  - tissue healing and repair
  - oncology
- (6) Common laboratory and screening techniques
- (7) Common medical and surgical procedures
- (8) Therapeutics, including pharmacology
- (9) Medical ethics and law
- (10) Medical socioeconomics
- (11) Counseling techniques and interpersonal dynamics

**Note:** Authority cited: Section 3510, Business and Professions Code. Reference cited: Sections 3509 and 3513, Business and Professions Code.

**1399.532.** Requirements for an Approved Program for the Specialty Training of Physician Assistants.

A program for the specialty training of physician assistants shall meet the general requirements of Section 1399.530, except that a specialty training program need not be located in an educational institution and need not provide academic credit for its coursework, and shall either

- (a) accept only trainees who have completed a primary care training program; or,
- (b) provide the curriculum set forth in Section 1399.531 in addition to any specialty instruction it may provide.

**Note:** Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3509 and 3513, Business and Professions Code.

**Recommended Motion:**

Direct staff to take all steps necessary to initiate the formal rulemaking process to repeal Sections 1399.531 and 1399.532, authorize the Executive Officer to make any non-substantive changes to the rulemaking package, and set the proposed regulations hearing.

## Proposed Text

~~1399.531. Curriculum Requirements for an Approved Program for Primary Care Physician Assistants:~~

~~(a) The curriculum of a program for instruction of primary care physician assistants shall include adequate theoretical instruction in or shall require as prerequisites to entry into the program the following basic education core:~~

- ~~(1) Chemistry~~
- ~~(2) Mathematics, which includes coursework in algebra~~
- ~~(3) English~~
- ~~(4) Anatomy and Physiology~~
- ~~(5) Microbiology~~
- ~~(6) Sociology or cultural anthropology~~
- ~~(7) Psychology~~

~~All instruction in the basic education core shall be at the junior college level or its equivalent with the exception of chemistry which may be at the junior college or high school level.~~

~~(b) The curriculum of an educational program shall also include or require as prerequisites adequate theoretical and clinical instruction which includes direct patient contact where appropriate, in the following clinical science core:~~

- ~~(1) Community Health and Preventive Medicine~~
- ~~(2) Mental Health~~
- ~~(3) History taking and physical diagnosis~~
- ~~(4) Management of common diseases (acute, chronic, and emergent) including first aid~~
- ~~(5) Concepts in clinical medicine and surgery, such as:
  - ~~growth and development~~
  - ~~nutrition~~
  - ~~aging~~
  - ~~infection~~
  - ~~allergy and sensitivity~~
  - ~~tissue healing and repair~~
  - ~~oncology~~~~
- ~~(6) Common laboratory and screening techniques~~
- ~~(7) Common medical and surgical procedures~~
- ~~(8) Therapeutics, including pharmacology~~
- ~~(9) Medical ethics and law~~
- ~~(10) Medical socioeconomic~~
- ~~(11) Counseling techniques and interpersonal dynamics~~

~~**Note:** Authority cited: Section 3510, Business and Professions Code. Reference cited: Sections 3509 and 3513, Business and Professions Code.~~

~~1399.532. Requirements for an Approved Program for the Specialty Training of Physician Assistants.~~

~~A program for the specialty training of physician assistants shall meet the general requirements of Section 1399.530, except that a specialty training program need not be located in an educational institution and need not provide academic credit for its coursework, and shall either~~  
~~(a) accept only trainees who have completed a primary care training program; or,~~  
~~(b) provide the curriculum set forth in Section 1399.531 in addition to any specialty instruction it may provide.~~

~~**Note:** Authority cited: Section 3510, Business and Professions Code. Reference: Sections 3509 and 3513, Business and Professions Code.~~

Agenda

Item

10.a

**REGULATORY HEARING ON PROPOSED LANGUAGE FOR REPORTING OF  
PHYSICIAN ASSISTANT SUPERVISION, SECTION 1399.546 OF  
DIVISION 13.8 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS**

**DISCUSSION**

At the January 11, 2016 Board meeting, proposed language to amend Title 16, California Code of Regulations section 1399.546 was reviewed. A motion was made to approve the proposed language which included the deletion of the word, "assistant" from the third line of subdivision (b).

On June 28, 2016, public comment regarding this regulatory proposal was received from the California Academy of PAs (CAPA) in which they requested that the originally proposed text be modified to delete the word, "assistant" from the third line of subdivision (b) of the originally proposed text.

Unfortunately, the word, "assistant" was inadvertently not deleted from the originally proposed text approved by the Board at the January 11, 2016 meeting.

**PROPOSED MODIFIED TEXT**

**§ 1399.546. Reporting of Physician Assistant Supervision.**

(a) Each time a physician assistant provides care for a patient and enters his or her name, signature, initials, or computer code on a patient's record, chart or written order, the physician assistant shall also enter the name of his or her record in the medical record for that episode of care the supervising physician who is responsible for the patient. When a physician assistant transmits an oral order, he or she shall also state the name of the supervising physician responsible for the patient.

(b) If the electronic medical record software used by the physician assistant is designed to, and actually does, enter the name of the supervising physician ~~assistant~~ for each episode of care into the patient's medical record, such automatic entry shall be sufficient for compliance with this recordkeeping requirement.

Note: Authority cited: Sections 2018 and 3510, Business and Professions Code.  
Reference: Section 3502, Business and Professions Code.

## **ACTION**

First: Motion to accept CAPA's comment to strike the word "assistant" from the third line of subdivision (b).

Second: Direct staff to take all steps necessary to complete the rulemaking process, including preparing modified text for an additional 15-day comment period, which includes the amendment to remove the word "assistant" as discussed at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt Section 1399.546 of the proposed regulations with the modified text.



CALIFORNIA  
ACADEMY  
OF PAs™

June 28, 2016

Ms. Anita Winslow  
Regulatory Coordinator  
2005 Evergreen Street, Suite 1100  
Sacramento, CA 95815

Subject: CCR, Title 16, Section 1399.546

Dear Ms. Winslow,

On behalf of the California Academy of PAs (CAPA) we write to express our support-if-amend position on the proposed regulatory change to *CCR, Title 16, Section 1399.546* which would simplify compliance with documentation requirements as specified in Senate Bill 337. We request a clarifying amendment specific to *Section 1399.546 (b)* of the proposed language. The draft version of the proposed language references a supervising physician assistant rather than a supervising physician.

*(b) If the electronic medical record software used by the physician assistant is designed to, and actually does, enter the name of the **supervising physician assistant** for each episode of care into the patient's medical record, such automatic entry shall be sufficient for compliance with this recordkeeping requirement.*

Based on a robust stakeholder process, public comment and content within the initial statement of reason (ISR) it is evident that the intent of the regulatory change is to permit the following:

*(b) If the electronic medical record software used by the physician assistant is designed to, and actually does, enter the name of the **supervising physician assistant** for each episode of care into the patient's medical record, such automatic entry shall be sufficient for compliance with this recordkeeping requirement.*

We appreciate the opportunity to provide comment and respectfully request clarification of the proposed language to reflect the intent of the regulatory change. If you have any questions please contact me at 916-759-0163.

Respectfully,

A handwritten signature in black ink, appearing to read 'Teresa Anderson', written in a cursive style.

Teresa Anderson  
Public Policy Director

## TITLE 16. PHYSICIAN ASSISTANT BOARD

(Notice published May 27, 2016)

### NOTICE OF PROPOSED RULEMAKING

The Physician Assistant Board (Board) proposes to adopt the proposed regulation described below after considering all comments, objections, and recommendations regarding the proposed action.

#### PUBLIC HEARING

The Board will hold a public hearing starting at 10:00 a.m. on July 11, 2016, in the Hearing Room located at 2005 Evergreen Street, Sacramento, California 95815. The Hearing Room is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Board requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

#### WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. Comments may also be submitted by facsimile (FAX) at (916) 263-2671 or by e-mail to [anita.winslow@mbc.ca.gov](mailto:anita.winslow@mbc.ca.gov). The written comment period closed at **5:00 p.m. on July 11, 2016**. The Board will consider only comments received at the Board offices by that time. Submit comments to:

Anita Winslow, Regulatory Coordinator  
Physician Assistant Board  
2005 Evergreen Street, Suite 1100  
Sacramento, CA 95815-3893

#### AUTHORITY AND REFERENCE

Business and Professions Code section 2018 and 3510 authorizes the Board to adopt this proposed regulation. The proposed regulation implement, interpret, and make specific section 3502 of the Business and Professions Code.

#### INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Profession Code section 3502 authorizes the medical services performable by physician assistants, the supervision requirements of physician assistants, and supervision recordkeeping requirements. Existing law at Title 16, California Code of Regulations (CCR) section 1399.546 requires the physician assistant to enter the name of their supervising physician in the patient's medical record every time they provide care for that patient. Section 1399.546 was adopted prior to the now

wide-use of electronic medical records (EMR) and the automated or computerized entry of required medical information in the medical records of patients.

SB 337 Chapter 536, Statutes of 2015 (Pavley), amended Business and Profession Code section 3502. Among the amendments was the requirement that the medical record for each episode of care for a patient identify the physician and surgeon who is responsible for the supervision of the physician assistant. Business and Professions Code section 3502(f) also was amended to state: "Compliance by a physician assistant and supervising physician and surgeon with this section shall be deemed compliance with Section 1399.546 of Title 16 of the California Code of Regulations."

Upon review of its interpretation of Section 1399.546 and the recent amendments to SB 337, the Board determined that Section 1399.546 is not consistent with the intent of Business and Professions Code section 3502 as amended by SB 337. Specifically, the Board determined that SB 337 was intended to alleviate the need for the physician assistant to manually enter the supervising physician's name in the patient's EMR for each episode of care. However, the current regulation still may be interpreted to require that entry.

This proposal would strike the current requirement that the physician assistant manually "enter" the name of his or her supervising physician in the patient's medical record for each episode of care, and instead require that the physician assistant only "record" the supervising physician in the patient's medical record for each episode of care. This would permit use of EMRs or other methods of recordation to meet this recordkeeping requirement.

The proposal would also add a paragraph to Section 1399.546 that explicitly permits the use of EMRs to meet this requirement provided that the electronic medical record software used by the physician assistant is designed to, and actually does, enter the name of the supervising physician assistant for each episode of care into the patient's medical record. Such automatic entry would be deemed sufficient compliance with this recordkeeping requirement.

*Anticipated Benefits of the Proposed Regulation:*

The purpose is to eliminate duplicative record keeping, thus ensuring that licensees would not be subjected to burdensome regulations in complying with this reporting requirement while still meeting the objective of documenting who is responsible for providing care in the patient's medical record.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations:*

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

## DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None

Cost impacts on a representative private person or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Statewide adverse economic impact directly affecting businesses and individuals: Although the proposed action will directly affect businesses statewide, including small business, the Board concludes that the adverse economic impact, including the ability of California businesses to compete with businesses in other states, will not be significant.

Significant effect on housing costs: None

Business Impact:

This regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts or evidence/documents/testimony:

The Physician Assistant Board has approximately 10,732 licensees for FY 2015-2016. Physician assistants work in a variety of practice settings and specialties under the supervision of licensed physicians. The Board does not have data on the number of physicians who supervise physician assistants or the number of businesses that employ them.

Existing law requires that physician assistants manually enter the name of their supervising physician in the patient's record for each episode of care. The proposed amendment would clarify and specifically permit the physician assistant to use computer software programs to automatically enter the information, thus saving costs and time and eliminating duplicative functions within the health care delivery system. This proposal would therefore result in cost savings for any businesses that employ physician assistants or no costs for those businesses already electronically generating the information required by this regulation. The proposal's purpose is to ensure there is no duplicative record keeping while still enabling the patient to reference who their

supervising physician is.

Effect on Small Business:

The Physician Assistant Board has determined that the proposed regulations would not affect small businesses because it only affects how the physician assistant documents their supervising physician.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS:**

The Physician Assistant Board has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of the Proposed Action: The Physician Assistant Board has determined that this regulatory proposal will benefit the health and welfare of California residents by eliminating the inconsistency between Business and Professions Code section 3502 and CCR section 1399.546, thus enhancing consumer protection.

**CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

**CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Name:	Anita Winslow
Address:	2005 Evergreen Street, Suite 1100 Sacramento, CA 95815-3893
Telephone No.:	(916) 561-8782
Fax No.:	(916) 263-2671
E-Mail Address:	anita.winslow@mbc.ca.gov

The backup contact person is:

Name: Lynn Forsyth  
Address: 2005 Evergreen Street, Suite 1100  
Sacramento, CA 95815-3893  
Telephone No.: (916) 561-8785  
Fax No.: (916) 263-2671  
E-Mail Address: lynn.forsyth@mbc.ca.gov

## AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulation as revised. Please send requests for copies of any modified regulations to the attention of Anita Winslow at the address indicated above. The Board will accept written comments on the modified regulation for 15 days after the date on which they are made available.

## AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Winslow at the above address.

## AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulation in underline and strikeout can be accessed through our website at: [www.pac.ca.gov](http://www.pac.ca.gov) .

**PHYSICIAN ASSISTANT BOARD**  
**Proposed Regulatory Language**  
**Title 16 CCR Section 1399.546**

Strikeout indicates deletions; underline indicates additions to current text.

**§ 1399.546. Reporting of Physician Assistant Supervision.**

(a) Each time a physician assistant provides care for a patient and enters his or her name, signature, initials, or computer code on a patient's record, chart or written order, the physician assistant shall also enter the name of his or her record in the medical record for that episode of care the supervising physician who is responsible for the patient. When a physician assistant transmits an oral order, he or she shall also state the name of the supervising physician responsible for the patient.

(b) If the electronic medical record software used by the physician assistant is designed to, and actually does, enter the name of the supervising physician assistant for each episode of care into the patient's medical record, such automatic entry shall be sufficient for compliance with this recordkeeping requirement.

Note: Authority cited: Sections 2018 and 3510, Business and Professions Code.  
Reference: Section 3502, Business and Professions Code.

Agenda

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## HEALTH PROFESSIONS EDUCATION FOUNDATION

*Giving Golden Opportunities*

### **About Us**

Established in 1987, HPEF is the state's only non-profit foundation statutorily created to encourage persons from underrepresented communities to become health professionals and increase access to health providers in medically underserved areas. Supported by grants, donations, licensing fees, and special funds, HPEF provides scholarship, loan repayment and programs to students and graduates who agree to practice in California's medically underserved communities. Housed in the Office of Statewide Health Planning and Development, HPEF's track record of delivering health providers to areas of need has resulted in approximately 10,500 awards totaling more than \$124 million to allied health, nursing, mental health and medical students and recent graduates practicing in all 58 counties of California.

### **Mission Statement**

The Health Professions Education Foundation (HPEF) improves access to healthcare in underserved areas of California by providing scholarships, loan repayments, and programs to health professional students and graduates who are dedicated to providing direct patient care in those areas. In return for this support, recipients agree to provide direct patient care in a medically underserved area (MUA) of California for a period of one to three years.

### **Scholarship Programs**

Allied Healthcare Scholarship Program (AHSP)

Advanced Practice Healthcare Scholarship Program (APHSP) (Formerly Health Professions Education Scholarship Program) (HPSP)

Associate Degree Nursing Scholarship Program (ADN)

Bachelor of Science Nursing Scholarship Program (BSN)

Licensed Vocational Nurse to Associate Degree Nursing Scholarship Program (LVN to ADN)

Vocational Nurse Scholarship Program (VNSP)

### **Loan Repayment Programs**

Allied Healthcare Loan Repayment Program (AHLRP)

Advanced Practice Healthcare Loan Repayment Program (APHLRP) (Formerly Health Professions Loan Repayment Program) (HPLRP)

Bachelor of Science Nursing Loan Repayment Program (BSNLRP)

Licensed Mental Health Services Provider Education Program (LMHSPEP)

Licensed Vocational Nurse Loan Repayment Program (LVNLRP)

Mental Health Loan Assumption Program (MHLAP)

Steven M. Thompson Physician Corp Loan Repayment Program (STLRP)

Agenda

Item

14.b



**PHYSICIAN ASSISTANT BOARD**  
2005 Evergreen Street, Suite 1100, Sacramento, CA 95815  
P (916) 561-8780 Fax(916) 263-2671 web www.pac.ca.gov

**PHYSICIAN ASSISTANT BOARD  
NOTICE OF TELECONFERENCE  
SPECIALTY TRAINING PROGRAM REVIEW COMMITTEE MEETING  
May 16, 2016  
10:00 A.M. – 12:00 P.M.**

One or more Committee Members will participate in this meeting at the teleconference sites listed below. Each teleconference location is accessible to the public and the public will be given an opportunity to address the Committee members at each teleconference location. The public teleconference sites for this meeting are as follows:

Xavier Martinez  
4995 Murphy Canyon Rd, #207  
San Diego, CA 92123  
858-637-7120

Jed Grant, PA-C  
2005 Evergreen St., #1120  
Sacramento, CA 95815  
(916) 561-8780

Sonya Earley  
2020 Zonal Ave, IRD Bldg, Rm 628  
Los Angeles, CA 90638  
323-226-2111

**AGENDA**

1. **OPEN SESSION** - Roll Call & Establishment of a Quorum  
Sonya Earley, PA  
Jed Grant, PA-C  
Xavier Martinez

2. **Public Comment on items not on the Agenda**

(Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a).])

3. **Review, Discussion and Possible Action to Approve or Deny Application for Post-Graduate Specialty Training Program Pursuant to Title 16, California Code of Regulations Section 1399.532, (Requirements for An Approved Program for the Specialty Training of Physician Assistants):**

Application for University of California, San Francisco (UCSF) School of Medicine. Community Regional Medical Center in Fresno, CA

4. **Adjournment**

Note: Action may be taken on any item on the agenda. Agenda discussion and report items are subject to action being taken on them during the meeting by the Committee at its discretion. All times when stated are approximate and subject to change without prior notice at the discretion of the Committee unless listed as "time certain". Agenda items may be taken out of order and total time allocated for public comment on particular issues may be limited. The meeting may be cancelled

without notice. For verification of the meeting, call (916) 561-8780 or access the Board's Web Site at [www.pac.ca.gov](http://www.pac.ca.gov).

Notice: The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Anita Winslow at (916) 561-8782 or email [anita.winslow@mbc.ca.gov](mailto:anita.winslow@mbc.ca.gov) or send a written request to the Physician Assistant Board, 2005 Evergreen Street, Suite 1100, Sacramento, California 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the request



PHYSICIAN ASSISTANT BOARD

2005 Evergreen Street, Suite 1100, Sacramento, CA 95815  
P (916) 561-8780 F (916) 263-2671 | [www.pac.ca.gov](http://www.pac.ca.gov)



June 16, 2016

Mr. Fred Wu  
Program Director  
UCSF Fresno Medical Education Program  
155 N. Fresno Street  
Fresno, California 93701

RE: Approval of Physician Assistant Postgraduate Residency Program

Dear Mr. Wu:

The Specialty Training Program Review Committee (Committee) met via teleconference on May 16, 2016 to review and discuss the application you submitted for approval of the Physician Assistant postgraduate residency program at the Community Regional Medical Center in Fresno, California affiliated with the University of California, San Francisco (UCSF) School of Medicine.

Upon review and discussion of your application, the Committee approved your application pursuant to Business and Professions Code, sections 3509 and 3513.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Anita Winslow  
Lead Licensing Analyst

cc Jed Grant  
Sonya Earley  
Xavier Martinez  
PA Board Members

Agenda

Item

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## Delegation of Services Agreements – Change in Regulations

Title 16, Division 13.8, Article 4, section 1399.540 was amended to include several requirements for the delegation of medical services to a physician assistant. There are four specific changes with this amendment:

Background:

The Delegation of Services Agreement (DSA) is a document used by supervising physicians and physician assistants to meet requirements of Section 1399.540. The DSA is the foundation of the relationship between a supervising physician and the physician assistant, and specifies the names of the supervising physicians and what types of medical services the physician assistant is allowed to perform, how they are performed, how the patient charts will be reviewed and countersigned, and what type of medications the physician assistant will transmit on behalf of the supervising physician.

Regulatory Requirements:

- 1) A physician assistant may provide medical services, which are delegated in writing by a supervising physician who is responsible for patients, cared for by the physician assistant. The physician assistant may only provide services which he or she is competent to perform, which are consistent with their education, training and experience, and which are delegated by the supervising physician.
- 2) The delegation of services agreement is the name of the document, which delegates the medical services. More than one supervising physician may sign the delegation of services agreement only if each supervising physician has delegated the same medical services. A physician assistant may provide medical services pursuant to more than one delegation of services agreement.
- 3) The Physician Assistant Board or their representative may require proof or demonstration of competence from any physician assistant for any medical services performed.
- 4) If a physician assistant determines a task, procedure or diagnostic problem exceeds his or her level of competence, and then the physician assistant shall either consult with a physician or refer such cases to a physician.

**Question:** What if a physician assistant works for more than one supervising physician at a hospital or clinic? Do we need to have separate DSAs for each supervising physician?

**Answer:** The Board has had questions regarding how the DSA would be written if a physician assistant works for more than one supervising physician at a hospital or clinic. If the duties and medical services performed are consistent with each supervising physician, then one DSA can be written to include several supervising physicians. Each supervising physician must sign and date the DSA, along with the signature of the physician assistant.

**Question:** What if a physician assistant works for one supervising physician who is an ob-gyn, and also works for an ortho supervising physician, and both are at the same clinic or hospital?

Answer: If the duties and medical services provided by the physician assistant differ from one supervising physician to another, then it is recommended that a separate DSA be written for each supervising physician. However, one DSA could be used, but it would need to be separated with which duties are allowed under each supervising physician. Again, signatures and dates from all parties must be included on the DSA.

**Question:** What if the physician assistant works at several different clinics – can one DSA be written?

Answer: A separate DSA should be made for each hospital or clinic, regardless of how many supervising physicians the physician assistant works with.

Alternatively, a physician assistant may have a DSA that specifies what services can be provided at a specific site.

**Question:** Are electronic signatures an acceptable method of signing the DSA?

It is the policy of the Physician Assistant Board to accept electronic signatures when signing the DSA. The electronic medical record system used should have procedures and protocols established to allow for the validation of electronic signatures.

**Question:** Am I required to update my DSA?

There are no legal requirements to update your DSA.

**Question:** How long should I retain my DSA?

Answer: You should retain the DSA as long as it is valid. Additionally, it is recommended that you keep a copy of your DSA for at least one to three years after it is no longer the current DSA in case you need to reference the document. However, there is no legal requirement to retain the DSA once it is no longer valid and current.

**DELEGATION OF SERVICES AGREEMENT  
BETWEEN  
A SUPERVISING PHYSICIAN AND A PHYSICIAN ASSISTANT  
and  
SUPERVISING PHYSICIAN'S RESPONSIBILITY FOR SUPERVISION  
OF A PHYSICIAN ASSISTANT**

Title 16, Section 1399.540 of the Physician Assistant Regulations states, in part, "A physician assistant may only provide those medical services which he or she is competent to perform and which are consistent with the physician assistant's education, training, and experience, and which are delegated in writing by a supervising physician who is responsible for the patients cared for by that physician assistant. b) The writing which delegates the medical services shall be known as a delegation of services agreement. A delegation of services agreement shall be signed and dated by the physician assistant and each supervising physician. A delegation of services agreement may be signed by more than one supervising physician only if the same medical services have been delegated by each supervising physician. A physician assistant may provide medical services pursuant to more than one delegation of services agreement."

The following two sample documents are attached to assist you with meeting this legal requirement:

- Delegation of Services Agreement (DSA) Between Supervising Physician and Physician Assistant; and,
- Supervising Physician's Responsibility for Supervision of Physician Assistant Agreement.

These are sample documents. They are for your convenience, information, and use. Please feel free to duplicate or modify them as appropriate and consistent with law.

If you choose not to use the sample documents, please be aware that you are still required by law to execute a DSA with your supervising physician. The DSA must be signed and dated by you and your supervising physician. The original or a copy of this document should be maintained at all practice sites where the physician assistant practices, and should be readily accessible. It is recommended that you retain prior DSAs for one to three years after the DSA is no longer current or valid.

While every practicing physician assistant is required to have a DSA, you are **not** required to submit it to the Physician Assistant Board. If requested, you must make a copy of your DSA available to any authorized agent of the Medical Board of California, the Osteopathic Medical Board of California, or the Physician Assistant Board who may request it.

Failure to have a current DSA constitutes a violation of the Physician Assistant Regulations and is grounds for disciplinary action against a physician assistant's license. In addition, failure by the physician assistant and supervising physician to comply with the supervision requirements specified in the Physician Assistant Regulations and in the Delegation of Services Agreement is ground for disciplinary action.

**THE ATTACHED DOCUMENTS DO NOT NEED TO BE RETURNED TO THE  
PHYSICIAN ASSISTANT BOARD**

**SAMPLE**  
**DELEGATION OF SERVICES AGREEMENT BETWEEN SUPERVISING PHYSICIAN**  
**AND PHYSICIAN ASSISTANT (Title 16, CCR, Section 1399.540)**

**PHYSICIAN ASSISTANT** \_\_\_\_\_  
(Name)

Physician assistant, graduated from the \_\_\_\_\_  
(Name of PA Training Program)

physician assistant training program on \_\_\_\_\_  
(Date)

He/she took (or is to take) the licensing examination for physician assistants recognized by the State of California (e.g., Physician Assistant National Certifying Examination or a specialty examination given by the State of California) on \_\_\_\_\_  
(Date)

He/she was first granted licensure by the Physician Assistant Board on \_\_\_\_\_, which expires on \_\_\_\_\_, unless renewed.  
(Date) (Date)

**SUPERVISION REQUIRED.** The physician assistant named above (hereinafter referred to as PA) will be supervised in accordance with the written supervisor guidelines required by Section 3502 of the Business and Professions Code and Section 1399.545 of the Physician Assistant Regulations. The written supervisor guidelines are incorporated with the attached document entitled, "Supervising Physician's Responsibility for Supervision of Physician Assistants."

**AUTHORIZED SERVICES.** The PA is authorized by the physician whose name and signature appear below to perform all the tasks set forth in subsections (a), (d), (e), (f), and (g) of Section 1399.541 of the Physician Assistant Regulations, when acting under the supervision of the herein named physician. (In lieu of listing specific lab procedures, etc. the PA and *supervising* physician may state as follows: "Those procedures specified in the practice protocols or which the supervising physician specifically authorizes.")

The PA is authorized to perform the following laboratory and screening procedures:  
\_\_\_\_\_  
\_\_\_\_\_

The PA is authorized to assist in the performance of the following laboratory and screening procedures:  
\_\_\_\_\_  
\_\_\_\_\_

The PA is authorized to perform the following therapeutic procedures:  
\_\_\_\_\_  
\_\_\_\_\_

The PA is authorized to assist in the performance of the following therapeutic procedures:  
\_\_\_\_\_  
\_\_\_\_\_

The PA is authorized to function as my agent per bylaws and/or rules and regulations of (name of hospital):  
\_\_\_\_\_  
\_\_\_\_\_

a) The PA is authorized to write and sign drug orders for Schedule: II, III, IV, V without advance approval (circle authorized Schedule(s)). The PA has taken and passed the drug course approved by the Board on \_\_\_\_\_ (attach certificate).      DEA #: \_\_\_\_\_      Date

or  
b) The PA is authorized to write and sign drug orders for Schedule: II, III, IV, V with advance patient specific approval (circle authorized Schedule(s)).      DEA #: \_\_\_\_\_

**CONSULTATION REQUIREMENTS.** The PA is required to always and immediately seek consultation on the following types of patients and situations (e.g., patient's failure to respond to therapy; physician assistant's uncertainty of diagnosis; patient's desire to see physician; any conditions which the physician assistant feels exceeds his/her ability to manage, etc.)

\_\_\_\_\_  
(List Types of Patients and Situations)  
\_\_\_\_\_

**MEDICAL DEVICES AND PHYSICIAN'S PRESCRIPTIONS.** The PA may transmit by telephone to a pharmacist, and orally or in writing on a patient's medical record or a written prescription drug order, the supervising physician's prescription in accordance with Section 3502.1 of the Business and Professions Code.

The supervising physician authorizes the delegation and use of the drug order form under the established practice protocols and drug formulary. \_\_\_\_\_ YES \_\_\_\_\_ NO

The PA may also enter a drug order on the medical record of a patient at \_\_\_\_\_  
(Name of Institution)  
in accordance with the Physician Assistant Regulations and other applicable laws and regulations.

Any medication handed to a patient by the PA shall be authorized by the supervising physician's prescription and be prepackaged and labeled in accordance with Sections 4076 of the Business and Professions Code.

**PRACTICE SITE.** All approved tasks may be performed for care of patients in this office or clinic located at \_\_\_\_\_  
(Address / City) and, in \_\_\_\_\_ hospital(s) and  
(Address / City) skilled nursing facility (facilities) for care of  
(Name of Facility) patients admitted to those institutions by physician(s) \_\_\_\_\_  
(Name/s)

**EMERGENCY TRANSPORT AND BACKUP.** In a medical emergency, telephone the 911 operator to summon an ambulance.

The \_\_\_\_\_ emergency room at \_\_\_\_\_  
(Name of Hospital) (Phone Number)  
is to be notified that a patient with an emergency problem is being transported to them for immediate admission. Give the name of the admitting physician. Tell the ambulance crew where to take the patient and brief them on known and suspected health condition of the patient.  
Notify \_\_\_\_\_ at \_\_\_\_\_ immediately  
(Name of Physician) (Phone Number/s)  
(or within \_\_\_\_\_ minutes).

**PHYSICIAN ASSISTANT DECLARATION**

My signature below signifies that I fully understand the foregoing Delegation of Services Agreement, having received a copy of it for my possession and guidance, and agree to comply with its terms without reservations.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Physician's Signature (Required)

\_\_\_\_\_  
Physician's Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Physician Assistant's Signature (Required)

\_\_\_\_\_  
Physician Assistant's Printed Name

**SUPERVISING PHYSICIAN'S RESPONSIBILITY  
FOR SUPERVISION OF PHYSICIAN ASSISTANT**

**SUPERVISOR** \_\_\_\_\_, M.D./D.O. is licensed to practice in California as a physician and surgeon with medical license number \_\_\_\_\_. Hereinafter, the above named physician shall be referred to as the supervising physician.

**SUPERVISION REQUIRED.** The physician assistant (PA) named in the attached Delegation of Services Agreement will be supervised by the supervising physician in accordance with these guidelines, set forth as required by Section 3502 of the Business and Professions Code and Section 1399.545 of the Physician Assistant Regulations, which have been read by the physician whose signature appears below.

The physician shall review, countersign, and date within seven (7) days the medical record of any patient cared for by the physician assistant for whom the physician's prescription for Schedule II medications was transmitted or carried out.

**REPORTING OF PHYSICIAN ASSISTANT SUPERVISION.** Each time the physician assistant provides care for a patient and enters his or her name, signature, initials, or computer code on a patient's record, chart or written order, the physician assistant shall also enter the name of his or her supervising physician who is responsible for the patient. When the physician assistant transmits an oral order, he or she shall also state the name of the supervising physician responsible for the patient.

**MEDICAL RECORD REVIEW.** One or more of the following mechanisms, as indicated below, by a check mark (x), shall be utilized by the supervising physician to partially fulfill his/her obligation to adequately supervise the actions of the physician assistant named \_\_\_\_\_.  
(Name of PA)

\_\_\_\_\_ Examination of the patient by a supervising physician the same day as care is given by the PA.

\_\_\_\_\_ The supervising physician shall review, audit, and countersign every medical record written by the PA within \_\_\_\_\_ of the encounter.  
(Number of Days May- Not Exceed 30 Days)

\_\_\_\_\_ The physician shall audit the medical records of at least 5% of patients seen by the PA under any protocols which shall be adopted by the supervising physician and the physician assistant. The physician shall select for review those cases which by diagnosis, problem, treatment, or procedure represent, in his or her judgment, the most significant risk to the patient.

\_\_\_\_\_ Other mechanisms approved in advance by the Physician Assistant Board may be used. Written documentation of those mechanisms is located at \_\_\_\_\_.  
(Give Location)

**BACK UP PROCEDURES:** In the event this supervising physician is not available when needed, the following physician(s) has (have) agreed to be a consultant(s) and/or to receive referrals:

\_\_\_\_\_ Phone: \_\_\_\_\_  
(Printed Name and Specialty)

\_\_\_\_\_ Phone: \_\_\_\_\_  
(Printed Name and Specialty)

**PROTOCOLS NOTE:** This document **does not** meet the regulation requirement to serve as a protocol. Protocols, if adopted by the supervising physician, must fully comply with the requirements authorized in Section 3502 (c) (1) of the Business and Professions Code.

\_\_\_\_\_ Date

\_\_\_\_\_ Physician's Signature

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# 0280 - Physician Assistant Board

## Analysis of Fund Condition

7/5/2016

(Dollars in Thousands)

### 2016-17 Governor's Budget

w/ current year expenditures and revenues

	ACTUAL 2014-15	CY 2015-16	BY 2016-17
<b>BEGINNING BALANCE</b>	\$ 1,531	\$ 1,764	\$ 1,770
Prior Year Adjustment	\$ 24	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,555	\$ 1,764	\$ 1,770
<b>REVENUES AND TRANSFERS</b>			
Revenues:			
125600 Other regulatory fees	\$ 12	\$ 9	\$ 5
125700 Other regulatory licenses and permits	\$ 246	\$ 228	\$ 253
125800 Renewal fees	\$ 1,378	\$ 1,439	\$ 1,410
125900 Delinquent fees	\$ 4	\$ 4	\$ 4
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 5	\$ 8	\$ 6
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ 1	\$ -	\$ -
161400 Miscellaneous revenues	\$ -	\$ -	\$ -
164300 Penalty Assessments	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,646	\$ 1,688	\$ 1,678
Transfers from Other Funds			
Proposed GF Loan Repay	\$ -	\$ -	\$ 1,500
Totals, Revenues and Transfers	\$ 1,646	\$ 1,688	\$ 3,178
Totals, Resources	\$ 3,201	\$ 3,452	\$ 4,948
<b>EXPENDITURES</b>			
Disbursements:			
0840 State Controllers	\$ -	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 1,436	\$ 1,679	\$ -
1111 Program Expenditures (State Operations)	\$ -	\$ -	\$ 1,672
8880 FI\$CAL (State Operations)	\$ 1	\$ 3	\$ 1
Total Disbursements	\$ 1,437	\$ 1,682	\$ 1,673
<b>FUND BALANCE</b>			
Reserve for economic uncertainties	\$ 1,764	\$ 1,770	\$ 3,275
<b>Months in Reserve</b>	12.6	12.7	23.0

#### NOTES:

- A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED IN BY+1 AND ON-GOING.
- B. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR BEGINNING IN BY+1
- C. ASSUMES INTEREST RATE AT 0.3%.
- D. ASSUMES EXPENDITURE AND REVENUE BASED ON FM 11

**PHYSICIAN ASSISTANT BOARD - FUND 0280**  
**BUDGET REPORT**  
**FY 2015-16 EXPENDITURE PROJECTION**

FM 11

OBJECT DESCRIPTION	FY 2014-15		FY 2015-16				
	ACTUAL EXPENDITURES (MONTH 13)	PRIOR YEAR EXPENDITURES 5/31/2015	BUDGET STONE 2015-16	CURRENT YEAR EXPENDITURES 5/31/2016	PERCENT SPENT	PROJECTIONS TO YEAR END	UNENCUMBERED BALANCE
<b>PERSONNEL SERVICES</b>							
Civil Service-Perm	179,755	169,291	208,000	126,412	61%	138,309	69,691
Statutory Exempt (EO)	85,908	78,538	76,000	83,094	109%	90,648	(14,648)
Temp Help - Expert Examiner (903)							0
Temp Help Reg (907)	32,099	29,950	30,000	29,042	97%	35,166	(5,166)
Bd / Commsn (901, 920)			2,000		0%	0	2,000
Comm Member (911)	7,500	5,500		8,500		9,200	(9,200)
Overtime	1,702	1,702				0	0
Staff Benefits	116,885	107,907	135,000	102,650	76%	112,311	22,689
<b>TOTALS, PERSONNEL SVC</b>	<b>423,849</b>	<b>392,888</b>	<b>451,000</b>	<b>349,698</b>	<b>78%</b>	<b>385,634</b>	<b>65,366</b>
<b>OPERATING EXPENSE AND EQUIPMENT</b>							
General Expense	16,150	15,949	13,000	15,833	122%	16,200	(3,200)
Fingerprint Reports	15,582	12,544	15,000	14,847	99%	18,500	(3,500)
Minor Equipment	323	323	0			0	0
Printing	6,084	6,084	3,000	5,368	179%	5,800	(2,800)
Communication	1,802	1,533	6,000	1,592	27%	1,800	4,200
Postage	3,848	3,371	8,000	3,907	49%	4,500	3,500
Insurance			0			0	0
Travel In State	15,817	12,546	21,000	17,425	83%	22,000	(1,000)
Travel, Out-of-State			0			0	0
Training	0	0	1,000	0	0%	0	1,000
Facilities Operations	45,266	44,925	56,000	48,775	87%	48,775	7,225
Utilities			0			0	0
C & P Services - Interdept.	0	59,000	0			0	0
C & P Services - External	58,813	105,130	50,000	114,652	229%	40,072	9,928
<b>DEPARTMENTAL SERVICES:</b>							
OIS Pro Rata	77,436	80,416	144,000	144,000	100%	144,000	0
Administration Pro Rata	51,821	51,821	55,000	55,000	100%	55,000	0
Interagency Services	0	0	8,000	0	0%	0	8,000
Shared Svcs - MBC Only	90,112	90,112	93,000	90,112	97%	93,000	0
DOI - Pro Rata	910	1,055	1,000	1,000	100%	1,000	0
Public Affairs Pro Rata	2,057	2,057	3,000	3,000	100%	3,000	0
PCSD Pro Rata	1,988	2,051	0			0	0
<b>INTERAGENCY SERVICES:</b>							
Consolidated Data Center	0	0	5,000	0	0%	0	5,000
DP Maintenance & Supply	160	160	3,000	1,068	36%	1,068	1,932
Statewide - Pro Rata	69,681	69,681	74,000	74,006	100%	74,006	(6)
<b>EXAMS EXPENSES:</b>							
Exam Supplies			0			0	0
<b>OTHER ITEMS OF EXPENSE:</b>							
<b>ENFORCEMENT:</b>							
Attorney General	363,002	336,513	451,000	475,307	105%	501,950	(50,950)
Office Admin. Hearings	57,102	53,424	75,000	100,115	133%	103,238	(28,238)
Court Reporters	3,817	3,238		3,145		4,000	(4,000)
Evidence/Witness Fees	44,713	37,350	0	36,414		50,000	(50,000)
Investigative Svcs - MBC Only	155,327	137,161	220,000	106,128	48%	155,000	65,000
Vehicle Operations						0	0
Major Equipment			9,000	0	0%	0	9,000
<b>TOTALS, OE&amp;E</b>	<b>1,081,811</b>	<b>1,126,444</b>	<b>1,314,000</b>	<b>1,311,694</b>	<b>100%</b>	<b>1,342,909</b>	<b>(28,909)</b>
<b>TOTAL EXPENSE</b>	<b>1,505,660</b>	<b>1,519,332</b>	<b>1,765,000</b>	<b>1,661,392</b>	<b>177%</b>	<b>1,728,543</b>	<b>36,457</b>
Sched. Reimb. - Fingerprints	(11,493)	(8,994)	(25,000)	(16,464)	66%	(25,000)	0
Sched. Reimb. - Other	(940)	(940)	(25,000)	(940)	4%	(25,000)	0
Unsched. Reimb. - ICR - FTB Collection				(2,443)			0
Unsched. Reimb. - ICR	(50,421)	(47,235)		(45,754)			0
Unsched. Reimb. - ICR - Prob Monitor	(6,750)	(6,650)		(11,822)			0
<b>NET APPROPRIATION</b>	<b>1,436,056</b>	<b>1,455,513</b>	<b>1,715,000</b>	<b>1,583,969</b>	<b>92%</b>	<b>1,678,543</b>	<b>36,457</b>
<b>SURPLUS/(DEFICIT):</b>							<b>2.1%</b>

Agenda

Item

19

AB

1566

AMENDED IN ASSEMBLY MARCH 1, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1566**

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**Introduced by Assembly ~~Member~~ Members Wilk and Patterson**  
*(Principal coauthor: Senator Vidak)*  
***(Coauthors: Assembly Members Baker, Brough, Beth Gaines,  
Gallagher, Hadley, Lackey, Mathis, and Steinorth)***

January 4, 2016

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An act to add Section 7550.7 to the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 1566, as amended, Wilk. Reports.

Existing law generally sets out the requirements for the submission of written reports by public agencies to the Legislature, the Governor, the Controller, and state legislative and other executive entities.

This bill would require a written report, as defined, submitted by any state agency or department to the Legislature, a Member of the Legislature, or any state legislative or executive body to include a signed statement by the head of the agency or department declaring that the factual contents of the written report are true, accurate, and complete to the best of his or her knowledge.

This bill would also make any person who declares as true any material matter pursuant to these provisions that he or she knows to be false liable for a civil penalty not to exceed \$20,000.

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 7550.7 is added to the Government Code,  
2 to read:

3 7550.7. (a) (1) Notwithstanding any other law, a written report  
4 submitted to the Legislature, a Member of the Legislature, or any  
5 state legislative or executive body by any state agency or  
6 department shall include a signed statement by the head of that  
7 agency or department declaring that the factual contents of the  
8 report are true, accurate, and complete to the best of his or her  
9 knowledge.

10 (2) With respect to the Franchise Tax Board, the signed  
11 statement described in paragraph (1) shall be made by the executive  
12 officer of that board, and with respect to the State Board of  
13 Equalization, the statement shall be made by the executive director  
14 of that board.

15 (b) Paragraph (1) of subdivision (a) shall apply to the head of  
16 every state agency or department, including, but not limited to,  
17 elected officials of state government, and any state official whose  
18 duties are prescribed by the California Constitution.

19 (c) For purposes of this section, a “written report” is either of  
20 the following:

21 (1) A document required by statute to be prepared and submitted  
22 to the Legislature, or any state legislative or executive body.

23 (2) A document, summary, or statement requested by a Member  
24 of the Legislature.

25 (d) The declaration in the signed statement as to the truth,  
26 accuracy, and completeness of the factual contents of the written  
27 report shall not apply to any forecasts, predictions,  
28 recommendations, or opinions contained in the written report.

29 (e) Any person who declares as true any material matter pursuant  
30 to this section that he or she knows to be false shall be liable for  
31 a civil penalty not to exceed twenty thousand dollars (\$20,000).  
32 The civil penalties provided for in this section shall be exclusively  
33 assessed and recovered in a civil action brought *by the Attorney*  
34 *General* in the name of the people of the State of California in any  
35 court of competent ~~jurisdiction by the Attorney General~~  
36 *jurisdiction*.

O

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Cristina Garcia, Chair

AB 1566 (Wilk) – As Amended March 1, 2016

**SUBJECT:** Reports

**SUMMARY:** Requires written reports submitted to the Legislature or executive body, by any state agency or department, to include a signed statement by the head of that agency or department declaring that the factual contents of the report are true, accurate and complete to the best of his/her knowledge. Specifically, **this bill:**

- 1) Stipulates that the provisions of this bill apply to the head of every state agency or department, including, but not limited to, elected state officials, and any state official whose duties are prescribed by the California Constitution.
- 2) Specifies the applicable executive officers for the Franchise Tax Board and the State Board of Equalization.
- 3) Defines "written report" to mean the following:
  - a) A document required by statute to be prepared and submitted to the Legislature or any state legislative or executive body; or,
  - b) A document, summary, or statement requested by a Member of the Legislature.
- 4) Exempts forecasts, predictions, recommendations or opinions from this bill.
- 5) Specifies that any person who declares as true any material matter that he/she knows to be false shall be liable for a civil penalty not to exceed \$20,000 and provides that the penalty shall be exclusively assessed and recovered in a civil action by the Attorney General.

**EXISTING LAW** provides, but is not limited to, the following:

- 1) Every willful omission to perform any duty enjoined by law upon any public officer, or person holding any public trust or employment, where no special provision is made for the punishment of such delinquency, is punishable as a misdemeanor (Government Code Section 1222).
- 2) Every person who, while taking and subscribing to the oath or affirmation required by this chapter, states as true any material matter which he or she knows to be false, is guilty of perjury, and is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years (Government Code Section 1368).

**FISCAL EFFECT:** Unknown

**COMMENTS:** According to the author, this bill seeks to improve the accuracy and truthfulness in reports submitted to the Legislature. The most recent examples where questions concerning accuracy have been raised include the bay bridge and high speed rail projects. The author's approach to

improving the accuracy of reports is to create a civil litigation process whereby heads of departments and agencies that submit reports to the Legislature are personally responsible for the truthfulness and accuracy of those reports. The author states, “There is a systemic problem in Sacramento of misrepresenting facts or outright lies by heads of agencies that are ultimately hurting Californian taxpayers.” This bill allows the Attorney General to pursue a civil fine of up to \$20,000 against any department or agency head that knowingly submits false information in a report to the Legislature.

This bill is a reintroduction of SB 1337 (DeSaulnier) that was introduced in 2014 and subsequently vetoed by the Governor. Rather than contain comments on the nature of the problem of inaccuracy of reports to the Legislature, the Governor’s veto message focused on the consequence of implementing the solution proposed in the bill. Specifically, the Governor’s veto message states:

“Contrary to its stated purpose, this bill creates new bureaucratic verification requirements that would likely impede communication between the Executive Branch and the Legislature.”

It is reasonable to assume that unless every report to the Legislature undergoes rigorous bureaucratic verification no department or agency head is likely to sign a statement attesting to its complete accuracy and truthfulness. This would lead to fewer reports submitted to the Legislature and less information available for legislative review.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Citizens for California High Speed Rail Accountability  
Howard Jarvis Taxpayers Association  
Rick Farinelli, District 3 Supervisor, County of Madera

##### **Opposition**

None on file

**Analysis Prepared by:** William Herms / A. & A.R. / (916) 319-3600

AB

1707

**ASSEMBLY BILL**

**No. 1707**

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**Introduced by Assembly Member Members Linder and Dababneh**  
**(Principal coauthor: Assembly Member Cristina Garcia)**  
**(Coauthors: Assembly Members Travis Allen, Brough, Hadley, Lackey,**  
**and Olsen)**

January 25, 2016

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An act to amend Section 6255 of the Government Code, relating to public records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1707, as amended, Linder. Public records: response to request.

The California Public Records Act requires state and local agencies to make public records available for inspection, unless an exemption from disclosure applies. *Existing law requires an agency to justify withholding any record by demonstrating that the record is exempt under express provisions of the act or that the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.* The act requires a response to a written request for public records that includes a denial of the request, in whole or in part, to be in writing.

~~This bill instead would require that response to be in writing regardless of whether the request was in writing. The bill would require that written response additionally to include a list that contains the title or other identification of each record requested but withheld due to an exemption and the specific exemption that applies to that record: the written response demonstrating that the record in question is exempt under an express provision of the act also to identify the type or types of record~~

*withheld and the specific exemption that justifies withholding that type of record.* Because local agencies would be required to comply with this new requirement, this bill would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

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

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

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

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

1 SECTION 1. Section 6255 of the Government Code is amended  
2 to read:

3 6255. (a) The agency shall justify withholding any record by  
4 demonstrating that the record in question is exempt under express  
5 provisions of this chapter or that on the facts of the particular case  
6 the public interest served by not disclosing the record clearly  
7 outweighs the public interest served by disclosure of the record.

8 (b) A response to ~~any~~ *a written* request for inspection or copies  
9 of public records that includes a determination that the request is  
10 denied, in whole or in part, shall be in writing. ~~That written~~  
11 ~~response also shall include a list that contains both of the following:~~  
12 *The written response demonstrating that the record in question is*  
13 *exempt under an express provision of this chapter also shall*  
14 *identify the type or types of record withheld and the specific*  
15 *exemption that justifies withholding that type of record.*

16 ~~(1) The title or other identification of each record requested but~~  
17 ~~withheld due to an exemption.~~

18 ~~(2) The specific exemption that applies to that record.~~

1 SEC. 2. The Legislature finds and declares that Section 1 of  
2 this act, which amends Section 6255 of the Government Code,  
3 furthers, within the meaning of paragraph (7) of subdivision (b)  
4 of Section 3 of Article I of the California Constitution, the purposes  
5 of that constitutional section as it relates to the right of public  
6 access to the meetings of local public bodies or the writings of  
7 local public officials and local agencies. Pursuant to paragraph (7)  
8 of subdivision (b) of Section 3 of Article I of the California  
9 Constitution, the Legislature makes the following findings:

10 Because the people have the right of access to information  
11 concerning the conduct of the people's business, requiring local  
12 agencies to provide a written response to any request for public  
13 records that is denied and to include in that response a list of each  
14 record being withheld due to an exemption from disclosure and  
15 the specific exemption that applies furthers the purposes of Section  
16 3 of Article I, also to identify in the written response demonstrating  
17 that the record is exempt under an express provision of the  
18 California Public Records Act the type or types of record withheld,  
19 and the specific exemption that applies, furthers the purposes of  
20 Section 3 of Article I.

21 SEC. 3. No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district under this act would result from a legislative mandate that  
25 is within the scope of paragraph (7) of subdivision (b) of Section  
26 3 of Article I of the California Constitution.

Date of Hearing: March 29, 2016

ASSEMBLY COMMITTEE ON JUDICIARY  
Mark Stone, Chair  
AB 1707 (Linder) – As Amended March 28, 2016

**SUBJECT:** PUBLIC RECORDS: RESPONSE TO REQUEST

**KEY ISSUE:** SHOULD A GOVERNMENT AGENCY'S WRITTEN DENIAL OF A REQUEST FOR PUBLIC RECORDS IDENTIFY THE TYPES OF RECORDS WITHHELD, AND THE SPECIFIC EXEMPTIONS THAT JUSTIFY WITHHOLDING THEM?

**SYNOPSIS**

*Under the California Public Records Act (PRA), all public records are open to public inspection unless a statutory exemption provides otherwise. When an agency withholds requested records from public inspection, existing law requires it to justify the withholding by "demonstrating" that the record withheld is exempt under an express provision of the PRA. According to the author, however, agencies often fail to adequately "demonstrate" why records are withheld. For example, according to a recent report in the Fresno Bee, a school district denied a request by simply stating that the records requested were exempt under "one or more of the following exemptions," and then proceeded to list five code sections from the Government Code. The author believes that in order to truly "demonstrate" that a record is subject to an exemption, as existing law requires, the agency must do more than just list applicable code sections; it must make some linkage between the records or types of records withheld and the specific exemption that applies to those records. Without this linkage, persons or entities making a PRA request will not know which exemptions applied to which requested records, or why. This bill, therefore, would require the agency's written response to identify at least the type or types of records withheld, and the specific exemption that applies to each type. The bill is supported by the ACLU, the California Newspaper Publishers Association, and the Electronic Frontier Foundation, among others. The bill is opposed by several individual cities and counties, the associations that represent them, and other public agencies. Opponents claim that this measure will impose significant costs and burdens on local agencies. However, several of the letters of opposition respond to the bill as introduced or to earlier proposed amendments. It is unclear to what extent the recent amendments address all of the opposition concerns, but they would seem to go a long way in that direction. The bill will move to the Assembly Committee on Local Government should it advance out of this Committee.*

**SUMMARY:** Requires that a public agency's written denial of a request for public records to provide a more specific explanation when it withholds requested public records. Specifically, **this bill:**

- 1) Provides that when a public agency withholds a record requested pursuant to the Public Records Act, the written response demonstrating that the record in question is exempt under an express provision of the Public Records Act shall identify the type or types of record withheld and the specific exemption that justifies withholding that type of record.
- 2) Finds and declares that because people have the right of access to information concerning the conduct of the people's business, requiring local agencies to identify which statutory

exemption applies to the type or types of record withheld furthers the purpose the California Public Records Act.

**EXISTING LAW:**

- 1) Requires state and local agencies to make public records available for inspection, unless an exemption from disclosure applies. (Government Code Section 5250 *et seq.*)
- 2) Requires an agency to justify withholding any record that is responsive to a public records request by demonstrating that the record in question is exempt under express provisions of the Public Records Act or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. Specifies that a response to a written request for inspection or copies of public records that includes a determination that the request is denied, in whole or in part, shall be in writing. (Government Code Section 6255 (a)-(b).)

**FISCAL EFFECT:** Unknown

**COMMENTS:** This bill seeks to strike a reasonable balance between the public's right to inspect public records against the ability of public agencies to withhold exempt documents without imposing unreasonable and costly burdens on those public agencies. Under the California Public Records Act (PRA), all public records are open to public inspection unless an express statutory exemption provides otherwise. When a public agency withholds requested records from public inspection, existing law requires the agency to justify its decision by "demonstrating" that the record is exempt under an express provision of the PRA.

The author and supporters of this bill, however, suggest that the public agencies too often fail to adequately "demonstrate" why records were withheld. For example, according to a recent report in the *Fresno Bee*, a school district denied the newspaper's PRA request by asserting that the records requested were exempt under "one or more of the following exemptions," and then listed five Government code sections and subdivisions. (*Fresno Bee*, March 5, 2016.) Supporters of this bill – including the California Newspaper Publishers Association (CNPA), whose members must often make public record requests – contend that this kind of response is all too common. The author believes that in order to truly "demonstrate" that a record is subject to an exemption, as existing law requires, the agency must do more than merely list applicable code sections; it must make some linkage between the records or types of records withheld and the specific exemption that applies to those records. Otherwise, the persons or entities making PRA requests will not know which exemptions apply to which requested records, or why. This leaves the requester with little or no information about how to refine a future request or, alternatively, decide whether to seek a writ of mandate, compelling the agency to provide the responsive records.

This bill, therefore, would flesh out the existing requirement that an agency must "justify" a withholding by "demonstrating" that the record in question is subject to an express exemption. Under this bill, the agency would be required, in its written response, to identify the type or types of records withheld, and the specific exemption that applies to each type. Such an approach seems fully consistent with the implied intent of existing law, for it is difficult to imagine how an agency could "demonstrate" why a record was withheld if did not, at the very least, identify which exemptions applied to the types of records requested but withheld.

***Bills as Amended Does Not Require a "Log" or "List" of Responsive Documents:*** The primary contention of the opponents of this bill is that it would require agencies to expend much more time, effort, and money responding to PRA requests and less time performing its essential public duties. To a certain extent, this criticism has been mitigated, at least in part and for some opponents, by recent amendments. As introduced, this bill would have required an agency to identify each record (and presumably each document) with a "title" and to list the corresponding exemption that applied next to that "title." This approach did indeed seem impractical in many ways. Not only would it have been needlessly time consuming – especially where an entire group or type of record was subject to the same exemption – the very "title" of the document could have revealed exempt information. To be sure, agency staff responding to a request could modify the "title" so as to redact or otherwise shield exempted information, but this would be very time consuming and of minimal public benefit. In addition, not all records or documents have obvious "titles," which would effectively require agency staff to create a title. Finally, and perhaps most significantly, the requirement that an agency list all document "titles" with corresponding exemptions would seem to require the agency to create the equivalent of the "privilege log" that is sometimes required in responses discovery requests. With one recently enacted exception, however, the provisions of the PRA do not require an agency to *create* records; the PRA only requires the agency to make *existing records in its possession* available for inspection and copying. In 2001, the California Supreme Court held that the existing language of the PRA does not require an agency to create any kind of "log" or "list" of responsive but exempt records. The Court suggested that the Legislature *could* amend the PRA to require such a list, but opined that as a policy matter such a requirement "would be burdensome and of scant public benefit." (*Haynie v. Superior Court* (2001) 26 Cal. 4<sup>th</sup> 1061, 1074-1075.)

In response to opposition concerns about the "title" and "list" requirement, concerns which mirrored the Court's dictum in *Haynie*, the author agreed to remove the "title" and "list" requirement. As recently amended, the bill simply requires that the agency, in its written response, to identify the records or *types* of records withheld and the specific exemption that applies to each type. That is, an agency could no longer list statutory exemptions and say that "one or more" of the listed exemptions applied to the records requested but withheld. Under this bill, an agency would need to state *which* exemptions applied to *which* records or types of records requested. This would not require an agency to create a "log" listing every record alongside a corresponding exemption. It would, however, require the agency to show which exemptions applied to which *types* of records withheld. For example: an agency could explain that certain types of contracts requested were subject to the trade secret exemption; or that the types of personnel records requested were subject to the medical information exemption; or that the correspondence requested was subject to the pending litigation exemption, and so on. This kind of written response seems fully consistent with the intent of existing law, which already requires an agency to "demonstrate" why records in question were withheld, not merely list code sections that apply to the request as a whole. That the PRA already implicitly requires more than a form letter (i.e. a response that identifies the responsive documents at least by type) is also suggested by the *requirement* in current that the agency make reasonable efforts to assist the requester in refining his or her request in order to identify responsive and disclosable records. (Government Code Section 6253.1.) Without identifying the records and the exemptions that apply to those records, the agency would not have all of the information it would need to help the requester formulate a successful request for records. Clearly, the intent of the PRA is not only to make records available for public inspection, but to assist persons in finding relevant records and avoiding denials. It is difficult to imagine how a person could refine a request (with the

assistance of the agency) if he or she did not know precisely why a prior request for specific documents was denied.

***Recent Amendments Appear to Strike Reasonable Balance:*** As recently amended, this bill seeks an appropriate balance to a difficult practical problem. On the one hand, it seems unreasonably burdensome to require an agency to create a list identifying each responsive record that has been withheld with the specific exemption that applies placed next to the record. On the other hand, it seems equally unreasonable, and inconsistent with the purpose of the PRA, for an agency's written response to consist of a form letter that merely lists the statutory exemptions that may apply to the request as a whole, without making any effort to break down the request and explain which exemption applies to which types of responsive records.

Without question, the PRA imposes burdens on public agencies by requiring them to make all public records open to inspection, unless the record is subject to an express exemption. This not only requires agency staff to locate and retrieve responsive documents, it requires them to assess whether the records are subject to an exemption, which may not always be obvious. The PRA even requires the agency, within reason, to assist the requester in making a relevant and successful request. Moreover, in the provision amended by this bill, the PRA requires the agency to justify any withholding by "demonstrating" that the record withheld is subject to an express exemption. These duties impose burdens and costs, and the Legislature should be mindful of not adding to these burdens and costs unless doing so serves an important public benefit. Yet in enacting the PRA, the Legislature has already determined that access to public records is an essential feature of a democracy, even if it comes with some burdens and costs.

***ARGUMENTS IN SUPPORT:*** According to the author, it is sometimes necessary and appropriate for a public agency to deny a public records request when the records in question contain information that is subject to a statutory exemption. However, the author also believes that, in the event of a denial, the agency should adequately explain why the request was denied. Yet too often, the author contends, "denial notifications only contain a list of exemptions that may apply to the documents requested. The list does not include information detailing the types of documents being withheld, or the exemptions that apply. Under the current system, an applicant is unable to examine for him or herself whether the document should indeed be exempt."

ACLU supports this bill because it supports government transparency. As an organization that is "concerned with fair and responsive government," the ACLU "frequently utilizes the PRA to gather important information about public entities." ACLU claims that government agencies "frequently respond to a PRA request with a form letter listing various exemptions from disclosure for all requested documents without stating whether responsive documents exist, what they are, or which exemption allegedly applies." ACLU believes that "AB 1707 would give a requester the information necessary to determine whether an agency has records responsive to the request, and appropriately advise the requester whether a legitimate exemption authorizes withholding the records." Finally, ACLU adds that the clarification afforded by AB 1707 "is consistent with the design and purpose of the PRA, would avoid unjustified obstructions, and would eliminate costly and would eliminate costly litigation in an already overburdened court system."

The California Newspaper Publishers Association (CNPA) similarly stresses that, even though current law requires agencies to identify specific exemptions that justify withholding a specific

record, the agencies often respond to a PRA request with a form letter that lists various exemptions that the agency "believes applies to the entire cache of requested records without identifying which exemption applies to which record." CNPA claims that such a response "subverts the purpose of the act – to give the people meaningful access to public records – and forces the requester to go to court to learn why certain records were denied and which exemption applies." In this respect, CNPA, like many of the other supporters, suggests that in the long run this bill may lessen the burden on agencies, requesters, and courts by allowing requesters to get necessary information without going to court to challenge a denial.

The Electronic Frontier Foundation (EFF) supports this bill for substantially the same reasons as those noted above; it additionally observes that AB 1707 will move the state closer to what is required under the federal Freedom of Information Act (FOIA), after which the CPRA is modeled. Under federal law, according to EFF, "it has become general practice to cite specific exemptions for each redaction made in a public record." EFF counters the arguments made by government agencies about the added costs and burdens by suggesting that "the bill may conserve resources as well. If a member of the public chooses to challenge a CPRA request denial in court, this bill would allow the requester to narrow the challenge to specific documents, thus limiting the scope of litigation for both the government and the requester."

***ARGUMENTS IN OPPOSITION:*** Several individual cities in California, as well as the League of California cities, oppose this bill because, they contend, it will pose "significant operational challenges, increased costs and a potential for increased litigation for cities already struggling to comply with the California Public Records Act (CPRA)." As noted above in the analysis, most of the letters received by the Committee appear to be in response to the bill as introduced or to a set of earlier proposed amendments that are significantly different than the most recent amendments. Nonetheless, whatever form additional requirements may take, the cities remind us that any additional requirements will impose burdens and costs on already limited resources. Many of the letters submitted by the cities point out that they "already struggle to comply with the 10-day response period associated with the CPRA." Moreover, cities contend that in recent years the volume of requests have increased, so much so that "many cities large and small have already had to hire additional staff dedicated solely to review documents in association with CPRA requests." Other objections by the cities that submitted letters of opposition address the provision, no longer in the bill, that would have required the agency to supply a "log" or "list" of responsive titles as part of the denial response. The bill is also opposed by counties, county associations, and miscellaneous local, regional, and state entities for substantially the same reasons as those put forth by the cities.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

ACLU  
California Newspaper Publishers Association  
Electronic Frontier Foundation  
Firearms Policy Coalition  
San Diegans for Open Government  
Socrata  
Sierra Club

**Opposition**

Association of California Water Agencies  
California Association of Clerks and Election Officials  
California Association of Counties  
City Clerks Association of California  
City of Burbank  
City of Belvedere  
City of Chico  
City of Chino  
City of Chino Hills  
City of Coachella  
City of Colton  
City of Corona  
City of Costa Mesa  
City of Cypress  
City of Danville  
City of Desert Hot Springs  
City of Downey  
City of Dublin  
City of Eastvale  
City of Glendora  
City of Indian Wells  
City of Laguna Hills  
City of Lakeport  
City of Lakewood  
City of La Quinta  
City of Los Alamitos  
City of Los Altos  
City of Martinez  
City of Menifee  
City of Murrieta  
City of Napa  
City of Newark  
City of Newport Beach  
City of Norco  
City of Norwalk  
City of Ontario  
City of Pinole  
City of Poway  
City of Rancho Cucamonga  
City of Riverbank  
City of Rocklin  
City of Roseville  
City of Salinas  
City of San Dimas  
City of San Marino  
City of Santa Maria  
City of Santa Monica

City of South Lake Tahoe  
City of Temecula  
City of Torrance  
City of Union City  
League of California Cities  
Sacramento Municipal Utility District (SMUD)  
San Joaquin Board of Supervisors  
One Individual

**Analysis Prepared by:** Thomas Clark / JUD. / (916) 319-2334

AB

2193

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2193

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**Introduced by ~~Committee on Business and Professions (Assembly Members Bonilla (Chair), Jones (Vice Chair), Baker, Bloom, Campos, Chang, Dodd, Mullin, Ting, Wilk, and Wood) Assembly Member Salas~~**

*(Principal coauthor: Senator Hill)*

February 18, 2016

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An act to amend ~~Section 2460~~ *Sections 2460, 3504, and 3512* of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, as amended, ~~Committee on Business and Professions~~ *Salas*. California Board of Podiatric Medicine: *Medicine: Physician Assistant Board: extension.*

Existing law provides for the certification and regulation of podiatrists by the California Board of Podiatric Medicine within the jurisdiction of the Medical Board of California. Under existing law, *provisions establishing the California Board of Podiatric Medicine will be repealed on January 1, 2017.*

This bill would extend the operation of the California Board of Podiatric Medicine until January 1, 2021.

*Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Board, which is within the jurisdiction of the Medical Board of California, and authorizes the Physician Assistant Board, except as specified, to employ personnel necessary to carry out the provisions of that act, including an executive officer. Existing law repeals provisions*

*establishing the Physician Assistant Board and the authorization for the board to employ personnel as of January 1, 2017.*

*This bill would extend the operation of the Physician Assistant Board and the board's authority to employ personnel until January 1, 2021.*

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 2460 of the Business and Professions  
2 Code is amended to read:

3 2460. (a) There is created within the jurisdiction of the Medical  
4 Board of California the California Board of Podiatric Medicine.

5 (b) This section shall remain in effect only until January 1, 2021,  
6 and as of that date is repealed. Notwithstanding any other law, the  
7 repeal of this section renders the California Board of Podiatric  
8 Medicine subject to review by the appropriate policy committees  
9 of the Legislature.

10 SEC. 2. Section 3504 of the Business and Professions Code is  
11 amended to read:

12 3504. There is established a Physician Assistant Board within  
13 the jurisdiction of the Medical Board of California. The board  
14 consists of nine members. This section shall remain in effect only  
15 until January 1, ~~2017,~~ 2021, and as of that date is ~~repealed, unless~~  
16 ~~a later enacted statute, that is enacted before January 1, 2017,~~  
17 ~~deletes or extends that date.~~ repealed. Notwithstanding any other  
18 ~~provision of law,~~ the repeal of this section renders the board subject  
19 to review by the appropriate policy committees of the Legislature.

20 SEC. 3. Section 3512 of the Business and Professions Code is  
21 amended to read:

22 3512. (a) Except as provided in Sections 159.5 and 2020, the  
23 board shall employ within the limits of the Physician Assistant  
24 Fund all personnel necessary to carry out ~~the provisions of this~~  
25 ~~chapter including an executive officer who shall be exempt from~~  
26 ~~civil service. The Medical Board of California and board shall~~  
27 ~~make all necessary expenditures to carry out the provisions of this~~  
28 ~~chapter from the funds established by Section 3520. The board~~  
29 ~~may accept contributions to effect the purposes of this chapter.~~

30 (b) This section shall remain in effect only until January 1, ~~2017,~~  
31 2021, and as of that date is ~~repealed, unless a later enacted statute,~~

- 1 that is enacted before January 1, 2017, deletes or extends that date.
- 2 *repealed.*

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**COMMENTS:**

1. **Purpose.** This bill is sponsored by the Author, and is one of five “sunset bills” the Author is sponsoring this Session. According to the Author, “because the boards are set to sunset in 2017, the date needs to be extended to ensure the continued regulation of the professions.”
2. **Oversight Hearings and Sunset Review of Licensing Boards and Programs.** Beginning in 2015, the Senate Business and Professions Committee and the Assembly Business and Professions Committee (Committees) conducted joint oversight hearings to review 12 regulatory entities: Department of Consumer Affairs (DCA), Acupuncture Board, Board of Behavioral Sciences, California Massage Therapy Association, Court Reporters Board, Board of Pharmacy, PAB, BPM, Bureau for Private Postsecondary Education (BPPE), Board of Psychology, Bureau of Real Estate, Bureau of Real Estate Appraisers and Veterinary Medical Board.

The Committees conducted two hearings in March. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees and which are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.

3. **Background on BPM.** BPM is a licensing board under the DCA. BPM licenses and regulates doctors of podiatric medicine (DPMs). In the Medical Practice Act, a license to practice podiatric medicine is called a “certificate,” but it is indistinguishable from other professional licenses. It is a misdemeanor to practice podiatric medicine or use the title DPM, podiatrist, or similar designation without a license. The Practice Act defines “podiatric medicine” as all medical treatment of the foot, ankle, and tendons that insert into the foot, including diagnosis, surgery, and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot. Therefore, a DPM’s scope of practice is similar to that of a physician and surgeon who specializes in the foot and ankle. However, unlike a physician and surgeon, whose scope is only limited by the licensee’s own area of competence, a DPM’s scope is limited by the license to the foot and ankle. Historically, the BPM was a committee within the Medical Board of California (MBC). Currently, however, the BPM functions as an independent board, similar to other licensing boards under the DCA. Still, the Practice Act continues to describe the BPM as “within the jurisdiction of” the MBC. As a result, the BPM makes recommendations for DPM licensure to the MBC, while the MBC officially issues the licenses, but defers completely to the judgment of BPM. The BPM licenses approximately 2,000 DPMs. On average, it issues 106 licenses each year and renews on average 1,106 licenses each year.

As a special fund agency, the BPM receives no general funds. Instead, it relies on fees set by statute and collected from licensing and renewal. The purpose of the BPM’s licensing program is to protect the public and consumers by ensuring minimum competency in practitioners. Applicants for a DPM license must graduate from a college of podiatric medicine that has been approved by the BPM, pass Part I, II and III of the national exam and successfully complete two years of postgraduate training.

4. **Review of the BPM – Issues Identified and Recommended Changes.**

Committee staff identified 11 issues pertaining to BBS and provided background information concerning each issue. Recommendations were made by Committee staff regarding the particular issue areas which needed to be addressed. Only one of the identified issues for BPM required a statutory change.

a) **Issue: Continued Regulation of the Profession by BPM.**

Background: The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory board with oversight over DPMs. The BPM has shown a commitment to its mission and a willingness to work with the legislature to improve consumer protection. Therefore, the BPM should be continued with a 4-year extension of its sunset date so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

Recommendation and Proposed Statutory Change: The committee recommends that DPMs continue to be regulated by the current the BPM members in order to protect the interests of the public and be reviewed again in four years.

**This bill extends the operation of BPM for four years.**

5. **Background on PAB.** PAB is also a licensing board under DCA. PAB licenses and regulates physician assistants (PAs). PAs provide health care services under the supervision of a physician and surgeon. PA functions include performing diagnostic, therapeutic, preventive, and health maintenance services. Currently, the PAB has over 10,000 licensed PAs. Historically, the PAB was a committee within the MBC, however, the current PAB is an independent board with regulatory authority to enforce the Physician Assistant Practice Act. The PAB still utilizes many of the MBC's services, including enforcement, information technology, and fund management via a contract with MBC.

The PAB's mandates include:

- Approval of the educational and training requirements of PAs
- Licensing of PAs.
- Promoting the health and safety of California health care consumers by enhancing the competence of PAs.
- Coordinating investigation and disciplinary processes
- Providing information and education regarding the PAB or PA professionals to California consumers.
- Managing a diversion/monitoring program for PAs with alcohol/substance abuse problems.

6. **Review of PAB – Issues Identified and Recommended Changes.** Committee staff identified 10 issues pertaining to PAB and provided background information concerning each issue. Recommendations were made by Committee staff regarding the particular issue areas which needed to be addressed. Only one of the identified issues for PAB required a statutory change.

a) **Issue: Continued Regulation of the Profession.**

Background: The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory board with oversight over PAs. The PAB has shown a commitment to improve its overall efficiency and effectiveness and has worked cooperatively with the Legislature and the Committees to bring about necessary changes. Therefore, the PAB should be continued with a 4-year extension of its sunset date so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

Recommendation and Proposed Statutory Change: The licensing and regulation of PAs should continue to be regulated by the current members of the PAB in order to protect the interests of the public and be reviewed once again in four years.

**This bill extends the operation of PAB and PAB's authority to appoint an EO for four years.**

7. **Related Legislation This Year.** SB 1039 (Hill), among other changes to the operations and fee structure of a number of boards under DCA, gives BPM their own chapter in the Business and Professions Code and formally separates it from the Medical Board, reflecting operational realities. (Status: *The bill is currently pending in the Assembly Committee on Business and Professions.*)

**SUPPORT AND OPPOSITION:**Support:

California Academy of Physician Assistants

Opposition:

None on file as of June 21, 2016.

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AB

2701

**ASSEMBLY BILL**

**No. 2701**

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**Introduced by Assembly Member Jones**

February 19, 2016

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An act to amend Section 453 of the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2701, as introduced, Jones. Department of Consumer Affairs: boards: training requirements.

Existing law provides for the licensure and regulation of various professions and vocations by various boards, as defined, within the Department of Consumer Affairs, and provides for the membership of those various boards. Existing law requires newly appointed board members, within one year of assuming office, to complete a training and orientation offered by the department regarding, among other things, the obligations of the board member. Existing law requires the department to adopt regulations necessary to establish the training and orientation program and its contents.

The Bagley-Keene Open Meeting Act (Bagley-Keene Act) generally requires, with specified exceptions for authorized closed sessions, that the meetings of state bodies be open and public and that all persons be permitted to attend. The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies, and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires every agency to adopt and promulgate a Conflict of Interest Code that contains, among other requirements, the circumstances under which designated employees or categories of designated employees must disqualify

themselves from making, participating in the making, or using their official position to influence the making of, any decision.

This bill would additionally require the training of new board members to include, but not be limited to, information regarding the requirements of the Bagley-Keene Act, the Administrative Procedure Act, the Office of Administrative Law, and the department’s Conflict of Interest Code.

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 453 of the Business and Professions Code  
2 is amended to read:  
3 453. Every newly appointed board member shall, within one  
4 year of assuming office, complete a training and orientation  
5 program offered by the department regarding, among other things,  
6 his or her functions, responsibilities, and obligations as a member  
7 of a board. *This training shall include, but is not limited to,*  
8 *information about the Bagley-Keene Open Meeting Act (Article 9*  
9 *(commencing with Section 11120) of Chapter 1 of Part 1 of*  
10 *Division 3 of Title 2 of the Government Code), the Administrative*  
11 *Procedure Act (Chapter 3.5 (commencing with Section 11340) of*  
12 *Part 1 of Division 3 of Title 2 of the Government Code), the Office*  
13 *of Administrative Law, and the department’s Conflict of Interest*  
14 *Code, as required pursuant to Section 87300 of the Government*  
15 *Code.* The department shall adopt regulations necessary to establish  
16 this training and orientation program and its content.

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**SB**

**482**

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Introduced by Assembly Member Harper

February 23, 2015

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An act relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 482, as introduced, Harper. Concurrent enrollment in secondary school and community college.

Existing law authorizes the governing board of a school district to allow pupils whom the district has determined would benefit from advanced scholastic or vocational work to attend community college as special part-time or full-time students, subject to recommendation by the school principal and parental permission.

This bill would express the intent of the Legislature to enact legislation later in the 2015–16 Regular Session regarding concurrent enrollment in secondary school and community college for pupils pursuing studies related to computer science.

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

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

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation later in the 2015–16 Regular Session regarding
- 3 concurrent enrollment in secondary school and community college
- 4 for pupils pursuing studies related to computer science.

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SB

960

AMENDED IN SENATE APRIL 26, 2016

**SENATE BILL**

**No. 960**

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**Introduced by Senators Hernandez and Leno  
(Coauthor: Senator McGuire)**

February 8, 2016

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An act to amend Section 14132.725 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

SB 960, as amended, Hernandez. Medi-Cal: telehealth: reproductive health care.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services, as specified. The Medi-Cal program is, in part, governed and funded by federal Medicaid ~~Program~~ *program* provisions. Existing law provides that, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient is not required under the Medi-Cal program for “teleophthalmology, ~~teledermatology~~ *teledermatology*, and teledentistry by store and forward,” as defined to mean the asynchronous transmission of medical information to be reviewed at a later time by a licensed physician or optometrist, as specified, at a distant site.

This bill would enact similar provisions relating to the use of reproductive health care under the Medi-Cal program. The bill would provide that, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for “reproductive health care provided by store and forward.” The bill would define that term

to mean an asynchronous transmission of medical information to be reviewed at a later time by a physician, nurse practitioner, certified nurse midwife, licensed midwife, physician assistant, or registered nurse at a distant site, where the provider at the distant site reviews the dental information without the patient being present in real time, as defined and as specified. *The bill would require Medi-Cal managed care plans that contract with the department to cover reproductive health care provided by store and forward.*

This bill would also provide that, to the extent federal financial participation is available and any necessary federal approvals are obtained, telephonic and electronic patient management services, as defined, provided by a physician or nonphysician health care provider acting within his or her scope of licensure shall be a benefit under the Medi-Cal program in fee-for-service and managed care delivery systems, as specified. The bill would authorize the department to seek approval of any state plan amendments necessary to implement these provisions.

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 14132.725 of the Welfare and Institutions  
2 Code is amended to read:

3 14132.725. (a) To the extent that federal financial participation  
4 is available, face-to-face contact between a health care provider  
5 and a patient is not required under the Medi-Cal program for  
6 teleophthalmology, teledermatology, and teledentistry, and  
7 reproductive health care provided by store and forward. Services  
8 appropriately provided through the store and forward process are  
9 subject to billing and reimbursement policies developed by the  
10 department. A Medi-Cal managed care plan that contracts with  
11 the department pursuant to this chapter and Chapter 8 (commencing  
12 with Section 14200) shall be required to cover ~~the services~~  
13 ~~described in this section:~~ *reproductive health care provided by*  
14 *store and forward.*

15 (b) For purposes of this section, “teleophthalmology,  
16 teledermatology, and teledentistry, and reproductive health care  
17 provided by store and forward” means an asynchronous  
18 transmission of medical or dental information to be reviewed at a  
19 later time by a physician at a distant site who is trained in

1 ophthalmology or dermatology or, for teleophthalmology, by an  
2 optometrist who is licensed pursuant to Chapter 7 (commencing  
3 with Section 3000) of Division 2 of the Business and Professions  
4 Code, or a dentist, or, for reproductive health care, by a physician,  
5 nurse practitioner, certified nurse midwife, licensed midwife,  
6 physician assistant, or registered nurse operating within his or her  
7 scope of practice, where the physician, optometrist, dentist, nurse  
8 practitioner, certified nurse midwife, licensed midwife, physician  
9 assistant, or registered nurse at the distant site reviews the medical  
10 or dental information without the patient being present in real time.  
11 A patient receiving teleophthalmology, teledermatology,  
12 teledentistry, or reproductive health care by store and forward shall  
13 be notified of the right to receive interactive communication with  
14 the distant specialist physician, optometrist, dentist, nurse  
15 practitioner, certified nurse midwife, licensed midwife, physician  
16 assistant, or registered nurse and shall receive an interactive  
17 communication with the distant specialist physician, optometrist,  
18 dentist, nurse practitioner, certified nurse midwife, licensed  
19 midwife, physician assistant, or registered nurse upon request. If  
20 requested, communication with the distant specialist physician,  
21 optometrist, dentist, nurse practitioner, certified nurse midwife,  
22 licensed midwife, physician assistant, or registered nurse may  
23 occur either at the time of the consultation, or within 30 days of  
24 the patient's notification of the results of the consultation. If the  
25 reviewing optometrist identifies a disease or condition requiring  
26 consultation or referral pursuant to Section 3041 of the Business  
27 and Professions Code, that consultation or referral shall be with  
28 an ophthalmologist or other appropriate physician and surgeon, as  
29 required.

30 (c) (1) To the extent that federal financial participation is  
31 available and any necessary federal approvals have been obtained,  
32 telephonic and electronic patient management services provided  
33 by a physician, or a nonphysician health care provider acting within  
34 his or her scope of licensure is a benefit under the Medi-Cal  
35 program, both in fee-for-service and managed care delivery systems  
36 delivered by Medi-Cal managed care plans that contract with the  
37 department pursuant to this chapter and Chapter 8 (commencing  
38 with Section 14200). Reimbursement for telephonic and electronic  
39 patient management services shall be based on the complexity of  
40 and time expended in rendering those services.

1 (2) This subdivision shall not be construed to authorize a  
2 Medi-Cal managed care plan to require the use of telephonic and  
3 electronic patient management services when the physician or  
4 nonphysician health care provider has determined that those  
5 services are not medically necessary.

6 (3) This subdivision shall not be construed to alter the scope of  
7 practice of a health care provider or authorize the delivery of health  
8 care services in a setting or in a manner ~~than~~ *that* is not otherwise  
9 authorized by law.

10 (4) All laws regarding the confidentiality of health information  
11 and a patient's right of access to his or her medical information  
12 shall apply to telephonic and electronic patient management  
13 services.

14 (5) This subdivision shall not apply to a patient in the custody  
15 of the Department of Corrections and Rehabilitation or any other  
16 correctional facility.

17 (d) Notwithstanding paragraph (1) of subdivision (b), separate  
18 reimbursement of a physician or a nonphysician health care  
19 provider shall not be required for any of the following:

20 (1) A telephonic or electronic visit that is related to a service or  
21 procedure provided to an established patient within a reasonable  
22 period of time prior to the telephonic or electronic visit, as  
23 recognized by the Current Procedural Terminology codes published  
24 by the American Medical Association.

25 (2) A telephonic or electronic visit that leads to a related service  
26 or procedure provided to an established patient within a reasonable  
27 period of time, or within an applicable postoperative period, as  
28 recognized by the Current Procedural Terminology codes published  
29 by the American Medical Association.

30 (3) A telephonic or electronic visit provided as part of a bundle  
31 of services for which reimbursement is provided for on a prepaid  
32 basis, including capitation, or which reimbursement is provided  
33 for using an episode-based payment methodology.

34 (4) A telephonic or electronic visit that is not initiated by an  
35 established patient, by the parents or guardians of a minor who is  
36 an established patient, or by a person legally authorized to make  
37 health care decisions on behalf of an established patient.

38 (e) Nothing in this section shall be construed to prohibit a  
39 Medi-Cal managed care plan from requiring documentation  
40 reasonably relevant to a telephonic or electronic visit, as recognized

1 by the Current Procedural Terminology codes published by the  
2 American Medical Association.

3 (f) For purposes of this section, the following definitions apply:

4 (1) “Established patient” means a patient who, within three  
5 years immediately preceding the telephonic or electronic visit, has  
6 received professional services from the provider or another provider  
7 of the same specialty or subspecialty who belongs to the same  
8 group practice.

9 (2) “Nonphysician health care provider” means a provider, other  
10 than a physician, who is licensed pursuant to Division 2  
11 (commencing with Section 500) of the Business and Professions  
12 Code.

13 (3) “Reproductive health care” means the general reproductive  
14 health care services described in paragraph (8) of subdivision (aa)  
15 of Section 14132.

16 (4) “Telephonic and electronic patient management service”  
17 means the use of electronic communication tools to enable treating  
18 physicians and nonphysician health care providers to evaluate and  
19 manage established patients in a manner that meets all of the  
20 following criteria:

21 (A) The service does not require an in-person visit with the  
22 physician or nonphysician health care provider.

23 (B) The service is initiated by the established patient, the parents  
24 or guardians of a minor who is an established patient, or a person  
25 legally authorized to make health care decisions on behalf of an  
26 established patient. “Initiated by an established patient” does not  
27 include a visit for which a provider or a person employed by a  
28 provider contacts a patient to initiate a service.

29 (C) The service is recognized by the Current Procedural  
30 Terminology codes published by the American Medical  
31 Association.

32 (g) The department may seek approval of any state plan  
33 amendments necessary to implement this section.

34 (h) Notwithstanding Chapter 3.5 (commencing with Section  
35 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
36 the department may implement, interpret, and make specific this  
37 section by means of all-county letters, provider bulletins, and  
38 similar instructions.

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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair  
2015 - 2016 Regular Session

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**SB 960 (Hernandez) - Medi-Cal: telehealth: reproductive health care**

**Version:** April 26, 2016

**Policy Vote:** HEALTH 6 - 0

**Urgency:** No

**Mandate:** No

**Hearing Date:** May 23, 2016

**Consultant:** Brendan McCarthy

**This bill meets the criteria for referral to the Suspense File.**

**Bill Summary:** SB 960 would require reproductive health care services provided through telehealth to be covered by the Medi-Cal program. The bill would require telephonic and electronic patient management services to be covered by the Medi-Cal program.

**Fiscal Impact:**

- Likely one-time costs in the low hundreds of thousands for the Department of Health Care Services to gain federal approvals, adopt regulations, and make any necessary system changes to allow for the provision of services under the bill (General Fund and federal funds).
- Unknown impact on Medi-Cal spending for reproductive health care services (General Fund and federal funds). By allowing reproductive services to be provided through telehealth, the bill is likely to make it easier for Medi-Cal beneficiaries to access such services. Whether this will actually increase the utilization of services is uncertain. To a large extent, the authority to use telehealth to access such services will make ordering such services more convenient for beneficiaries, but will not increase overall utilization (since a beneficiary would most likely have sought out services in another manner without the bill). There also may be some increase in utilization of services. For example a beneficiary may request a test for a sexually transmitted infection for symptoms that would have resolved on their own before the beneficiary sought a test through traditional health care settings. The extent to which that would happen is unknown.
- Increased costs in the tens of millions per year for Medi-Cal coverage of telephonic and electronic patient management services (General Fund and federal funds). The requirement in the bill for Medi-Cal coverage of telephonic and electronic patient management services goes beyond reproductive health care and would be available for all appropriate health care services. Based to an analysis of a similar requirement in another bill by the California Health Benefits Review Program, staff estimates that the overall increase in Medi-Cal spending from this requirement could be between \$10 million and \$40 million per year.

**Background:** Under state and federal law, the Department of Health Care Services operates the Medi-Cal program, which provides health care coverage to low income individuals, families, and children. Medi-Cal provides coverage to childless adults and parents with household income up to 138% of the federal poverty level and to children with household income up to 266% of the federal poverty level. The federal government

provides matching funds that vary from 50% to 90% of expenditures depending on the category of beneficiary.

Current law provides that a face-to-face visit is not required between a patient and a provider for Medi-Cal coverage of teleophthamology, teledermatology, and teledentistry by store and forward. In this case, store and forward means technologies that capture information from a patient and send it to a provider at a different location, for example an x-ray image taken in a clinic and then sent to a dentist in another location for examination. To date, the use of store and forward telehealth technology in Medi-Cal does not allow patients to directly request services or send information about symptoms directly to health care providers (for example using a smart phone).

**Proposed Law:** SB 960 would require reproductive health care services provided through telehealth to be covered by the Medi-Cal program. The bill would require telephonic and electronic patient management services to be covered by the Medi-Cal program.

Specific provisions of the bill would:

- Add reproductive health care services to those telehealth services that are covered under the Medi-Cal program without the need for a face-to-face visit;
- Require Medi-Cal managed care plans to cover reproductive health care provided by telehealth store and forward;
- Specify the medical provider types that can provide reproductive health care by telehealth store and forward;
- Require telephonic and electronic patient management services to be a benefit in the Medi-Cal program, in both fee-for-service and managed care;
- Limit the required reimbursement for services when the telephonic or electronic patient management service is related to another service or procedure provided to the patient, when the telephonic or electronic patient management service leads to a related service or visit, when the health care provider receives a bundled or capitated payment, or when the telephonic or electronic patient management service is not initiated by the patient;
- Define reproductive health care, by reference to another statute.

**Related Legislation:**

- AB 2507 (Gordon) would expand the definition of telehealth to include telephone, email, and synchronous text. That bill is pending in the Assembly Appropriations Committee.
- SB 289 (Mitchell, 2015) would have mandated that health insurers and health plans provide coverage for telephonic and electronic patient management services provided by a contracted physician or non-physician health care provider. That bill was held on this committee's Suspense File.

**Staff Comments:** SB 289 (Mitchell, 2015) would have mandated the coverage of telephonic and electronic patient management services for all health plans and insurers. According to the analysis of that bill by the California Health Benefits Review Program, the requirements to cover those service modalities would have had an overall effect of increasing utilization of health care services. As is described in the analysis of that bill provided by Program, there is a good deal of uncertainty about how the behavior of

patients and providers would change under that bill. By requiring reimbursement to providers for telephonic and electronic patient management services, that bill was very likely to have increased providers' willingness to use such services with their patients, increasing utilization. Some of the increased utilization of telephonic and electronic patient management services would have reduced in person visits with providers. For example, a patient may have found it more convenient to call or email a provider with a question about an ongoing health issue, rather than making an in person appointment. In that case, the bill would not have reduced overall utilization of services: it would have resulted in a *substitute* visit. On the other hand, the ability to communicate with a provider on the phone or through electronic means would also have resulted in *supplemental* visits (i.e. more utilization than would occur under current law). For example, a patient with a minor question or who is experiencing a minor illness that would not necessarily have led to an in person visit with a provider would have been more likely to make a phone call or use an electronic means to communicate with a provider. In those cases, the bill would have resulted in an increase in overall utilization of health care services.

The California Health Benefits Review Program modelled a variety of scenarios for utilization under SB 289. Under all scenarios, there would have been both substitution and supplementation of in person visits. In all scenarios, however, the supplementation would have resulted in an overall increase of utilization of services and therefore an increase of health care costs.

The California Health Benefits Review Program analysis for SB 289 assumed that Medi-Cal managed care plans would not have been able to pass the cost of the benefit mandate along to the state, due to the state's bargaining power. However, the requirement in this bill is specific to the Medi-Cal program and explicitly includes both fee-for-service and managed care. Because Medi-Cal managed care rates are required to be actuarially sound, staff anticipates that Medi-Cal managed care plans would be able to pass along increased costs to the state, once they were able to demonstrate that utilization was occurring.

Current law and regulation allows Medi-Cal managed care plans to provide services to enrollees not specifically required under law. Therefore, Medi-Cal managed care plans can already contract with providers to allow the use of telehealth for reproductive health care services, provided that the Medi-Cal managed care plan and the provider can agree on the rates and terms that would apply to those services.

Current federal law and state regulation provides that Medi-Cal enrollees can access family planning (including reproductive health care) from any Medi-Cal provider, even when the provider is not in the enrollee's Medi-Cal managed care plan network. By authorizing the use of telehealth for reproductive health care services, the bill will make it easier for Medi-Cal beneficiaries to seek services outside of their managed care plan network. To the extent that providers and Medi-Cal managed care plans cannot agree on the rates and terms for providing reproductive health care services through telehealth, the bill is likely to result in a shift in the provision of health care services from Medi-Cal managed care plan networks to out-of-network providers.

SB

1140

**Introduced by Senator Moorlach**

February 18, 2016

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An act to add Section 9601 of the Government Code, relating to the Legislature.

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, as introduced, Moorlach. Legislature: operation of statutes.

Existing law specifies the dates by which enacted statutes go into effect. Existing law also provides that a statute may be repealed at any time, except when vested rights would be impaired.

This bill would require the automatic repeal of a statute that expressly or implicitly authorizes an executive agency to promulgate regulations two years after the statute goes into effect, unless the Legislature amends the statute to state its intent that the statute not be repealed, or unless the statute was passed in response to an emergency, as defined.

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

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

- 1 SECTION 1. Section 9601 is added to the Government Code,
- 2 to read:
- 3 9601. (a) A statute that expressly authorizes an executive
- 4 agency to promulgate regulations, or that gives a new duty or
- 5 power to an executive agency, shall be repealed two years after it
- 6 goes into effect, unless the Legislature amends the statute before
- 7 its repeal to expressly state the Legislature's intent that the statute
- 8 not be repealed.
- 9 (b) This section shall not apply to either of the following:

- 1 (1) An agency that is constitutionally created.
- 2 (2) A statute that is passed in response to an emergency, as
- 3 defined by Section 8558 of the Government Code.

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**SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION**  
**Senator Isadore Hall, III**  
**Chair**  
**2015 - 2016 Regular**

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<b>Bill No:</b>	SB 1140	<b>Hearing Date:</b>	4/12/2016
<b>Author:</b>	Moorlach		
<b>Version:</b>	2/18/2016	Introduced	
<b>Urgency:</b>	No	<b>Fiscal:</b>	No
<b>Consultant:</b>	Felipe Lopez		

**SUBJECT:** Legislature: operation of statutes

**DIGEST:** This bill requires the automatic repeal of a statute that expressly or implicitly authorizes an executive agency to promulgate regulations two years after the statute goes into effect, unless the Legislature amends the statute to state its intent that the statute not be repealed, or unless the statute was passed in response to an emergency, as defined.

**ANALYSIS:**

Existing law:

- 1) Specifies the dates by which enacted statutes go into effect.
- 2) Specifies that any statute may be repealed at any time, except when vested rights would be impaired.
- 3) Specifies that every concurrent and joint resolution takes effect upon filing of it with the Secretary of State.
- 4) Governs, under the Administrative Procedure Act (APA), the process for adoption, amendment, or repeal of regulations by state agencies charged with the implementation of statutes, and for legal review of those regulatory actions.
- 5) Establishes the Office of Administrative Law (OAL) to ensure that agency regulations are clear, necessary, legally valid, and available to the public.
- 6) Directs the OAL at the request of any standing, select, or joint committee of the Legislature, to initiate a priority review of any regulation that the committee believes does not meet the standards of necessity, authority, clarity, reference, and non-duplication, as defined.

- 7) Specifies that if OAL is notified of, or on its own becomes aware of, an existing regulation for which the statute has been repealed or becomes ineffective, then the OAL shall order the agency to show cause as to why the regulation should not be repealed, and shall notify the Legislature in writing of this order.

This bill:

- 1) Requires that a statute that expressly authorizes an executive agency to promulgate regulations, or that gives a new duty or power to an executive agency, shall be repealed two years after it goes into effect, unless the Legislature amends the statute before its repeal to expressly state the Legislature's intent that the statute not be repealed.
- 2) Specifies that the provisions of this bill shall not apply to either of the following:
  - a) An agency that is constitutionally created.
  - b) A statute that is passed in response to a "state of war emergency," as defined, "state of emergency," or a "local emergency," as defined.

## **Background**

*Purpose of the bill.* The author argues that, "existing law lacks true checks and balances over new regulations. Bureaucracies sometimes produce regulations beyond the intent of the original law, yet there is insufficient oversight on this process. With a built-in sunset, it would provide legislators a vehicle through which to affirm good regulations and to stop others that may be deemed excessive or contrary to a bill's original intent. Providing a path for the Legislature to review regulations could remedy California's hostile regulatory environment, which puts extreme burdens on certain industries and affects the state's business climate."

*Office of Administrative Law.* The Office of Administrative Law ensures that agency regulations are clear, necessary, legally valid and available to the public. OAL is responsible for reviewing administrative regulations proposed by over 200 state agencies for compliance with the standards set forth in the APA, for transmitting these regulations to the Secretary of State and for publishing regulations in the California Code of Regulations.

The OAL assists state regulatory agencies through a formal training program, as well as through other less formal methods, to understand and comply with the APA. The OAL also accepts petitions challenging rules issued by state agencies

which meet the APA's definition of a "regulation" but were not adopted pursuant to the APA process and are not expressly exempt.

The APA is designed to provide the public with a meaningful opportunity to participate in the adoption of the rulemaking process through various opportunities to comment on proposed regulations.

*Regulatory Process.* Before any state agency can adopt a new regulation, the APA requires OAL to review a proposed regulation using the following standards: necessity, authority, clarity, consistency, reference, and non-duplication. For purposes of the APA, "necessity" means that "the record of the rulemaking proceeding demonstrates by substantial evidence the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets, or makes specific, taking into account the totality of the record."

In addition, the APA defines "authority" as "the provision of law which permits or obligates the agency to adopt, amend, or repeal a regulation."

*Staff Comments.* The APA already establishes a mechanism to ensure that any regulation proposed by any state agency is consistent and within the scope of any statute. In other words no regulations could ever be adopted without express, statutory authorization by the Legislature.

In addition, the Legislature already has a system of checks and balances through their authority to demand that the OAL review any regulation that the Legislature believes does not meet the standards of necessity, authority, clarity, reference, and non-duplication.

### **Prior/Related Legislation**

ACA 1 (Donnelly, 2014) would have amended the California Constitution to require state agencies to submit all regulations that have been approved by the OAL to the Legislature for final approval. (Held in Assembly Accountability and Administrative Review Committee)

SB 981 (Huff, 2014) would have required each state agency to review each regulation adopted prior to January 1, 2014, and to develop a report to the Legislature specified information. (Held in Senate Governmental Organization Committee)

AB 1982 (Gorrell, 2012) would have increased the effective date for a regulation or an order of repeal of a regulation from 20 to 90 days and would have required OAL to forward a copy of each major regulation to the Legislature for review. (Held on the Assembly Appropriations Committee Suspense File)

SB 366 (Calderon, 2012) would have required each state agency to review its regulations to identify duplicative, overlapping, inconsistent or outdated provisions and repeal or amend identified regulations. Also, would have created a Streamlined Permit Review Team charged with improving the efficiency of the state permitting process for development projects. (Held in Senate Governmental Organization Committee)

SB 401 (Fuller, 2012 Session) would have required every regulation proposed by an agency after January 1, 2012, to include a provision repealing the regulation in 5 years. (Held in Senate Environmental Quality Committee)

SB 617 (Ron Calderon, Chapter 496, Statutes of 2010) revised various provisions of the APA and required each state agency to prepare a standardized regulatory impact analysis, as specified, with respect to the adoption, amendment, or repeal of a major regulation, proposed on or after November 1, 2013.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: No Local: No

**SUPPORT:**

None received

**OPPOSITION:**

None received

**DUAL REFERRAL:** Senate Rules Committee

**SB**

**1 1 5 5**

AMENDED IN ASSEMBLY JUNE 23, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1155**

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**Introduced by Senator Morrell**

February 18, 2016

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An act to add Section 114.6 to the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as amended, Morrell. Professions and vocations: licenses: military service.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met. Existing law also requires the boards to waive the renewal fees, continuing education requirements, and other renewal requirements, if applicable, of any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard, if certain requirements are met. Existing law requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military. Existing law, on and after July 1, 2016, requires a board within the Department of Consumer Affairs to expedite, and authorizes a board to assist, the initial licensure

process for an applicant who has served as an active duty member of the United States Armed Forces and was honorably discharged.

This bill, on and after January 1, 2018, would require every board within the Department of Consumer Affairs to grant a fee waiver for the application for and the issuance of an initial license to ~~an individual who is an honorably discharged veteran~~ *an applicant who supplies satisfactory evidence, as defined, to the board that the applicant has served as an active duty member of the California National Guard or the United States Armed Forces and was honorably discharged.* The bill would require that a veteran be granted only one fee waiver, except as specified.

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

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

1 SECTION 1. Section 114.6 is added to the Business and  
2 Professions Code, to read:

3 114.6. (a) (1) Notwithstanding any other provision of law,  
4 every board within the department shall grant a fee waiver for the  
5 application for and issuance of an initial license to ~~an individual~~  
6 ~~who is an honorably discharged veteran who served as an active~~  
7 ~~duty member of the California National Guard or the United States~~  
8 ~~Armed Forces. Under this program, all of the following apply: an~~  
9 ~~applicant who supplies satisfactory evidence to the board that the~~  
10 ~~applicant has served as an active duty member of the California~~  
11 ~~National Guard or the United States Armed Forces and was~~  
12 ~~honorably discharged.~~

13 (2) For purposes of this section, "satisfactory evidence" means  
14 a completed "Certificate of Release or Discharge from Active  
15 Duty" (DD Form 214).

16 (b) Under this program, all of the following apply:

17 (a)

18 (1) A veteran shall be granted only one fee waiver, except as  
19 specified in ~~subdivision (b)~~ *paragraph (2)*. After a fee waiver has  
20 been issued by any board within the department pursuant to this  
21 section, the veteran is no longer eligible for a waiver.

22 (b)

- 1 (2) If a board charges a fee for the application for a license and  
2 another fee for the issuance of a license, the veteran shall be granted  
3 fee waivers for both the application for and issuance of a license.  
4 (e)  
5 (3) The fee waiver shall apply only to an application of and a  
6 license issued to an individual veteran and not to an application  
7 of or a license issued to an individual veteran on behalf of a  
8 business or other entity.  
9 (d)  
10 (4) A waiver shall not be issued for any of the following:  
11 (1)  
12 (A) Renewal of a license.  
13 (2)  
14 (B) The application for and issuance of an additional license, a  
15 certificate, a registration, or a permit associated with the initial  
16 license.  
17 (3)  
18 (C) The application for an examination.  
19 (e)  
20 (c) This section shall become operative on January 1, 2018.

Date of Hearing: June 28, 2016

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS

Jacqui Irwin, Chair

SB 1155 (Morrell) – As Amended May 31, 2016

**SENATE VOTE:** 39-0

**SUBJECT:** Professions and vocations: licenses: military service

**SUMMARY:** Requires, on or after January 1, 2018, every board under the Department of Consumer Affairs (DCA) to waive initial license fees for veterans, as specified. This bill:

- 1) Requires every board within the department to grant a fee waiver for the application for and issuance of an initial license to an applicant who supplies satisfactory evidence to the board that the applicant has served as an active duty member of the California National Guard or the United States Armed Forces and was honorably discharged.
- 2) Specifies that “satisfactory evidence” means a completed “Certificate of Release or Discharge from Active Duty” (DD Form 214).
- 3) Mandates that a veteran shall be granted only one fee waiver, except as specified
- 4) States that after a fee waiver has been issued by any board within the department pursuant to this section, the veteran is no longer eligible for a waiver.
- 5) Mandates that if board charges a fee for the application for a license and another fee for the issuance of a license, the veteran shall be granted fee waivers for both the application for and issuance of a license.
- 6) Requires a fee waiver to apply only to an application of and a license issued to an individual veteran and not to an application of or a license issued to an individual veteran on behalf of a business or other entity.
- 7) Prohibits issuance of a waiver for any of the following:
  - a) Renewal of a license.
  - b) The application for and issuance of an additional license, a certificate, a registration, or a permit associated with the initial license.
  - c) The application for an examination.
- 8) States that the operative date of this statute will be January 1, 2018.

**EXISTING LAW:**

- 1) Provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs.

- 2) Authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met.
- 3) Requires the boards to waive the renewal fees, continuing education requirements, and other renewal requirements, if applicable, of any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard, if certain requirements are met.
- 4) Requires each board to inquire in every application if the individual applying for licensure is serving in, or has previously served in, the military.
- 5) Requires, on and after July 1, 2016, a board within the Department of Consumer Affairs to expedite, and authorizes a board to assist, the initial licensure process for an applicant who has served as an active duty member of the United States Armed Forces and was honorably discharged.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, this bill will result in:

- 1) “[DCA]-wide revenue loss of \$1.1 million to waive applicable fees for honorably discharged veterans. Additional workload required of each board and bureau to establish the fee waiver in regulations prior to implementation could drive potentially significant costs. Though most boards and bureaus indicate that the loss of revenue and any associated workload would be minor, this bill would exacerbate the fiscal issues of several funds within the [DCA].
- 2) Additional absorbable workload to the [DCA] to make necessary changes to the [DCA’s] online licensing and enforcement system, BreZE. Additional minor costs for updating websites related to applications.”

**COMMENTS:** According to the author:

In a 2013 White House Report, President Obama and the First Lady called upon states to do anything they can to streamline states’ occupational licensing schemes. The report stated, “many service members are required to repeat education or training in order to receive industry certifications and state occupational licenses, even though much, and in some cases, all, of their military training and experience overlaps with credential training requirements.” California has already taken a step toward alleviating this issue by expediting the licensing processes for veterans. We can make that process even easier by relieving veterans from having to scrape up money to pay for a license, some of which cost upwards of \$500, to do a job for which they are already, more than likely, qualified to perform.

A May 2015 Department of Veteran Affairs report found that the young veteran (18-24 years old) poverty rate was 11.9%, 14.2% if they had a disability. In addition, the California Department of Housing and Community Development found, “of California’s extremely low-income veteran renter households, 79 percent have a severe cost burden, spending more than 50 percent of their income on housing.” For those low-income veterans, licensing fees would be another burden they face if they were to apply for an occupational license. Waiving the fee may encourage some of these individuals to either apply for a license or to pursue a professional career requiring licensure.

[This bill] ...removes a barrier for veterans seeking work in California and encourages immediate entrance into the civilian workforce by waiving the application and initial license fees in order to receive an occupational license. These fees act as a barrier of entry to the workforce for the 240,000 to 360,000 veterans that separate from the military each year, many of whom would like to make California home... By removing a barrier, we can more effectively help veterans harness their invaluable skillsets thereby helping them find higher paying jobs, strengthening the economy, and chipping away at the growing issue of veteran homelessness.”

Families with one or both active duty parents move more often than the average household. While there is usually some notice to the servicemember about a permanent change of station (PCS) move, servicemembers are subject to an order to move and generally must do so. Often the servicemember knows well in advance that he or she will PCS but the destination may not be known until much closer in time to the orders directing the move. Therefore, to the extent that the non-servicemember spouse holds a license or certification that is not the subject of reciprocity by the destination state, there can be a significant financial impact resulting from the cost of licensing in the destination state and the amount of delay before a license is granted (during which period the license applicant cannot work at the licensed profession).

The Committee on Business and Professions noted in its analysis of this bill:

*DCA Board Assistance for Military Applicants and Licensees.* Due to the potential hardships of licensing on military applicants, veterans, and their families, the Legislature has passed, and the DCA boards have implemented, several policies to ease the burdens on military applicants, spouses, and licensees. For instance, BPC § 114 exempts licensees from penalties for reinstating a retired license if called to active duty. BPC § 114.3 requires boards under the DCA to waive renewal fees, continuing education requirements, and other requirements for military licensees as long as specified requirements are met.

In addition, after July 1, 2016, BPC § 115.4 will require boards under the DCA to begin expediting the initial licensure process for applicants who are honorably discharged veterans. Similarly, this bill adds a one-time initial license fee waiver for applicants who are honorably discharged veterans.

Policy Questions:

Does this bill meet a documented need or fix a known problem facing veterans?

This bill presents a general policy concern, applicable in this particular case but much broader than this single piece of legislation; the bill provides an incremental benefit to a small number of veterans and does not arise out of a known problem facing veterans. The policy concern is that bills like this could have a sort of halo effect, creating a false sense of greater progress. They also may consume the limited bandwidth of the Legislature and distract the attention of policy makers from documented issues of critical importance to veterans.

This bill would provide a tangible benefit to some veterans, and is aligned with the general policy to ease veterans' transition to civilian life. However, the waiver will not address a known veterans' need or challenge except in an attenuated way. License fees are a barrier to entry for all applicants, a license is, by design, a barrier to entry, put there typically to protect the public. Waiving the fee removes a barrier for every applicant. However, a fee waiver would most

logically present the greatest barrier to those for whom the fee presents a financial hardship. It has not been established that veteran applicants are experiencing more or less financial hardship than others, particularly in such DCA professions as dentistry, medicine, optometry, pharmacy, veterinary medicine, accountancy, and architecture.

Author's amendments: Due to imminent Legislative process deadlines, there is not sufficient time to amend the bill. However, staff recommends:

- 1) Clarification of the terminology of the bill. The author's intent is to include National Guard.
  - a) Clarify the documents which will suffice for eligibility for the waiver. Though the DD-214 is the most common discharge document, there are other forms, particularly for the National Guard, that are analogous but use a different form number.
  - b) Clarify "active duty" as it pertains to the National Guard.
- 2) Tailoring the bill by refining its scope. Some avenues of tailoring might include: refining which DCA entities will be required to grant a waiver (veteran applicants are concentrated in certain DCA entities), a financial hardship requirement, a chronological relationship with the date of discharge.
- 3) Refocus the bill: Grant the fee waiver to spouses of active duty members either instead of veterans or in addition to veterans. These spouses are compelled to move frequently with their active duty spouse and face documented issues with the portability of their professional licenses and certifications.

**Current Related Legislation.** SB 1348 (Canella) of the current Legislative Session, requires boards under the DCA that authorize veterans to apply military experience and training towards licensure requirements to post information on the board's website about applying for military experience and training towards licensure requirements.

**Prior Related Legislation.** AB 1057 (Medina), Chapter 693, Statutes of 2013, requires each board to inquire in every application for licensure if the individual applying for licensure is serving in, or has previously served in, the military.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

American G.I. Forum of California  
 AMVETS-Department of California  
 California Association of County Veterans Service Officers  
 California Dental Association  
 Goodwill Southern California  
 Military Officers Association of America, California Council of Chapters  
 Veterans of Foreign Wars, California Department

##### **Opposition**

None on File

**Analysis Prepared by:** John Spangler / V.A. / (916) 319-3550

**SB**

**1 1 9 5**

AMENDED IN SENATE JUNE 1, 2016  
AMENDED IN SENATE APRIL 6, 2016

**SENATE BILL**

**No. 1195**

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**Introduced by Senator Hill**

February 18, 2016

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An act to amend Sections 109, 116, 153, 307, 313.1, 2708, 4800, 4804.5, ~~4825.1~~, 4830, and ~~4846.5~~ 4846.5, 4904, and 4905 of, and to add Sections ~~4826.3~~, ~~4826.5~~, ~~4826.7~~, 109.5, 4826.5, 4848.1, and 4853.7 to, the Business and Professions Code, and to amend Sections ~~825~~, ~~11346.5~~, ~~11349~~, and ~~11349.1~~ 825 and 11346.5 of the Government Code, relating to professional regulation, and making an appropriation therefor: *regulations.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1195, as amended, Hill. Professions and vocations: board actions: competitive impact: *actions.*

(1) Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs, and authorizes those boards to adopt regulations to enforce the laws pertaining to the profession and vocation for which they have jurisdiction. Existing law makes decisions of any board within the department pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of Consumer Affairs. Existing law authorizes the director to audit and review certain inquiries and complaints regarding licensees, including the dismissal of a disciplinary case. Existing law requires the director to annually report to the chairpersons of certain committees of the Legislature information regarding findings from any audit, review, or

monitoring and evaluation. Existing law authorizes the director to contract for services of experts and consultants where necessary. Existing law requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the department, to comply with certain requirements before the regulation or fee change can take effect, including that the director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. Existing law prohibits a rule or regulation that is disapproved by the director from having any force or effect, unless the director's disapproval is overridden by a unanimous vote of the members of the board, as specified.

This bill would instead authorize the director, upon his or her own initiative, and require the director, upon the request of ~~a consumer or licensee~~, *the board making the decision or the Legislature*, to review ~~a~~ *any nonministerial market-sensitive* decision or other action, except as specified, of a board within the department to determine whether it ~~unreasonably restrains trade~~ *further* ~~state law~~ and to approve, disapprove, *request further information*, or modify the board decision or action, as specified. The bill would require the director to *issue and post* on the department's Internet Web site his or her final written decision and the reasons for the decision within 90 days from receipt of the ~~request of a consumer or licensee~~ *request for review or the director's decision to review the board decision*. *The bill would prohibit the executive officer of any board, committee, or commission within the department from being an active licensee of any profession that board, committee, or commission regulates.* The bill would, commencing on March 1, 2017, require the director to annually report to the chairs of specified committees of the Legislature information regarding the director's disapprovals, modifications, or findings from any audit, review, or monitoring and evaluation. The bill would authorize the director to seek, designate, employ, or contract for the services of independent antitrust experts for purposes of reviewing board actions for unreasonable restraints on trade. The bill would also require the director to review and approve any regulation promulgated by a board within the department, as specified. ~~The bill would authorize the director to modify any regulation as a condition of approval, and to disapprove a regulation because it would have an impermissible anticompetitive effect.~~ *The bill would authorize the director, for a specified period of time, to approve, disapprove, or require modification of a proposed rule or regulation on the ground that it does not further state law.* The

bill would prohibit any rule or regulation from having any force or effect if the director does not approve the ~~regulation because it has an impermissible anticompetitive effect.~~ *rule or regulation and prohibits any rule or regulation that is not approved by the director from being submitted to the Office of Administrative Law.*

(2) Existing law, until January 1, 2018, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing, which is within the Department of Consumer Affairs, and requires the board to appoint an executive officer who is a nurse currently licensed by the board.

This bill would instead prohibit the executive officer from being a licensee of the board.

(3) The Veterinary Medicine Practice Act provides for the licensure and registration of veterinarians and registered veterinary technicians and the regulation of the practice of veterinary medicine by the Veterinary Medical Board, which is within the Department of Consumer Affairs, and authorizes the board to appoint an executive officer, as specified. Existing law repeals the provisions establishing the board and authorizing the board to appoint an executive officer as of January 1, 2017. That act exempts certain persons from the requirements of the act, including a veterinarian employed by the University of California or the Western University of Health Sciences while engaged in the performance of specified duties. That act requires all premises where veterinary medicine, dentistry, and surgery is being practiced to register with the board. That act requires all fees collected on behalf of the board to be deposited into the Veterinary Medical Board Contingent Fund, which continuously appropriates fees deposited into the fund. That act makes a violation of any provision of the act punishable as a misdemeanor.

This bill would extend the operation of the board and the authorization of the board to appoint an executive officer to January 1, 2021. The bill would authorize a veterinarian ~~and or~~ registered veterinary technician who is under the direct supervision of a *licensed* veterinarian ~~with a current and active license~~ to compound a drug for ~~anesthesia, the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal in a premises currently and actively registered with the board, as specified.~~ *animal use pursuant to federal law and regulations promulgated by the board and would require those regulations to, at*

*a minimum, address the storage of drugs, the level and type of supervision required for compounding drugs by a registered veterinary technician, and the equipment necessary for safe compounding of drugs.* The bill would instead require veterinarians engaged in the practice of veterinary medicine employed by the University of California or by the Western University of Health Sciences ~~while and~~ engaged in the performance of specified duties to be licensed as a veterinarian in the state or ~~hold be issued a university license issued by the board. license,~~ *as specified.* The bill would ~~require an applicant~~ *authorize an individual to apply for and be issued a university license to meet if he or she meets* certain requirements, including ~~that the applicant passes a specified exam. paying an application and license fee.~~ *The bill would require a university license, among other things, to automatically cease to be valid upon termination or cessation of employment by the University of California or the Western University of Health Sciences.* The bill would also prohibit a premise registration that is not renewed within 5 years after its expiration from being renewed, restored, reissued, or reinstated; however, the bill would authorize a new premise registration to be issued to an applicant if no fact, circumstance, or condition exists that would justify the revocation or suspension of the registration if the registration was issued and if specified fees are paid. ~~By requiring additional persons to be licensed and pay certain fees that would go into a continuously appropriated fund, this bill would make an appropriation.~~ *This bill would provide that the Veterinary Medical Board Contingent Fund is available for expenditure only upon an appropriation by the Legislature.* By requiring additional persons to be licensed under the act that were previously exempt, this bill would expand the definition of an existing crime and would, therefore, result in a state-mandated local program.

(4) ~~Existing law, The Government Claims Act,~~ except as provided, requires a public entity to pay any judgment or any compromise or settlement of a claim or action against an employee or former employee of the public entity if the employee or former employee requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity, the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action. *That act prohibits*

*the payment of punitive or exemplary damages by a public entity, except as specified.*

This bill would require a public entity to pay a judgment or settlement for treble damage antitrust awards against a member of a regulatory board for an act or omission occurring within the scope of his or her employment as a member of a regulatory board. *The bill would specify that treble damages awarded pursuant to a specified federal law for violation of another federal law are not punitive or exemplary damages within the Government Claims Act.*

(5) The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. ~~That act requires the review by the office to follow certain standards, including, among others, necessity, as defined. That act requires an agency proposing to adopt, amend, or repeal a regulation to prepare a notice to the public that includes specified information, including reference to the authority under which the regulation is proposed.~~

~~This bill would add competitive impact, as defined, as an additional standard for the office to follow when reviewing regulatory actions of a state board on which a controlling number of decisionmakers are active market participants in the market that the board regulates, and requires the office to, among other things, consider whether the anticompetitive effects of the proposed regulation are clearly outweighed by the public policy merits. The bill would authorize the office to designate, employ, or contract for the services of independent antitrust or applicable economic experts when reviewing proposed regulations for competitive impact. The bill would require state boards on which a controlling number of decisionmakers are active market participants in the market that the board regulates, when preparing the public notice, to additionally include a statement that the agency has evaluated the impact of the regulation on competition and that the effect of the regulation is within a clearly articulated and affirmatively expressed state law or policy. also require a board within the Department of Consumer Affairs to submit a statement to the office that the Director of Consumer Affairs has reviewed the proposed regulation and determined that the proposed regulation furthers state law.~~

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

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

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

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

1 SECTION 1. Section 109 of the Business and Professions Code  
2 is amended to read:

3 109. (a) ~~The director~~ *decisions of any of the boards comprising*  
4 *the department with respect to passing candidates and revoking*  
5 *or otherwise imposing discipline on licenses shall not be subject*  
6 *to review by the director and are final within the limits provided*  
7 *by this code that are applicable to the particular board.*

8 (b) *The director* may initiate an investigation of any allegations  
9 of misconduct in the preparation, administration, or scoring of an  
10 examination which is administered by a board, or in the review of  
11 qualifications which are a part of the licensing process of any  
12 board. A request for investigation shall be made by the director to  
13 the Division of Investigation through the chief of the division or  
14 to any law enforcement agency in the jurisdiction where the alleged  
15 misconduct occurred.

16 ~~(b)(1)~~

17 (1) The director may intervene in any matter of any board where  
18 an investigation by the Division of Investigation discloses probable  
19 cause to believe that the conduct or activity of a board, or its  
20 members or ~~employees~~ *employees*, constitutes a violation of  
21 criminal law.

22 (2) The term “intervene,” as used in paragraph (1) *of this section*  
23 may include, but is not limited to, an application for a restraining  
24 order or injunctive relief as specified in Section 123.5, or a referral  
25 or request for criminal prosecution. For purposes of this section,  
26 the director shall be deemed to have standing under Section 123.5  
27 and shall seek representation of the Attorney General, or other  
28 appropriate counsel in the event of a conflict in pursuing that  
29 action.

30 (c) The director may, upon his or her own initiative, and shall,  
31 upon request by ~~a consumer or licensee~~; *the board making the*  
32 *decision or the Legislature*, review any *nonministerial*  
33 *market-sensitive board action or decision* ~~or other action to~~

1 ~~determine whether it unreasonably restrains trade. Such a review~~  
2 ~~shall proceed as follows: by the board to determine whether it~~  
3 ~~further state law. Market-sensitive actions or decisions are those~~  
4 ~~that create barriers to market participation and restrict competition~~  
5 ~~including, but not limited to, examination passage scores,~~  
6 ~~advertising restrictions, price regulation, enlarging or restricting~~  
7 ~~scope of practice qualifications for licensure, and a pattern or~~  
8 ~~program of disciplinary actions affecting multiple individuals that~~  
9 ~~creates barriers to market participation. If the board action or~~  
10 ~~decision is determined to be a market-sensitive action or decision,~~  
11 ~~the director shall review the board action or decision to determine~~  
12 ~~whether that action or decision furthers a clearly articulated and~~  
13 ~~affirmatively expressed state policy. Review under this subdivision~~  
14 ~~shall serve to cease implementation of the market-sensitive action~~  
15 ~~or decision until the review is finalized and the action or decision~~  
16 ~~is found to further state law.~~

17 ~~(1) The director shall assess whether the action or decision~~  
18 ~~reflects a clearly articulated and affirmatively expressed state law.~~  
19 ~~If the director determines that the action or decision does not reflect~~  
20 ~~a clearly articulated and affirmatively expressed state law, the~~  
21 ~~director shall disapprove the board action or decision and it shall~~  
22 ~~not go into effect.~~

23 ~~(2) If the action or decision is a reflection of clearly articulated~~  
24 ~~and affirmatively expressed state law, the director shall assess~~  
25 ~~whether the action or decision was the result of the board's exercise~~  
26 ~~of ministerial or discretionary judgment. If the director finds no~~  
27 ~~exercise of discretionary judgment, but merely the direct~~  
28 ~~application of statutory or constitutional provisions, the director~~  
29 ~~shall close the investigation and review of the board action or~~  
30 ~~decision.~~

31 ~~(3) If the director concludes under paragraph (2) that the board~~  
32 ~~exercised discretionary judgment, the director shall review the~~  
33 ~~board action or decision as follows:~~

34 ~~(A) The~~

35 ~~(1) Any review by the director under this subdivision shall~~  
36 ~~conduct include a full substantive review of the board action or~~  
37 ~~decision using based upon all the relevant facts, data, market~~  
38 ~~conditions, facts in the record provided by the board and any~~  
39 ~~additional information provided by the director, which may include~~  
40 ~~data, public comment, studies, or other documentary evidence~~

1 pertaining to the market impacted by the board's action or decision  
2 and determine whether the anticompetitive effects of the action or  
3 decision are clearly outweighed by the benefit to the public. The  
4 director may seek, designate, employ, or contract for the services  
5 of independent antitrust or economic experts pursuant to Section  
6 307. These experts shall not be active participants in the market  
7 affected by the board action or decision. *decision.*

8 (B) If the board action or decision was not previously subject  
9 to a public comment period, the director shall release the subject  
10 matter of his or her investigation for a 30-day public comment  
11 period and shall consider all comments received.

12 (C) If the director determines that the action or decision furthers  
13 the public protection mission of the board and the impact on  
14 competition is justified, the director may approve the action or  
15 decision.

16 (D) If the director determines that the action furthers the public  
17 protection mission of the board and the impact on competition is  
18 justified, the director may approve the action or decision. If the  
19 director finds the action or decision does not further the public  
20 protection mission of the board or finds that the action or decision  
21 is not justified, the director shall either refuse to approve it or shall  
22 modify the action or decision to ensure that any restraints of trade  
23 are related to, and advance, clearly articulated state law or public  
24 policy.

25 (2) *The director shall take one of the following actions:*

26 (A) *Approve the action or decision upon determination that it*  
27 *furtheres state law.*

28 (B) *Disapprove the action or decision if it does not further state*  
29 *law. If the director disapproves the board action or decision, the*  
30 *director may recommend modifications to the board action or*  
31 *decision, which, if adopted, shall not become effective until final*  
32 *approval by the director pursuant to this subdivision.*

33 (C) *Modify the action or decision to ensure that it furtheres state*  
34 *law.*

35 (D) *Request further information from the board if the record*  
36 *provided is insufficient to make a determination that the action or*  
37 *decision furtheres state law. Upon submission of further information*  
38 *from the board and any information provided by the director, the*  
39 *director shall make a final determination to approve, disapprove,*  
40 *or modify the board's action or decision.*

1     ~~(4)~~

2     ~~(d)~~ The director shall issue, and post on the department’s Internet  
3 Web site, his or her final written decision ~~approving, modifying,~~  
4 ~~or disapproving on~~ the *board* action or decision with an explanation  
5 of the reasons ~~that action or decision does or does not further state~~  
6 ~~law and the~~ rationale behind the director’s decision within 90 days  
7 from receipt of the ~~request from a consumer or licensee.~~ *board’s*  
8 *or Legislature’s request for review or the director’s decision to*  
9 *review the board action or decision.* Notwithstanding any other  
10 law, the decision of the director shall be final, except if the state  
11 or federal constitution requires an appeal of the director’s decision.

12     ~~(d)~~

13     ~~(e)~~ The review set forth in ~~paragraph (3)~~ of subdivision (c) shall  
14 not apply ~~when an individual seeks to the~~ review of any  
15 disciplinary ~~action or other action pertaining solely to that~~  
16 ~~individual.~~ *any other sanction or citation imposed by a board upon*  
17 *a licensee.*

18     ~~(e)~~

19     ~~(f)~~ The director shall report to the Chairs of the Senate Business,  
20 Professions, and Economic Development Committee and the  
21 Assembly Business and Professions Committee annually,  
22 commencing March 1, 2017, regarding his or her disapprovals,  
23 modifications, or findings from any audit, review, or monitoring  
24 and evaluation conducted pursuant to this section. That report shall  
25 be submitted in compliance with Section 9795 of the Government  
26 Code.

27     ~~(f)~~ ~~If the director has already reviewed a board action or decision~~  
28 ~~pursuant to this section or Section 313.1, the director shall not~~  
29 ~~review that action or decision again.~~

30     ~~(g)~~ This section shall not be construed to affect, impede, or  
31 delay any disciplinary actions of any board.

32     ~~SEC. 2. Section 109.5 is added to the Business and Professions~~  
33 ~~Code, to read:~~

34     ~~109.5. The executive officer of any board, committee, or~~  
35 ~~commission within the department shall not be an active licensee~~  
36 ~~of any profession that board, committee, or commission regulates.~~

37     ~~SEC. 2.~~

38     ~~SEC. 3. Section 116 of the Business and Professions Code is~~  
39 ~~amended to read:~~

1 116. (a) The director may audit and review, upon his or her  
2 own initiative, or upon the request of a consumer or licensee,  
3 inquiries and complaints regarding licensees, dismissals of  
4 disciplinary cases, the opening, conduct, or closure of  
5 investigations, informal conferences, and discipline short of formal  
6 accusation by any board or bureau within the department.

7 (b) The director shall report to the Chairs of the Senate Business,  
8 Professions, and Economic Development Committee and the  
9 Assembly Business and Professions Committee annually,  
10 commencing March 1, 2017, regarding his or her findings from  
11 any audit, review, or monitoring and evaluation conducted pursuant  
12 to this section. This report shall be submitted in compliance with  
13 Section 9795 of the Government Code.

14 ~~SEC. 3.~~

15 *SEC. 4.* Section 153 of the Business and Professions Code is  
16 amended to read:

17 153. The director may investigate the work of the several  
18 boards in his *or her* department and may obtain a copy of all  
19 records and full and complete data in all official matters in  
20 possession of the boards, their members, officers, or employees.

21 ~~SEC. 4.~~

22 *SEC. 5.* Section 307 of the Business and Professions Code is  
23 amended to read:

24 307. The director may contract for the services of experts and  
25 consultants where necessary to carry out this chapter and may  
26 provide compensation and reimbursement of expenses for those  
27 experts and consultants in accordance with state law.

28 ~~SEC. 5.~~

29 *SEC. 6.* Section 313.1 of the Business and Professions Code  
30 is amended to read:

31 313.1. (a) Notwithstanding any other law to the contrary, no  
32 rule or regulation and no fee change proposed or promulgated by  
33 any of the boards, commissions, or committees within the  
34 department, shall take effect pending compliance with this section.

35 (b) The director shall be formally notified of and shall review,  
36 in accordance with the requirements of Article 5 (commencing  
37 with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title  
38 2 of the Government Code, the requirements in subdivision (c) of  
39 Section 109, and this section, all of the following:

1 (1) All notices of proposed action, any modifications and  
2 supplements thereto, and the text of proposed regulations.

3 (2) Any notices of sufficiently related changes to regulations  
4 previously noticed to the public, and the text of proposed  
5 regulations showing modifications to the text.

6 (3) Final rulemaking records.

7 (4) All relevant ~~facts,~~ *facts in the rulemaking record, which may*  
8 *include* data, public comments, ~~market conditions, studies,~~ or other  
9 documentary evidence pertaining to the ~~market impacted by the~~  
10 ~~proposed regulation. This information shall be included in the~~  
11 ~~written decision of the director required under paragraph (4) of~~  
12 ~~subdivision (c) of Section 109.~~ *proposed regulation to determine*  
13 *whether it furthers state law. If the regulation does not further*  
14 *state law, it shall not be approved.*

15 (c) The submission of all notices and final rulemaking records  
16 to the director and the director's approval, as authorized by this  
17 section, shall be a precondition to the filing of any rule or  
18 regulation with the Office of Administrative Law. The Office of  
19 Administrative Law shall have no jurisdiction to review a rule or  
20 regulation subject to this section until after the director's review  
21 and approval. The filing of any document with the Office of  
22 Administrative Law shall be accompanied by a certification that  
23 the board, commission, or committee has complied with the  
24 requirements of this section.

25 (d) Following the receipt of any final rulemaking record subject  
26 to subdivision (a), the director shall have the authority for a period  
27 of 30 days to ~~approve~~ *approve, disapprove, or require modification*  
28 *of a proposed rule or regulation or disapprove a proposed rule or*  
29 *regulation on the ground that it is injurious to the public health,*  
30 *safety, or welfare, welfare or has an impermissible anticompetitive*  
31 *effect. The director may modify a rule or regulation as a condition*  
32 *of approval. Any modifications to regulations by the director shall*  
33 *be subject to a 30-day public comment period before the director*  
34 *issues a final decision regarding the modified regulation. If the*  
35 *director does not approve the rule or regulation within the 30-day*  
36 *period, the rule or regulation shall not be submitted to the Office*  
37 *of Administrative Law and the rule or regulation shall have no*  
38 *effect. does not further state law. If the director does not approve*  
39 *the rule or regulation within the 30-day period, the rule or*

1 *regulation shall not be submitted to the Office of Administrative*  
2 *Law and the rule or regulation shall have no effect.*

3 (e) Final rulemaking records shall be filed with the director  
4 within the one-year notice period specified in Section 11346.4 of  
5 the Government Code. If necessary for compliance with this  
6 section, the one-year notice period may be extended, as specified  
7 by this subdivision.

8 (1) In the event that the one-year notice period lapses during  
9 the director's 30-day review period, or within 60 days following  
10 the notice of the director's disapproval, it may be extended for a  
11 maximum of 90 days.

12 (2) If the director approves the final rulemaking record, the  
13 board, commission, or committee shall have five days from the  
14 receipt of the record from the director within which to file it with  
15 the Office of Administrative Law.

16 (3) If the director disapproves a rule or regulation, it shall have  
17 no force or effect unless, within 60 days of the notice of  
18 disapproval, (A) the disapproval is overridden by a unanimous  
19 vote of the members of the board, commission, or committee, and  
20 (B) the board, commission, or committee files the final rulemaking  
21 record with the Office of Administrative Law in compliance with  
22 this section and the procedures required by Chapter 3.5  
23 (commencing with Section 11340) of Part 1 of Division 3 of Title  
24 2 of the Government Code. This paragraph shall not apply to any  
25 decision disapproved by the director under subdivision (e) of  
26 Section 109: *effect.*

27 (f) This section shall not be construed to prohibit the director  
28 from affirmatively approving a proposed rule, regulation, or fee  
29 change at any time within the 30-day period after it has been  
30 submitted to him or her, in which event it shall become effective  
31 upon compliance with this section and the procedures required by  
32 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
33 3 of Title 2 of the Government Code.

34 ~~SEC. 6:~~

35 *SEC. 7.* Section 2708 of the Business and Professions Code is  
36 amended to read:

37 2708. (a) The board shall appoint an executive officer who  
38 shall perform the duties delegated by the board and who shall be  
39 responsible to it for the accomplishment of those duties.

1 (b) The executive officer shall not be a licensee under this  
2 chapter and shall possess other qualifications as determined by the  
3 board.

4 (c) The executive officer shall not be a member of the board.

5 (d) This section shall remain in effect only until January 1, 2018,  
6 and as of that date is repealed, unless a later enacted statute, that  
7 is enacted before January 1, 2018, deletes or extends that date.

8 ~~SEC. 7.~~

9 *SEC. 8.* Section 4800 of the Business and Professions Code is  
10 amended to read:

11 4800. (a) There is in the Department of Consumer Affairs a  
12 Veterinary Medical Board in which the administration of this  
13 chapter is vested. The board consists of the following members:

14 (1) Four licensed veterinarians.

15 (2) One registered veterinary technician.

16 (3) Three public members.

17 (b) This section shall remain in effect only until January 1, 2021,  
18 and as of that date is repealed.

19 (c) Notwithstanding any other law, the repeal of this section  
20 renders the board subject to review by the appropriate policy  
21 committees of the Legislature. However, the review of the board  
22 shall be limited to those issues identified by the appropriate policy  
23 committees of the Legislature and shall not involve the preparation  
24 or submission of a sunset review document or evaluative  
25 questionnaire.

26 ~~SEC. 8.~~

27 *SEC. 9.* Section 4804.5 of the Business and Professions Code  
28 is amended to read:

29 4804.5. (a) The board may appoint a person exempt from civil  
30 service who shall be designated as an executive officer and who  
31 shall exercise the powers and perform the duties delegated by the  
32 board and vested in him or her by this chapter.

33 (b) This section shall remain in effect only until January 1, 2021,  
34 and as of that date is repealed.

35 ~~SEC. 9.~~ Section 4825.1 of the Business and Professions Code  
36 is amended to read:

37 ~~4825.1.~~ These definitions shall govern the construction of this  
38 chapter as it applies to veterinary medicine.

1 (a) ~~“Diagnosis” means the act or process of identifying or~~  
2 ~~determining the health status of an animal through examination~~  
3 ~~and the opinion derived from that examination.~~

4 (b) ~~“Animal” means any member of the animal kingdom other~~  
5 ~~than humans, and includes fowl, fish, and reptiles, wild or~~  
6 ~~domestic, whether living or dead.~~

7 (c) ~~“Food animal” means any animal that is raised for the~~  
8 ~~production of an edible product intended for consumption by~~  
9 ~~humans. The edible product includes, but is not limited to, milk,~~  
10 ~~meat, and eggs. Food animal includes, but is not limited to, cattle~~  
11 ~~(beef or dairy), swine, sheep, poultry, fish, and amphibian species.~~

12 (d) ~~“Livestock” includes all animals, poultry, aquatic and~~  
13 ~~amphibian species that are raised, kept, or used for profit. It does~~  
14 ~~not include those species that are usually kept as pets such as dogs,~~  
15 ~~eats, and pet birds, or companion animals, including equines.~~

16 (e) ~~“Compounding,” for the purposes of veterinary medicine,~~  
17 ~~shall have the same meaning given in Section 1735 of Title 16 of~~  
18 ~~the California Code of Regulations, except that every reference~~  
19 ~~therein to “pharmacy” and “pharmacist” shall be replaced with~~  
20 ~~“veterinary premises” and “veterinarian,” and except that only a~~  
21 ~~licensed veterinarian or a licensed registered veterinarian technician~~  
22 ~~under direct supervision of a veterinarian may perform~~  
23 ~~compounding and shall not delegate to or supervise any part of~~  
24 ~~the performance of compounding by any other person.~~

25 ~~SEC. 10. Section 4826.3 is added to the Business and~~  
26 ~~Professions Code, to read:~~

27 ~~4826.3. (a) Notwithstanding Section 4051, a veterinarian or~~  
28 ~~registered veterinarian technician under the direct supervision of~~  
29 ~~a veterinarian with a current and active license may compound a~~  
30 ~~drug for anesthesia, the prevention, cure, or relief of a wound,~~  
31 ~~fracture, bodily injury, or disease of an animal in a premises~~  
32 ~~currently and actively registered with the board and only under~~  
33 ~~the following conditions:~~

34 (1) ~~Where there is no FDA-approved animal or human drug that~~  
35 ~~can be used as labeled or in an appropriate extralabel manner to~~  
36 ~~properly treat the disease, symptom, or condition for which the~~  
37 ~~drug is being prescribed.~~

38 (2) ~~Where the compounded drug is not available from a~~  
39 ~~compounding pharmacy, outsourcing facility, or other~~  
40 ~~compounding supplier in a dosage form and concentration to~~

1 appropriately treat the disease, symptom, or condition for which  
2 the drug is being prescribed.

3 (3) Where the need and prescription for the compounded  
4 medication has arisen within an established  
5 veterinarian-client-patient relationship as a means to treat a specific  
6 occurrence of a disease, symptom, or condition observed and  
7 diagnosed by the veterinarian in a specific animal that threatens  
8 the health of the animal or will cause suffering or death if left  
9 untreated.

10 (4) Where the quantity compounded does not exceed a quantity  
11 demonstrably needed to treat a patient with which the veterinarian  
12 has a current veterinarian-client-patient relationship.

13 (5) Except as specified in subdivision (c), where the compound  
14 is prepared only with commercially available FDA-approved  
15 animal or human drugs as active ingredients.

16 (b) A compounded veterinary drug may be prepared from an  
17 FDA-approved animal or human drug for extralabel use only when  
18 there is no approved animal or human drug that, when used as  
19 labeled or in an appropriate extralabel manner will, in the available  
20 dosage form and concentration, treat the disease, symptom, or  
21 condition. Compounding from an approved human drug for use  
22 in food-producing animals is not permitted if an approved animal  
23 drug can be used for compounding.

24 (c) A compounded veterinary drug may be prepared from bulk  
25 drug substances only when:

26 (1) The drug is compounded and dispensed by the veterinarian  
27 to treat an individually identified animal patient under his or her  
28 care.

29 (2) The drug is not intended for use in food-producing animals.

30 (3) If the drug contains a bulk drug substance that is a  
31 component of any marketed FDA-approved animal or human drug,  
32 there is a change between the compounded drug and the  
33 comparable marketed drug made for an individually identified  
34 animal patient that produces a clinical difference for that  
35 individually identified animal patient, as determined by the  
36 veterinarian prescribing the compounded drug for his or her patient.

37 (4) There are no FDA-approved animal or human drugs that  
38 can be used as labeled or in an appropriate extralabel manner to  
39 properly treat the disease, symptom, or condition for which the  
40 drug is being prescribed.

1 ~~(5) All bulk drug substances used in compounding are~~  
2 ~~manufactured by an establishment registered under Section 360~~  
3 ~~of Title 21 of the United States Code and are accompanied by a~~  
4 ~~valid certificate of analysis.~~

5 ~~(6) The drug is not sold or transferred by the veterinarian~~  
6 ~~compounding the drug, except that the veterinarian shall be~~  
7 ~~permitted to administer the drug to a patient under his or her care~~  
8 ~~or dispense it to the owner or caretaker of an animal under his or~~  
9 ~~her care.~~

10 ~~(7) Within 15 days of becoming aware of any product defect or~~  
11 ~~serious adverse event associated with any drug compounded by~~  
12 ~~the veterinarian from bulk drug substances, the veterinarian shall~~  
13 ~~report it to the federal Food and Drug Administration on Form~~  
14 ~~FDA 1932a.~~

15 ~~(8) In addition to any other requirements, the label of any~~  
16 ~~veterinary drug compounded from bulk drug substances shall~~  
17 ~~indicate the species of the intended animal patient, the name of~~  
18 ~~the animal patient, and the name of the owner or caretaker of the~~  
19 ~~patient.~~

20 ~~(d) Each compounded veterinary drug preparation shall meet~~  
21 ~~the labeling requirements of Section 4076 and Sections 1707.5~~  
22 ~~and 1735.4 of Title 16 of the California Code of Regulations;~~  
23 ~~except that every reference therein to "pharmacy" and "pharmacist"~~  
24 ~~shall be replaced by "veterinary premises" and "veterinarian," and~~  
25 ~~any reference to "patient" shall be understood to refer to the animal~~  
26 ~~patient. In addition, each label on a compounded veterinary drug~~  
27 ~~preparation shall include withdrawal and holding times, if needed,~~  
28 ~~and the disease, symptom, or condition for which the drug is being~~  
29 ~~prescribed. Any compounded veterinary drug preparation that is~~  
30 ~~intended to be sterile, including for injection, administration into~~  
31 ~~the eye, or inhalation, shall in addition meet the labeling~~  
32 ~~requirements of Section 1751.2 of Title 16 of the California Code~~  
33 ~~of Regulations, except that every reference therein to "pharmacy"~~  
34 ~~and "pharmacist" shall be replaced by "veterinary premises" and~~  
35 ~~"veterinarian," and any reference to "patient" shall be understood~~  
36 ~~to refer to the animal patient.~~

37 ~~(e) Any veterinarian, registered veterinarian technician who is~~  
38 ~~under the direct supervision of a veterinarian, and veterinary~~  
39 ~~premises engaged in compounding shall meet the compounding~~  
40 ~~requirements for pharmacies and pharmacists stated by the~~

1 provisions of Article 4.5 (commencing with Section 1735) of Title  
2 16 of the California Code of Regulations, except that every  
3 reference therein to “pharmacy” and “pharmacist” shall be replaced  
4 by “veterinary premises” and “veterinarian,” and any reference to  
5 “patient” shall be understood to refer to the animal patient:

6 (1) Section 1735.1 of Title 16 of the California Code of  
7 Regulations:

8 (2) Subdivisions (d),(e), (f), (g), (h), (i), (j), (k), and (l) of  
9 Section 1735.2 of Title 16 of the California Code of Regulations:

10 (3) Section 1735.3 of Title 16 of the California Code of  
11 Regulations, except that only a licensed veterinarian or registered  
12 veterinarian technician may perform compounding and shall not  
13 delegate to or supervise any part of the performance of  
14 compounding by any other person:

15 (4) Section 1735.4 of Title 16 of the California Code of  
16 Regulations:

17 (5) Section 1735.5 of Title 16 of the California Code of  
18 Regulations:

19 (6) Section 1735.6 of Title 16 of the California Code of  
20 Regulations:

21 (7) Section 1735.7 of Title 16 of the California Code of  
22 Regulations:

23 (8) Section 1735.8 of Title 16 of the California Code of  
24 Regulations:

25 (f) Any veterinarian, registered veterinarian technician under  
26 the direct supervision of a veterinarian, and veterinary premises  
27 engaged in sterile compounding shall meet the sterile compounding  
28 requirements for pharmacies and pharmacists under Article 7  
29 (commencing with Section 1751) of Title 16 of the California Code  
30 of Regulations, except that every reference therein to “pharmacy”  
31 and “pharmacist” shall be replaced by “veterinary premises” and  
32 “veterinarian,” and any reference to “patient” shall be understood  
33 to refer to the animal patient.

34 (g) The California State Board of Pharmacy shall have authority  
35 with the board to ensure compliance with this section and shall  
36 have the right to inspect any veterinary premises engaged in  
37 compounding, along with or separate from the board, to ensure  
38 compliance with this section. The board is specifically charged  
39 with enforcing this section with regard to its licensees:

1     ~~SEC. 11. Section 4826.5 is added to the Business and~~  
2     ~~Professions Code, to read:~~

3     ~~4826.5. Failure by a licensed veterinarian, registered~~  
4     ~~veterinarian technician, or veterinary premises to comply with the~~  
5     ~~provisions of this article shall be deemed unprofessional conduct~~  
6     ~~and constitute grounds for discipline.~~

7     ~~SEC. 12. Section 4826.7 is added to the Business and~~  
8     ~~Professions Code, to read:~~

9     ~~4826.7. The board may adopt regulations to implement the~~  
10    ~~provisions of this article.~~

11    ~~SEC. 10. Section 4826.5 is added to the Business and~~  
12    ~~Professions Code, to read:~~

13    ~~4826.5. Notwithstanding any other law, a licensed veterinarian~~  
14    ~~or a registered veterinary technician under the supervision of a~~  
15    ~~licensed veterinarian may compound drugs for animal use pursuant~~  
16    ~~to Section 530 of Title 21 of the Code of Federal Regulations and~~  
17    ~~in accordance with regulations promulgated by the board. The~~  
18    ~~regulations promulgated by the board shall, at a minimum, address~~  
19    ~~the storage of drugs, the level and type of supervision required for~~  
20    ~~compounding drugs by a registered veterinary technician, and the~~  
21    ~~equipment necessary for the safe compounding of drugs. Any~~  
22    ~~violation of the regulations adopted by the board pursuant to this~~  
23    ~~section shall constitute grounds for an enforcement or disciplinary~~  
24    ~~action.~~

25    ~~SEC. 13.~~

26    ~~SEC. 11. Section 4830 of the Business and Professions Code~~  
27    ~~is amended to read:~~

28    ~~4830. (a) This chapter does not apply to:~~

29    ~~(1) Veterinarians while serving in any armed branch of the~~  
30    ~~military service of the United States or the United States~~  
31    ~~Department of Agriculture while actually engaged and employed~~  
32    ~~in their official capacity.~~

33    ~~(2) Regularly licensed veterinarians in actual consultation from~~  
34    ~~other states.~~

35    ~~(3) Regularly licensed veterinarians actually called from other~~  
36    ~~states to attend cases in this state, but who do not open an office~~  
37    ~~or appoint a place to do business within this state.~~

38    ~~(4) Students in the School of Veterinary Medicine of the~~  
39    ~~University of California or the College of Veterinary Medicine of~~  
40    ~~the Western University of Health Sciences who participate in~~

1 diagnosis and treatment as part of their educational experience,  
2 including those in off-campus educational programs under the  
3 direct supervision of a licensed veterinarian in good standing, as  
4 defined in paragraph (1) of subdivision (b) of Section 4848,  
5 appointed by the University of California, Davis, or the Western  
6 University of Health Sciences.

7 (5) A veterinarian who is employed by the Meat and Poultry  
8 Inspection Branch of the California Department of Food and  
9 Agriculture while actually engaged and employed in his or her  
10 official capacity. A person exempt under this paragraph shall not  
11 otherwise engage in the practice of veterinary medicine unless he  
12 or she is issued a license by the board.

13 (6) Unlicensed personnel employed by the Department of Food  
14 and Agriculture or the United States Department of Agriculture  
15 when in the course of their duties they are directed by a veterinarian  
16 supervisor to conduct an examination, obtain biological specimens,  
17 apply biological tests, or administer medications or biological  
18 products as part of government disease or condition monitoring,  
19 investigation, control, or eradication activities.

20 (b) (1) For purposes of paragraph (3) of subdivision (a), a  
21 regularly licensed veterinarian in good standing who is called from  
22 another state by a law enforcement agency or animal control  
23 agency, as defined in Section 31606 of the Food and Agricultural  
24 Code, to attend to cases that are a part of an investigation of an  
25 alleged violation of federal or state animal fighting or animal  
26 cruelty laws within a single geographic location shall be exempt  
27 from the licensing requirements of this chapter if the law  
28 enforcement agency or animal control agency determines that it  
29 is necessary to call the veterinarian in order for the agency or  
30 officer to conduct the investigation in a timely, efficient, and  
31 effective manner. In determining whether it is necessary to call a  
32 veterinarian from another state, consideration shall be given to the  
33 availability of veterinarians in this state to attend to these cases.  
34 An agency, department, or officer that calls a veterinarian pursuant  
35 to this subdivision shall notify the board of the investigation.

36 (2) Notwithstanding any other provision of this chapter, a  
37 regularly licensed veterinarian in good standing who is called from  
38 another state to attend to cases that are a part of an investigation  
39 described in paragraph (1) may provide veterinary medical care  
40 for animals that are affected by the investigation with a temporary

1 shelter facility, and the temporary shelter facility shall be exempt  
2 from the registration requirement of Section 4853 if all of the  
3 following conditions are met:

4 (A) The temporary shelter facility is established only for the  
5 purpose of the investigation.

6 (B) The temporary shelter facility provides veterinary medical  
7 care, shelter, food, and water only to animals that are affected by  
8 the investigation.

9 (C) The temporary shelter facility complies with Section 4854.

10 (D) The temporary shelter facility exists for not more than 60  
11 days, unless the law enforcement agency or animal control agency  
12 determines that a longer period of time is necessary to complete  
13 the investigation.

14 (E) Within 30 calendar days upon completion of the provision  
15 of veterinary health care services at a temporary shelter facility  
16 established pursuant to this section, the veterinarian called from  
17 another state by a law enforcement agency or animal control agency  
18 to attend to a case shall file a report with the board. The report  
19 shall contain the date, place, type, and general description of the  
20 care provided, along with a listing of the veterinary health care  
21 practitioners who participated in providing that care.

22 (c) For purposes of paragraph (3) of subdivision (a), the board  
23 may inspect temporary facilities established pursuant to this  
24 section.

25 ~~SEC. 14.~~

26 *SEC. 12.* Section 4846.5 of the Business and Professions Code  
27 is amended to read:

28 4846.5. (a) Except as provided in this section, the board shall  
29 issue renewal licenses only to those applicants that have completed  
30 a minimum of 36 hours of continuing education in the preceding  
31 two years.

32 (b) (1) Notwithstanding any other law, continuing education  
33 hours shall be earned by attending courses relevant to veterinary  
34 medicine and sponsored or cosponsored by any of the following:

35 (A) American Veterinary Medical Association (AVMA)  
36 accredited veterinary medical colleges.

37 (B) Accredited colleges or universities offering programs  
38 relevant to veterinary medicine.

39 (C) The American Veterinary Medical Association.

1 (D) American Veterinary Medical Association recognized  
2 specialty or affiliated allied groups.

3 (E) American Veterinary Medical Association's affiliated state  
4 veterinary medical associations.

5 (F) Nonprofit annual conferences established in conjunction  
6 with state veterinary medical associations.

7 (G) Educational organizations affiliated with the American  
8 Veterinary Medical Association or its state affiliated veterinary  
9 medical associations.

10 (H) Local veterinary medical associations affiliated with the  
11 California Veterinary Medical Association.

12 (I) Federal, state, or local government agencies.

13 (J) Providers accredited by the Accreditation Council for  
14 Continuing Medical Education (ACCME) or approved by the  
15 American Medical Association (AMA), providers recognized by  
16 the American Dental Association Continuing Education  
17 Recognition Program (ADA CERP), and AMA or ADA affiliated  
18 state, local, and specialty organizations.

19 (2) Continuing education credits shall be granted to those  
20 veterinarians taking self-study courses, which may include, but  
21 are not limited to, reading journals, viewing video recordings, or  
22 listening to audio recordings. The taking of these courses shall be  
23 limited to no more than six hours biennially.

24 (3) The board may approve other continuing veterinary medical  
25 education providers not specified in paragraph (1).

26 (A) The board has the authority to recognize national continuing  
27 education approval bodies for the purpose of approving continuing  
28 education providers not specified in paragraph (1).

29 (B) Applicants seeking continuing education provider approval  
30 shall have the option of applying to the board or to a  
31 board-recognized national approval body.

32 (4) For good cause, the board may adopt an order specifying,  
33 on a prospective basis, that a provider of continuing veterinary  
34 medical education authorized pursuant to paragraph (1) or (3) is  
35 no longer an acceptable provider.

36 (5) Continuing education hours earned by attending courses  
37 sponsored or cosponsored by those entities listed in paragraph (1)  
38 between January 1, 2000, and January 1, 2001, shall be credited  
39 toward a veterinarian's continuing education requirement under  
40 this section.

1 (c) Every person renewing his or her license issued pursuant to  
2 Section 4846.4, or any person applying for relicensure or for  
3 reinstatement of his or her license to active status, shall submit  
4 proof of compliance with this section to the board certifying that  
5 he or she is in compliance with this section. Any false statement  
6 submitted pursuant to this section shall be a violation subject to  
7 Section 4831.

8 (d) This section shall not apply to a veterinarian's first license  
9 renewal. This section shall apply only to second and subsequent  
10 license renewals granted on or after January 1, 2002.

11 (e) The board shall have the right to audit the records of all  
12 applicants to verify the completion of the continuing education  
13 requirement. Applicants shall maintain records of completion of  
14 required continuing education coursework for a period of four  
15 years and shall make these records available to the board for  
16 auditing purposes upon request. If the board, during this audit,  
17 questions whether any course reported by the veterinarian satisfies  
18 the continuing education requirement, the veterinarian shall provide  
19 information to the board concerning the content of the course; the  
20 name of its sponsor and cosponsor, if any; and specify the specific  
21 curricula that was of benefit to the veterinarian.

22 (f) A veterinarian desiring an inactive license or to restore an  
23 inactive license under Section 701 shall submit an application on  
24 a form provided by the board. In order to restore an inactive license  
25 to active status, the veterinarian shall have completed a minimum  
26 of 36 hours of continuing education within the last two years  
27 preceding application. The inactive license status of a veterinarian  
28 shall not deprive the board of its authority to institute or continue  
29 a disciplinary action against a licensee.

30 (g) Knowing misrepresentation of compliance with this article  
31 by a veterinarian constitutes unprofessional conduct and grounds  
32 for disciplinary action or for the issuance of a citation and the  
33 imposition of a civil penalty pursuant to Section 4883.

34 (h) The board, in its discretion, may exempt from the continuing  
35 education requirement any veterinarian who for reasons of health,  
36 military service, or undue hardship cannot meet those requirements.  
37 Applications for waivers shall be submitted on a form provided  
38 by the board.

39 (i) The administration of this section may be funded through  
40 professional license and continuing education provider fees. The

1 fees related to the administration of this section shall not exceed  
2 the costs of administering the corresponding provisions of this  
3 section.

4 (j) For those continuing education providers not listed in  
5 paragraph (1) of subdivision (b), the board or its recognized  
6 national approval agent shall establish criteria by which a provider  
7 of continuing education shall be approved. The board shall initially  
8 review and approve these criteria and may review the criteria as  
9 needed. The board or its recognized agent shall monitor, maintain,  
10 and manage related records and data. The board may impose an  
11 application fee, not to exceed two hundred dollars (\$200)  
12 biennially, for continuing education providers not listed in  
13 paragraph (1) of subdivision (b).

14 (k) (1) Beginning January 1, 2018, a licensed veterinarian who  
15 renews his or her license shall complete a minimum of one credit  
16 hour of continuing education on the judicious use of medically  
17 important antimicrobial drugs every four years as part of his or  
18 her continuing education requirements.

19 (2) For purposes of this subdivision, “medically important  
20 antimicrobial drug” means an antimicrobial drug listed in Appendix  
21 A of the federal Food and Drug Administration’s Guidance for  
22 Industry #152, including critically important, highly important,  
23 and important antimicrobial drugs, as that appendix may be  
24 amended.

25 ~~SEC. 15.~~

26 *SEC. 13.* Section 4848.1 is added to the Business and  
27 Professions Code, to read:

28 4848.1. (a) A veterinarian engaged in the practice of veterinary  
29 medicine, as defined in Section 4826, employed by the University  
30 of California ~~while~~ *and* engaged in the performance of duties in  
31 connection with the School of Veterinary Medicine or employed  
32 by the Western University of Health Sciences ~~while~~ *and* engaged  
33 in the performance of duties in connection with the College of  
34 Veterinary Medicine shall be ~~licensed in California or shall hold~~  
35 ~~issued a university license issued by the board.~~ *pursuant to this*  
36 *section or hold a license to practice veterinary medicine in this*  
37 *state.*

38 (b) ~~An applicant is eligible to hold~~ *individual may apply for and*  
39 *be issued a university license if all of the following are satisfied:*

- 1 (1) ~~The applicant~~ *He or she* is currently employed by the  
2 University of California or Western University of Health Sciences  
3 ~~Sciences~~, as defined in subdivision (a).
- 4 (2) ~~Passes~~ *He or she passes* an examination concerning the  
5 statutes and regulations of the Veterinary Medicine Practice Act,  
6 administered by the board, pursuant to subparagraph (C) of  
7 paragraph (2) of subdivision (a) of Section 4848.
- 8 (3) ~~Successfully~~ *He or she successfully* completes the approved  
9 educational curriculum described in paragraph (5) of subdivision  
10 (b) of Section 4848 on regionally specific and important diseases  
11 and conditions.
- 12 (4) *He or she completes and submits the application specified*  
13 *by the board and pays the application fee, pursuant to subdivision*  
14 *(g) of Section 4905, and the initial license fee, pursuant to*  
15 *subdivision (h) of Section 4905.*
- 16 (c) A university license:  
17 (1) Shall be numbered as described in Section 4847.  
18 (2) Shall *automatically* cease to be valid upon termination or  
19 *cessation* of employment by the University of California or by the  
20 Western University of Health Sciences.  
21 (3) Shall be subject to the license renewal provisions in Section  
22 ~~4846.4~~ *4846.4 and the payment of the renewal fee pursuant to*  
23 *subdivision (i) of Section 4905.*
- 24 (4) Shall be subject to denial, revocation, or suspension pursuant  
25 to Sections ~~4875 and 4883~~ *480, 4875, and 4883.*
- 26 (5) *Authorizes the holder to practice veterinary medicine only*  
27 *at the educational institution described in subdivision (a) and any*  
28 *locations formally affiliated with those institutions.*
- 29 (d) An individual who holds a university license is exempt from  
30 satisfying the license renewal requirements of Section 4846.5.
- 31 ~~SEC. 16.~~  
32 *SEC. 14.* Section 4853.7 is added to the Business and  
33 Professions Code, to read:  
34 4853.7. A premise registration that is not renewed within five  
35 years after its expiration may not be renewed and shall not be  
36 restored, reissued, or reinstated thereafter. However, an application  
37 for a new premise registration may be submitted and obtained if  
38 both of the following conditions are met:  
39 (a) No fact, circumstance, or condition exists that, if the premise  
40 registration was issued, would justify its revocation or suspension.

1 (b) All of the fees that would be required for the initial premise  
2 registration are paid at the time of application.

3 *SEC. 15. Section 4904 of the Business and Professions Code*  
4 *is amended to read:*

5 4904. All fees collected on behalf of the board and all receipts  
6 of every kind and nature shall be reported each month for the month  
7 preceding to the State Controller and at the same time the entire  
8 amount shall be paid into the State Treasury and shall be credited  
9 to the Veterinary Medical Board Contingent Fund. This contingent  
10 fund shall be *available, upon appropriation by the Legislature,*  
11 *for the use of the Veterinary Medical Board and out of it and not*  
12 ~~*otherwise shall be paid all expenses of the board.*~~ *Board.*

13 *SEC. 16. Section 4905 of the Business and Professions Code*  
14 *is amended to read:*

15 4905. The following fees shall be collected by the board and  
16 shall be credited to the Veterinary Medical Board Contingent Fund:

17 (a) The fee for filing an application for examination shall be set  
18 by the board in an amount it determines is reasonably necessary  
19 to provide sufficient funds to carry out the purpose of this chapter,  
20 not to exceed three hundred fifty dollars (\$350).

21 (b) The fee for the California state board examination shall be  
22 set by the board in an amount it determines is reasonably necessary  
23 to provide sufficient funds to carry out the purpose of this chapter,  
24 not to exceed three hundred fifty dollars (\$350).

25 (c) The fee for the Veterinary Medicine Practice Act  
26 examination shall be set by the board in an amount it determines  
27 reasonably necessary to provide sufficient funds to carry out the  
28 purpose of this chapter, not to exceed one hundred dollars (\$100).

29 (d) The initial license fee shall be set by the board not to exceed  
30 five hundred dollars (\$500) except that, if the license is issued less  
31 than one year before the date on which it will expire, then the fee  
32 shall be set by the board at not to exceed two hundred fifty dollars  
33 (\$250). The board may, by appropriate regulation, provide for the  
34 waiver or refund of the initial license fee where the license is issued  
35 less than 45 days before the date on which it will expire.

36 (e) The renewal fee shall be set by the board for each biennial  
37 renewal period in an amount it determines is reasonably necessary  
38 to provide sufficient funds to carry out the purpose of this chapter,  
39 not to exceed five hundred dollars (\$500).

1 (f) The temporary license fee shall be set by the board in an  
2 amount it determines is reasonably necessary to provide sufficient  
3 funds to carry out the purpose of this chapter, not to exceed two  
4 hundred fifty dollars (\$250).

5 (g) *The fee for filing an application for a university license shall*  
6 *be one hundred twenty-five dollars (\$125), which may be revised*  
7 *by the board in regulation but shall not exceed three hundred fifty*  
8 *dollars (\$350).*

9 (h) *The initial license fee for a university license shall be two*  
10 *hundred ninety dollars (\$290), which may be revised by the board*  
11 *in regulation but shall not exceed five hundred dollars (\$500).*

12 (i) *The biennial renewal fee for a university license shall be two*  
13 *hundred ninety dollars (\$290), which may be revised by the board*  
14 *in regulation but shall not exceed five hundred dollars (\$500).*

15 ~~(g)~~

16 (j) The delinquency fee shall be set by the board, not to exceed  
17 fifty dollars (\$50).

18 ~~(h)~~

19 (k) The fee for issuance of a duplicate license is twenty-five  
20 dollars (\$25).

21 ~~(i)~~

22 (l) Any charge made for duplication or other services shall be  
23 set at the cost of rendering the service, except as specified in  
24 subdivision ~~(h)~~: (k).

25 ~~(j)~~

26 (m) The fee for failure to report a change in the mailing address  
27 is twenty-five dollars (\$25).

28 ~~(k)~~

29 (n) The initial and annual renewal fees for registration of  
30 veterinary premises shall be set by the board in an amount not to  
31 exceed four hundred dollars (\$400) annually.

32 ~~(l)~~

33 (o) If the money transferred from the Veterinary Medical Board  
34 Contingent Fund to the General Fund pursuant to the Budget Act  
35 of 1991 is redeposited into the Veterinary Medical Board  
36 Contingent Fund, the fees assessed by the board shall be reduced  
37 correspondingly. However, the reduction shall not be so great as  
38 to cause the Veterinary Medical Board Contingent Fund to have  
39 a reserve of less than three months of annual authorized board  
40 expenditures. The fees set by the board shall not result in a

1 Veterinary Medical Board Contingent Fund reserve of more than  
2 10 months of annual authorized board expenditures.

3 SEC. 17. Section 825 of the Government Code is amended to  
4 read:

5 825. (a) Except as otherwise provided in this section, if an  
6 employee or former employee of a public entity requests the public  
7 entity to defend him or her against any claim or action against him  
8 or her for an injury arising out of an act or omission occurring  
9 within the scope of his or her employment as an employee of the  
10 public entity and the request is made in writing not less than 10  
11 days before the day of trial, and the employee or former employee  
12 reasonably cooperates in good faith in the defense of the claim or  
13 action, the public entity shall pay any judgment based thereon or  
14 any compromise or settlement of the claim or action to which the  
15 public entity has agreed.

16 If the public entity conducts the defense of an employee or  
17 former employee against any claim or action with his or her  
18 reasonable good-faith cooperation, the public entity shall pay any  
19 judgment based thereon or any compromise or settlement of the  
20 claim or action to which the public entity has agreed. However,  
21 where the public entity conducted the defense pursuant to an  
22 agreement with the employee or former employee reserving the  
23 rights of the public entity not to pay the judgment, compromise,  
24 or settlement until it is established that the injury arose out of an  
25 act or omission occurring within the scope of his or her  
26 employment as an employee of the public entity, the public entity  
27 is required to pay the judgment, compromise, or settlement only  
28 if it is established that the injury arose out of an act or omission  
29 occurring in the scope of his or her employment as an employee  
30 of the public entity.

31 Nothing in this section authorizes a public entity to pay that part  
32 of a claim or judgment that is for punitive or exemplary damages.

33 (b) Notwithstanding subdivision (a) or any other provision of  
34 law, a public entity is authorized to pay that part of a judgment  
35 that is for punitive or exemplary damages if the governing body  
36 of that public entity, acting in its sole discretion except in cases  
37 involving an entity of the state government, finds all of the  
38 following:

1 (1) The judgment is based on an act or omission of an employee  
2 or former employee acting within the course and scope of his or  
3 her employment as an employee of the public entity.

4 (2) At the time of the act giving rise to the liability, the employee  
5 or former employee acted, or failed to act, in good faith, without  
6 actual malice and in the apparent best interests of the public entity.

7 (3) Payment of the claim or judgment would be in the best  
8 interests of the public entity.

9 As used in this subdivision with respect to an entity of state  
10 government, “a decision of the governing body” means the  
11 approval of the Legislature for payment of that part of a judgment  
12 that is for punitive damages or exemplary damages, upon  
13 recommendation of the appointing power of the employee or  
14 former employee, based upon the finding by the Legislature and  
15 the appointing authority of the existence of the three conditions  
16 for payment of a punitive or exemplary damages claim. The  
17 provisions of subdivision (a) of Section 965.6 shall apply to the  
18 payment of any claim pursuant to this subdivision.

19 The discovery of the assets of a public entity and the introduction  
20 of evidence of the assets of a public entity shall not be permitted  
21 in an action in which it is alleged that a public employee is liable  
22 for punitive or exemplary damages.

23 The possibility that a public entity may pay that part of a  
24 judgment that is for punitive damages shall not be disclosed in any  
25 trial in which it is alleged that a public employee is liable for  
26 punitive or exemplary damages, and that disclosure shall be  
27 grounds for a mistrial.

28 (c) Except as provided in subdivision (d), if the provisions of  
29 this section are in conflict with the provisions of a memorandum  
30 of understanding reached pursuant to Chapter 10 (commencing  
31 with Section 3500) of Division 4 of Title 1, the memorandum of  
32 understanding shall be controlling without further legislative action,  
33 except that if those provisions of a memorandum of understanding  
34 require the expenditure of funds, the provisions shall not become  
35 effective unless approved by the Legislature in the annual Budget  
36 Act.

37 (d) The subject of payment of punitive damages pursuant to this  
38 section or any other provision of law shall not be a subject of meet  
39 and confer under the provisions of Chapter 10 (commencing with

1 Section 3500) of Division 4 of Title 1, or pursuant to any other  
2 law or authority.

3 (e) Nothing in this section shall affect the provisions of Section  
4 818 prohibiting the award of punitive damages against a public  
5 entity. This section shall not be construed as a waiver of a public  
6 entity's immunity from liability for punitive damages under Section  
7 1981, 1983, or 1985 of Title 42 of the United States Code.

8 (f) (1) Except as provided in paragraph (2), a public entity shall  
9 not pay a judgment, compromise, or settlement arising from a  
10 claim or action against an elected official, if the claim or action is  
11 based on conduct by the elected official by way of tortiously  
12 intervening or attempting to intervene in, or by way of tortiously  
13 influencing or attempting to influence the outcome of, any judicial  
14 action or proceeding for the benefit of a particular party by  
15 contacting the trial judge or any commissioner, court-appointed  
16 arbitrator, court-appointed mediator, or court-appointed special  
17 referee assigned to the matter, or the court clerk, bailiff, or marshal  
18 after an action has been filed, unless he or she was counsel of  
19 record acting lawfully within the scope of his or her employment  
20 on behalf of that party. Notwithstanding Section 825.6, if a public  
21 entity conducted the defense of an elected official against such a  
22 claim or action and the elected official is found liable by the trier  
23 of fact, the court shall order the elected official to pay to the public  
24 entity the cost of that defense.

25 (2) If an elected official is held liable for monetary damages in  
26 the action, the plaintiff shall first seek recovery of the judgment  
27 against the assets of the elected official. If the elected official's  
28 assets are insufficient to satisfy the total judgment, as determined  
29 by the court, the public entity may pay the deficiency if the public  
30 entity is authorized by law to pay that judgment.

31 (3) To the extent the public entity pays any portion of the  
32 judgment or is entitled to reimbursement of defense costs pursuant  
33 to paragraph (1), the public entity shall pursue all available  
34 creditor's remedies against the elected official, including  
35 garnishment, until that party has fully reimbursed the public entity.

36 (4) This subdivision shall not apply to any criminal or civil  
37 enforcement action brought in the name of the people of the State  
38 of California by an elected district attorney, city attorney, or  
39 attorney general.

1 (g) Notwithstanding subdivision (a), a public entity shall pay  
2 for a judgment or settlement for treble damage antitrust awards  
3 against a member of a regulatory board for an act or omission  
4 occurring within the scope of his or her employment as a member  
5 of a regulatory board.

6 (h) *Treble damages awarded pursuant to the federal Clayton*  
7 *Act (Sections 12 to 27 of Title 15 of, and Sections 52 to 53 of Title*  
8 *29 of, the United States Code) for a violation of the federal*  
9 *Sherman Act (Sections 1 to 6, 6a, and 7 of Title 15 of the United*  
10 *States Code) are not punitive or exemplary damages under the*  
11 *Government Claims Act (Division 3.6 (commencing with Section*  
12 *810) of Title 1 of the Government Code) for purposes of this*  
13 *section.*

14 SEC. 18. Section 11346.5 of the Government Code is amended  
15 to read:

16 11346.5. (a) The notice of proposed adoption, amendment, or  
17 repeal of a regulation shall include the following:

18 (1) A statement of the time, place, and nature of proceedings  
19 for adoption, amendment, or repeal of the regulation.

20 (2) Reference to the authority under which the regulation is  
21 proposed and a reference to the particular code sections or other  
22 provisions of law that are being implemented, interpreted, or made  
23 specific.

24 (3) An informative digest drafted in plain English in a format  
25 similar to the Legislative Counsel's digest on legislative bills. The  
26 informative digest shall include the following:

27 (A) A concise and clear summary of existing laws and  
28 regulations, if any, related directly to the proposed action and of  
29 the effect of the proposed action.

30 (B) If the proposed action differs substantially from an existing  
31 comparable federal regulation or statute, a brief description of the  
32 significant differences and the full citation of the federal regulations  
33 or statutes.

34 (C) A policy statement overview explaining the broad objectives  
35 of the regulation and the specific benefits anticipated by the  
36 proposed adoption, amendment, or repeal of a regulation, including,  
37 to the extent applicable, nonmonetary benefits such as the  
38 protection of public health and safety, worker safety, or the  
39 environment, the prevention of discrimination, the promotion of

1 fairness or social equity, and the increase in openness and  
2 transparency in business and government, among other things.

3 (D) An evaluation of whether the proposed regulation is  
4 inconsistent or incompatible with existing state regulations.

5 (4) Any other matters as are prescribed by statute applicable to  
6 the specific state agency or to any specific regulation or class of  
7 regulations.

8 (5) A determination as to whether the regulation imposes a  
9 mandate on local agencies or school districts and, if so, whether  
10 the mandate requires state reimbursement pursuant to Part 7  
11 (commencing with Section 17500) of Division 4.

12 (6) An estimate, prepared in accordance with instructions  
13 adopted by the Department of Finance, of the cost or savings to  
14 any state agency, the cost to any local agency or school district  
15 that is required to be reimbursed under Part 7 (commencing with  
16 Section 17500) of Division 4, other nondiscretionary cost or  
17 savings imposed on local agencies, and the cost or savings in  
18 federal funding to the state.

19 For purposes of this paragraph, “cost or savings” means  
20 additional costs or savings, both direct and indirect, that a public  
21 agency necessarily incurs in reasonable compliance with  
22 regulations.

23 (7) If a state agency, in proposing to adopt, amend, or repeal  
24 any administrative regulation, makes an initial determination that  
25 the action may have a significant, statewide adverse economic  
26 impact directly affecting business, including the ability of  
27 California businesses to compete with businesses in other states,  
28 it shall include the following information in the notice of proposed  
29 action:

30 (A) Identification of the types of businesses that would be  
31 affected.

32 (B) A description of the projected reporting, recordkeeping, and  
33 other compliance requirements that would result from the proposed  
34 action.

35 (C) The following statement: “The (name of agency) has made  
36 an initial determination that the (adoption/amendment/repeal) of  
37 this regulation may have a significant, statewide adverse economic  
38 impact directly affecting business, including the ability of  
39 California businesses to compete with businesses in other states.  
40 The (name of agency) (has/has not) considered proposed

1 alternatives that would lessen any adverse economic impact on  
2 business and invites you to submit proposals. Submissions may  
3 include the following considerations:

4 (i) The establishment of differing compliance or reporting  
5 requirements or timetables that take into account the resources  
6 available to businesses.

7 (ii) Consolidation or simplification of compliance and reporting  
8 requirements for businesses.

9 (iii) The use of performance standards rather than prescriptive  
10 standards.

11 (iv) Exemption or partial exemption from the regulatory  
12 requirements for businesses.”

13 (8) If a state agency, in adopting, amending, or repealing any  
14 administrative regulation, makes an initial determination that the  
15 action will not have a significant, statewide adverse economic  
16 impact directly affecting business, including the ability of  
17 California businesses to compete with businesses in other states,  
18 it shall make a declaration to that effect in the notice of proposed  
19 action. In making this declaration, the agency shall provide in the  
20 record facts, evidence, documents, testimony, or other evidence  
21 upon which the agency relies to support its initial determination.

22 An agency’s initial determination and declaration that a proposed  
23 adoption, amendment, or repeal of a regulation may have or will  
24 not have a significant, adverse impact on businesses, including the  
25 ability of California businesses to compete with businesses in other  
26 states, shall not be grounds for the office to refuse to publish the  
27 notice of proposed action.

28 (9) A description of all cost impacts, known to the agency at  
29 the time the notice of proposed action is submitted to the office,  
30 that a representative private person or business would necessarily  
31 incur in reasonable compliance with the proposed action.

32 If no cost impacts are known to the agency, it shall state the  
33 following:

34 “The agency is not aware of any cost impacts that a  
35 representative private person or business would necessarily incur  
36 in reasonable compliance with the proposed action.”

37 (10) A statement of the results of the economic impact  
38 assessment required by subdivision (b) of Section 11346.3 or the  
39 standardized regulatory impact analysis if required by subdivision  
40 (c) of Section 11346.3, a summary of any comments submitted to

1 the agency pursuant to subdivision (f) of Section 11346.3 and the  
2 agency's response to those comments.

3 (11) The finding prescribed by subdivision (d) of Section  
4 11346.3, if required.

5 (12) (A) A statement that the action would have a significant  
6 effect on housing costs, if a state agency, in adopting, amending,  
7 or repealing any administrative regulation, makes an initial  
8 determination that the action would have that effect.

9 (B) The agency officer designated in paragraph (15) shall make  
10 available to the public, upon request, the agency's evaluation, if  
11 any, of the effect of the proposed regulatory action on housing  
12 costs.

13 (C) The statement described in subparagraph (A) shall also  
14 include the estimated costs of compliance and potential benefits  
15 of a building standard, if any, that were included in the initial  
16 statement of reasons.

17 (D) For purposes of model codes adopted pursuant to Section  
18 18928 of the Health and Safety Code, the agency shall comply  
19 with the requirements of this paragraph only if an interested party  
20 has made a request to the agency to examine a specific section for  
21 purposes of estimating the costs of compliance and potential  
22 benefits for that section, as described in Section 11346.2.

23 (13) If the regulatory action is submitted by a ~~state board on~~  
24 ~~which a controlling number of decisionmakers are active market~~  
25 ~~participants in the market the board regulates, a statement that the~~  
26 ~~adopting agency has evaluated the impact of the proposed~~  
27 ~~regulation on competition, and that the proposed regulation furthers~~  
28 ~~a clearly articulated and affirmatively expressed state law to restrain~~  
29 ~~competition:~~ *board within the Department of Consumer Affairs,*  
30 *a statement that the Director of Consumer Affairs has reviewed*  
31 *the proposed regulation and determined that the proposed*  
32 *regulation furthers state law.*

33 (14) A statement that the adopting agency must determine that  
34 no reasonable alternative considered by the agency or that has  
35 otherwise been identified and brought to the attention of the agency  
36 would be more effective in carrying out the purpose for which the  
37 action is proposed, would be as effective and less burdensome to  
38 affected private persons than the proposed action, or would be  
39 more cost effective to affected private persons and equally effective  
40 in implementing the statutory policy or other provision of law. For

1 a major regulation, as defined by Section 11342.548, proposed on  
2 or after November 1, 2013, the statement shall be based, in part,  
3 upon the standardized regulatory impact analysis of the proposed  
4 regulation, as required by Section 11346.3, as well as upon the  
5 benefits of the proposed regulation identified pursuant to  
6 subparagraph (C) of paragraph (3).

7 (15) The name and telephone number of the agency  
8 representative and designated backup contact person to whom  
9 inquiries concerning the proposed administrative action may be  
10 directed.

11 (16) The date by which comments submitted in writing must  
12 be received to present statements, arguments, or contentions in  
13 writing relating to the proposed action in order for them to be  
14 considered by the state agency before it adopts, amends, or repeals  
15 a regulation.

16 (17) Reference to the fact that the agency proposing the action  
17 has prepared a statement of the reasons for the proposed action,  
18 has available all the information upon which its proposal is based,  
19 and has available the express terms of the proposed action, pursuant  
20 to subdivision (b).

21 (18) A statement that if a public hearing is not scheduled, any  
22 interested person or his or her duly authorized representative may  
23 request, no later than 15 days prior to the close of the written  
24 comment period, a public hearing pursuant to Section 11346.8.

25 (19) A statement indicating that the full text of a regulation  
26 changed pursuant to Section 11346.8 will be available for at least  
27 15 days prior to the date on which the agency adopts, amends, or  
28 repeals the resulting regulation.

29 (20) A statement explaining how to obtain a copy of the final  
30 statement of reasons once it has been prepared pursuant to  
31 subdivision (a) of Section 11346.9.

32 (21) If the agency maintains an Internet Web site or other similar  
33 forum for the electronic publication or distribution of written  
34 material, a statement explaining how materials published or  
35 distributed through that forum can be accessed.

36 (22) If the proposed regulation is subject to Section 11346.6, a  
37 statement that the agency shall provide, upon request, a description  
38 of the proposed changes included in the proposed action, in the  
39 manner provided by Section 11346.6, to accommodate a person  
40 with a visual or other disability for which effective communication

1 is required under state or federal law and that providing the  
2 description of proposed changes may require extending the period  
3 of public comment for the proposed action.

4 (b) The agency representative designated in paragraph (15) of  
5 subdivision (a) shall make available to the public upon request the  
6 express terms of the proposed action. The representative shall also  
7 make available to the public upon request the location of public  
8 records, including reports, documentation, and other materials,  
9 related to the proposed action. If the representative receives an  
10 inquiry regarding the proposed action that the representative cannot  
11 answer, the representative shall refer the inquiry to another person  
12 in the agency for a prompt response.

13 (c) This section shall not be construed in any manner that results  
14 in the invalidation of a regulation because of the alleged inadequacy  
15 of the notice content or the summary or cost estimates, or the  
16 alleged inadequacy or inaccuracy of the housing cost estimates, if  
17 there has been substantial compliance with those requirements.

18 ~~SEC. 19. Section 11349 of the Government Code is amended~~  
19 ~~to read:~~

20 ~~11349. The following definitions govern the interpretation of~~  
21 ~~this chapter:~~

22 (a) ~~“Necessity” means the record of the rulemaking proceeding~~  
23 ~~demonstrates by substantial evidence the need for a regulation to~~  
24 ~~effectuate the purpose of the statute, court decision, or other~~  
25 ~~provision of law that the regulation implements, interprets, or~~  
26 ~~makes specific, taking into account the totality of the record. For~~  
27 ~~purposes of this standard, evidence includes, but is not limited to,~~  
28 ~~facts, studies, and expert opinion.~~

29 (b) ~~“Authority” means the provision of law which permits or~~  
30 ~~obligates the agency to adopt, amend, or repeal a regulation.~~

31 (c) ~~“Clarity” means written or displayed so that the meaning of~~  
32 ~~regulations will be easily understood by those persons directly~~  
33 ~~affected by them.~~

34 (d) ~~“Consistency” means being in harmony with, and not in~~  
35 ~~conflict with or contradictory to, existing statutes, court decisions,~~  
36 ~~or other provisions of law.~~

37 (e) ~~“Reference” means the statute, court decision, or other~~  
38 ~~provision of law which the agency implements, interprets, or makes~~  
39 ~~specific by adopting, amending, or repealing a regulation.~~

1 (f) “Nonduplication” means that a regulation does not serve the  
2 same purpose as a state or federal statute or another regulation.  
3 This standard requires that an agency proposing to amend or adopt  
4 a regulation must identify any state or federal statute or regulation  
5 which is overlapped or duplicated by the proposed regulation and  
6 justify any overlap or duplication. This standard is not intended  
7 to prohibit state agencies from printing relevant portions of  
8 enabling legislation in regulations when the duplication is necessary  
9 to satisfy the clarity standard in paragraph (3) of subdivision (a)  
10 of Section 11349.1. This standard is intended to prevent the  
11 indiscriminate incorporation of statutory language in a regulation.

12 (g) “Competitive impact” means that the record of the  
13 rulemaking proceeding or other documentation demonstrates that  
14 the regulation is authorized by a clearly articulated and  
15 affirmatively expressed state law, that the regulation furthers the  
16 public protection mission of the state agency, and that the impact  
17 on competition is justified in light of the applicable regulatory  
18 rationale for the regulation.

19 SEC. 20. Section 11349.1 of the Government Code is amended  
20 to read:

21 11349.1. (a) The office shall review all regulations adopted,  
22 amended, or repealed pursuant to the procedure specified in Article  
23 5 (commencing with Section 11346) and submitted to it for  
24 publication in the California Code of Regulations Supplement and  
25 for transmittal to the Secretary of State and make determinations  
26 using all of the following standards:

27 (1) Necessity.

28 (2) Authority.

29 (3) Clarity.

30 (4) Consistency.

31 (5) Reference.

32 (6) Nonduplication.

33 (7) For those regulations submitted by a state board on which  
34 a controlling number of decisionmakers are active market  
35 participants in the market the board regulates, the office shall  
36 review for competitive impact.

37 In reviewing regulations pursuant to this section, the office shall  
38 restrict its review to the regulation and the record of the rulemaking  
39 except as directed in subdivision (h). The office shall approve the

1 regulation or order of repeal if it complies with the standards set  
2 forth in this section and with this chapter.

3 ~~(b) In reviewing proposed regulations for the criteria in~~  
4 ~~subdivision (a), the office may consider the clarity of the proposed~~  
5 ~~regulation in the context of related regulations already in existence.~~

6 ~~(c) The office shall adopt regulations governing the procedures~~  
7 ~~it uses in reviewing regulations submitted to it. The regulations~~  
8 ~~shall provide for an orderly review and shall specify the methods,~~  
9 ~~standards, presumptions, and principles the office uses, and the~~  
10 ~~limitations it observes, in reviewing regulations to establish~~  
11 ~~compliance with the standards specified in subdivision (a). The~~  
12 ~~regulations adopted by the office shall ensure that it does not~~  
13 ~~substitute its judgment for that of the rulemaking agency as~~  
14 ~~expressed in the substantive content of adopted regulations.~~

15 ~~(d) The office shall return any regulation subject to this chapter~~  
16 ~~to the adopting agency if any of the following occur:~~

17 ~~(1) The adopting agency has not prepared the estimate required~~  
18 ~~by paragraph (6) of subdivision (a) of Section 11346.5 and has not~~  
19 ~~included the data used and calculations made and the summary~~  
20 ~~report of the estimate in the file of the rulemaking.~~

21 ~~(2) The agency has not complied with Section 11346.3.~~  
22 ~~“Nonecompliance” means that the agency failed to complete the~~  
23 ~~economic impact assessment or standardized regulatory impact~~  
24 ~~analysis required by Section 11346.3 or failed to include the~~  
25 ~~assessment or analysis in the file of the rulemaking proceeding as~~  
26 ~~required by Section 11347.3.~~

27 ~~(3) The adopting agency has prepared the estimate required by~~  
28 ~~paragraph (6) of subdivision (a) of Section 11346.5, the estimate~~  
29 ~~indicates that the regulation will result in a cost to local agencies~~  
30 ~~or school districts that is required to be reimbursed under Part 7~~  
31 ~~(commencing with Section 17500) of Division 4, and the adopting~~  
32 ~~agency fails to do any of the following:~~

33 ~~(A) Cite an item in the Budget Act for the fiscal year in which~~  
34 ~~the regulation will go into effect as the source from which the~~  
35 ~~Controller may pay the claims of local agencies or school districts.~~

36 ~~(B) Cite an accompanying bill appropriating funds as the source~~  
37 ~~from which the Controller may pay the claims of local agencies~~  
38 ~~or school districts.~~

39 ~~(C) Attach a letter or other documentation from the Department~~  
40 ~~of Finance which states that the Department of Finance has~~

1 approved a request by the agency that funds be included in the  
2 Budget Bill for the next following fiscal year to reimburse local  
3 agencies or school districts for the costs mandated by the  
4 regulation.

5 ~~(D) Attach a letter or other documentation from the Department~~  
6 ~~of Finance which states that the Department of Finance has~~  
7 ~~authorized the augmentation of the amount available for~~  
8 ~~expenditure under the agency's appropriation in the Budget Act~~  
9 ~~which is for reimbursement pursuant to Part 7 (commencing with~~  
10 ~~Section 17500) of Division 4 to local agencies or school districts~~  
11 ~~from the unencumbered balances of other appropriations in the~~  
12 ~~Budget Act and that this augmentation is sufficient to reimburse~~  
13 ~~local agencies or school districts for their costs mandated by the~~  
14 ~~regulation.~~

15 ~~(4) The proposed regulation conflicts with an existing state~~  
16 ~~regulation and the agency has not identified the manner in which~~  
17 ~~the conflict may be resolved.~~

18 ~~(5) The agency did not make the alternatives determination as~~  
19 ~~required by paragraph (4) of subdivision (a) of Section 11346.9.~~

20 ~~(6) The office decides that the record of the rulemaking~~  
21 ~~proceeding or other documentation for the proposed regulation~~  
22 ~~does not demonstrate that the regulation is authorized by a clearly~~  
23 ~~articulated and affirmatively expressed state law, that the regulation~~  
24 ~~does not further the public protection mission of the state agency,~~  
25 ~~or that the impact on competition is not justified in light of the~~  
26 ~~applicable regulatory rationale for the regulation.~~

27 ~~(e) The office shall notify the Department of Finance of all~~  
28 ~~regulations returned pursuant to subdivision (d).~~

29 ~~(f) The office shall return a rulemaking file to the submitting~~  
30 ~~agency if the file does not comply with subdivisions (a) and (b)~~  
31 ~~of Section 11347.3. Within three state working days of the receipt~~  
32 ~~of a rulemaking file, the office shall notify the submitting agency~~  
33 ~~of any deficiency identified. If no notice of deficiency is mailed~~  
34 ~~to the adopting agency within that time, a rulemaking file shall be~~  
35 ~~deemed submitted as of the date of its original receipt by the office.~~  
36 ~~A rulemaking file shall not be deemed submitted until each~~  
37 ~~deficiency identified under this subdivision has been corrected.~~

38 ~~(g) Notwithstanding any other law, return of the regulation to~~  
39 ~~the adopting agency by the office pursuant to this section is the~~  
40 ~~exclusive remedy for a failure to comply with subdivision (e) of~~

1 ~~Section 11346.3 or paragraph (10) of subdivision (a) of Section~~  
2 ~~11346.5.~~

3 ~~(h) The office may designate, employ, or contract for the~~  
4 ~~services of independent antitrust or applicable economic experts~~  
5 ~~when reviewing proposed regulations for competitive impact.~~  
6 ~~When reviewing a regulation for competitive impact, the office~~  
7 ~~shall do all of the following:~~

8 ~~(1) If the Director of Consumer Affairs issued a written decision~~  
9 ~~pursuant to subdivision (c) of Section 109 of the Business and~~  
10 ~~Professions Code, the office shall review and consider the decision~~  
11 ~~and all supporting documentation in the rulemaking file.~~

12 ~~(2) Consider whether the anticompetitive effects of the proposed~~  
13 ~~regulation are clearly outweighed by the public policy merits.~~

14 ~~(3) Provide a written opinion setting forth the office's findings~~  
15 ~~and substantive conclusions under paragraph (2), including, but~~  
16 ~~not limited to, whether rejection or modification of the proposed~~  
17 ~~regulation is necessary to ensure that restraints of trade are related~~  
18 ~~to and advance the public policy underlying the applicable~~  
19 ~~regulatory rationale.~~

20 ~~SEC. 21.~~

21 ~~SEC. 19.~~ No reimbursement is required by this act pursuant to  
22 Section 6 of Article XIII B of the California Constitution because  
23 the only costs that may be incurred by a local agency or school  
24 district will be incurred because 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.

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THIRD READING

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Bill No: SB 1195  
Author: Hill (D)  
Amended: 6/1/16  
Vote: 21

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SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 6-0, 4/18/16  
AYES: Hill, Block, Galgiani, Hernandez, Mendoza, Wieckowski  
NO VOTE RECORDED: Bates, Berryhill, Jackson

SENATE APPROPRIATIONS COMMITTEE: 5-0, 5/27/16  
AYES: Lara, Beall, Hill, McGuire, Mendoza  
NO VOTE RECORDED: Bates, Nielsen

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**SUBJECT:** Professions and vocations: board actions

**SOURCE:** Author

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**DIGEST:** This bill makes various changes that are intended to improve the effectiveness of the Veterinary Medical Board (VMB), extends the VMB's sunset dates. This bill also authorizes the Director of the Department of Consumer Affairs (DCA) to review, veto, or modify actions and decisions of DCA boards to ensure such actions or decisions conform with public policy; and prohibits any board executive officer (EO) from being an actively licensed member of the profession the board regulates.

**ANALYSIS:**

Existing law:

- 1) Establishes the California Veterinary Medicine Practice Act until January 1, 2017, and requires the VMB within the DCA to, among other things, license and regulate veterinarians, registered veterinary technicians (RVTs), RVT

schools and programs, and veterinary premises. (Business and Professions Code(BPC) §§ 4800 et seq.)

- 2) Makes decisions of any board within the DCA pertaining to setting standards, conducting examinations, passing candidates, and revoking licenses final, except as specified, and provides that those decisions are not subject to review by the Director of the DCA. (BPC § 109 (a))
- 3) Authorizes the Director to initiate an investigation of any allegations of misconduct in the preparation, administration, or scoring of any examination which is administered by a board, or in the review and qualifications which are part of the licensing process of any board. (BPC § 109 (b))
- 4) Requires regulations, except those pertaining to examinations and qualifications for licensure and fee changes proposed or promulgated by a board within the DCA, to comply with certain requirements before the regulation or fee change can take effect, including that the Director is required to be notified of the rule or regulation and given 30 days to disapprove the regulation. (BPC § 313.1)
- 5) Prohibits a rule or regulation that is disapproved by the Director from having any force or effect, unless the Director's disapproval is overridden by a unanimous vote of the members of the board, as specified. (BPC § 313.1 (e)(3))
- 6) Provides, until January 1, 2018, for the licensure and regulation of registered nurses by the Board of Registered Nursing (BRN) which is within the DCA, and requires the BRN to appoint an EO who is a nurse currently licensed by the BRN. (BPC § 2708)

This bill:

- 1) Extends the sunset date for the VMB and the VMB EO until January 1, 2021.
- 2) Authorizes a veterinarian and RVT who is under the direct supervision of a veterinarian with a current and active license to compound a drug for animal use pursuant to federal regulations and in accordance with regulations promulgated by the VMB.
- 3) Requires veterinarians engaged in practice of veterinary medicine employed by the University of California or by Western University of Health Sciences to be licensed as a veterinarian in the state or hold a university license issued by the

VMB, and that the applicant for a university license meet certain requirements, including that the applicant passes a specified exam.

- 4) Provides that a veterinary premise registration may be canceled after five years of delinquency, unless the VMB finds circumstances or conditions that would justify a new premise registration to be issued.
- 5) Makes technical changes to BPC regarding the VMB.
- 6) Authorizes the Director to review actions or decisions related to the setting of professional standards and conducting examinations.
- 7) Authorizes the Director, upon his or her own initiative, and requires the Director upon the request of Legislature or the DCA board making the subject decision or action, to review a decision or other action, except for disciplinary actions, to determine whether it furthers state law.
- 8) Authorizes the Director, after reviewing a board action or decision, to approve, disapprove, modify, or request further information from the board regarding the action or decision.
- 9) Requires the Director to post on the DCA's Web site his or her final written decision on the board action or decision and the reasons for his or her decision within 90 days.
- 10) Requires, commencing March 1, 2017, the Director to annually report to the chairs of specified committees of the Legislature information regarding the Director's disapprovals, modifications, or findings from any audit, review or monitoring and evaluation.
- 11) Prohibits a DCA board from overruling a Director's decision to disapprove a regulation.
- 12) Prohibits any DCA board's executive director from being an active licensee of the profession the board regulates.
- 13) Clarifies that treble damages awarded pursuant to the Clayton Act are not punitive or exemplary damages.

## **Background**

In March of 2015, the Senate Business, Professions, and Economic Development Committee and the Assembly Business and Professions Committee (Committees) conducted three joint oversight hearings to review 12 regulatory entities including the VMB. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by staff of the Committees and that are reflected in the Background Papers prepared by Committee staff for each agency and program reviewed this year.

Changes to the DCA are in response to a recent U.S. Supreme Court decision, *North Carolina State Board of Dental Examiners v. FTC*, regarding potential anticompetitive actions taken by licensing boards which could result in antitrust litigation. In 2010, the Federal Trade Commission (FTC) brought an administrative complaint against the North Carolina State Board of Dental Examiners (Board) for excluding non-dentists from the practice of teeth whitening. The FTC alleged that the Board's decision was anticompetitive under the FTC Act because the Board was not acting as a state agent. The Board appealed to the Supreme Court, arguing that it was acting on behalf of the government and should be afforded immunity from antitrust lawsuits.

The Supreme Court ruled in the FTC's favor, stating that regulatory bodies comprised of active market participants in the occupation regulated by that body may invoke state-action antitrust immunity only if it is subject to active supervision by the state.

The Supreme Court has stated that to qualify as active supervision "the [state] supervisor must have the *power to veto or modify* particular decisions to ensure they accord with state policy." *N. Carolina State Bd.*, 135 S. Ct. at 1116.

In order to establish active supervision for California boards, this bill builds upon the current authority of the Director DCA to review certain board decisions (except those relating to disciplinary actions) in order to ensure they conform with state policy. This bill also ensures that DCA board members are not personally liable in the event they are sued in an antitrust matter related to their board service.

This bill also prohibits an active licensee in the profession a board regulates from serving as EO of a DCA board. This provision will apply to all boards, but currently only the BRN requires its EO to be an active licensee. There are no other licensees serving as EOs of other DCA boards. Because the EO has such influence on a board's proceedings, especially with regards to disciplinary decisions, it is

important to comply with the Supreme Court's holding that this person not be an "active" market participant. The California Nurses Association has expressed concern that this bill will prohibit a nurse from serving as the BRN's EO. However, this is not the case. A retired nurse or a nurse with a license on "inactive" status may serve as the EO under this bill.

The author's office has worked closely with the DCA, the Governor's and Attorney General's offices in crafting this bill.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, this bill will result in one-time costs of \$600,000 and ongoing costs of \$570,000 per year for DCA to establish an Anti-Trust Unit to review board actions for their impacts on trade, costs which would be paid from the DCA boards and bureaus, which are supported by license fees. This bill would also result in ongoing costs of about \$4.8 million per year for the continued operation of the VMB, funded through licensing fees. Minor costs are anticipated by the VMB for the changes in the bill to its statutory requirements and procedures. This bill would result in ongoing costs of about \$160,000 per year for the Board of Pharmacy to coordinate inspection and enforcement activities with respect to the regulation of drug compounding on veterinary premises .

**SUPPORT:** (Verified 5/31/16)

Center for Public Interest Law

**OPPOSITION:** (Verified 5/31/16)

California Nurses Association  
California Pharmacists Association  
California Psychiatric Association  
California Society of Certified Public Accountants

**ARGUMENTS IN SUPPORT:** The Center for Public Interest Law (CPIL) supports this bill and just suggests some minor amendments to clear up inconsistency in the language. The CPIL makes clear that boards are not immune from federal antitrust scrutiny unless they are controlled by public members (and not licensees) or the state has created a mechanism to actively supervise the acts and decisions of these boards to ensure they benefit the public, and not merely the professions themselves. "Indeed, failure to approve SB 1195 will continue to expose consumers to anticompetitive actions and decisions made by occupational licensing boards within the Department of Consumer Affairs (DCA) that are

controlled by ‘active market participants’ in the relevant market, and will expose DCA boards and board members to potential federal antitrust criminal and civil liability.”

The CPIL further argues that the opposition to this bill registered by trade associations misunderstands federal antitrust law and the *North Carolina* decision itself. States have to either require occupational licensing boards to be controlled by public members, or they can create an “adequate state supervision” mechanism to oversee, review, veto, and/or modify acts and decisions that violate federal antitrust laws made by boards controlled by active market participants. In addition, CPIL supports the provision which eliminates the requirements that the EO of the BRN be a licensee of the Board.

**ARGUMENTS IN OPPOSITION:** The California Pharmacists Association, the California Psychiatric Association and the California Society of Certified Public Accountants writes, “We do not believe that the additional authority the bill would give to the Director of Consumer Affairs will best serve our collective goals of protecting the legitimate actions of licensing boards.”

The California Nurses Association are also concerned about the new authority of the director, stating that “The DCA director, no matter who fills the position, may be influenced or swayed by political agendas designed to overturn board actions and regulations somehow vaguely harmful to corporate profits or, as part of a general ideological bias against government and regulations. This power is particularly dangerous when countenanced in one person, subject to the varying winds of political pressure.”

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6/1/16 19:23:19

\*\*\*\* END \*\*\*\*

**SB**

**1217**

**Introduced by Senator Stone**

February 18, 2016

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An act to amend Sections 800, 801, 801.1, and 802 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1217, as amended, Stone. Healing arts: reporting requirements: professional liability resulting in death or personal injury.

Existing law establishes within the Department of Consumer Affairs various boards that license and regulate the practice of various professions and vocations, including those relating to the healing arts. Existing law requires each healing arts licensing board to create and maintain a central file containing an individual historical record on each person who holds a license from that board. Existing law requires that the individual historical record contain any reported judgment or settlement requiring the licensee or the licensee's insurer to pay over \$3,000 in damages for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or rendering unauthorized professional service. *Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy, which is within the Department of Consumer Affairs.*

This bill ~~would~~ *would, notwithstanding the above provision,* instead require the record to contain reported judgments or settlements with damages over ~~\$10,000~~. *\$10,000 for persons licensed under the Pharmacy Act.*

Existing law requires an insurer providing professional liability insurance to a physician and surgeon, a governmental agency that self-insures a physician and surgeon or, if uninsured, a physician and surgeon himself or herself, to report to the respective licensing board information concerning settlements over \$30,000, arbitration awards in any amount, and judgments in any amount in malpractice actions to the practitioner's licensing board. Existing law provides that information concerning professional liability settlements, judgments, and arbitration awards of over \$10,000 in damages arising from death or personal injury must be reported to the respective licensing boards of specified healing arts practitioners including, among others, licensed professional clinical counselors, licensed dentists, and licensed veterinarians. Existing law provides that, for other specified healing arts practitioners including, among others, licensed educational psychologists, licensed nurses, and licensed pharmacists, information concerning professional liability settlements, judgments, and arbitration awards of over \$3,000 in damages arising from death or personal injury shall be reported to their respective licensing boards.

This bill would raise the minimum dollar amount triggering those reporting requirements from \$3,000 to ~~\$10,000~~ *\$10,000 for persons licensed under the Pharmacy Law*.

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 800 of the Business and Professions Code  
2 is amended to read:  
3 800. (a) The Medical Board of California, the Board of  
4 Psychology, the Dental Board of California, the Dental Hygiene  
5 Committee of California, the Osteopathic Medical Board of  
6 California, the State Board of Chiropractic Examiners, the Board  
7 of Registered Nursing, the Board of Vocational Nursing and  
8 Psychiatric Technicians of the State of California, the State Board  
9 of Optometry, the Veterinary Medical Board, the Board of  
10 Behavioral Sciences, the Physical Therapy Board of California,  
11 the California State Board of Pharmacy, the Speech-Language  
12 Pathology and Audiology and Hearing Aid Dispensers Board, the  
13 California Board of Occupational Therapy, the Acupuncture Board,  
14 and the Physician Assistant Board shall each separately create and

1 maintain a central file of the names of all persons who hold a  
2 license, certificate, or similar authority from that board. Each  
3 central file shall be created and maintained to provide an individual  
4 historical record for each licensee with respect to the following  
5 information:

6 (1) Any conviction of a crime in this or any other state that  
7 constitutes unprofessional conduct pursuant to the reporting  
8 requirements of Section 803.

9 (2) (A) Any judgment or settlement requiring the licensee or  
10 his or her insurer to pay any amount of damages in excess of ~~ten~~  
11 ~~thousand dollars (\$10,000)~~ *three thousand dollars (\$3,000)* for  
12 any claim that injury or death was proximately caused by the  
13 licensee's negligence, error or omission in practice, or by rendering  
14 unauthorized professional services, pursuant to the reporting  
15 requirements of Section 801 or 802.

16 (B) *Notwithstanding subparagraph (A), any judgment or*  
17 *settlement requiring a person licensed pursuant to Chapter 9*  
18 *(commencing with Section 4000) or his or her insurer to pay any*  
19 *amount of damages in excess of ten thousand dollars (\$10,000)*  
20 *for any claim that injury or death was proximately caused by the*  
21 *licensee's negligence, error or omission in practice, or by*  
22 *rendering unauthorized professional services, pursuant to the*  
23 *reporting requirements of Section 801 or 802.*

24 (3) Any public complaints for which provision is made pursuant  
25 to subdivision (b).

26 (4) Disciplinary information reported pursuant to Section 805,  
27 including any additional exculpatory or explanatory statements  
28 submitted by the licentiate pursuant to subdivision (f) of Section  
29 805. If a court finds, in a final judgment, that the peer review  
30 resulting in the 805 report was conducted in bad faith and the  
31 licensee who is the subject of the report notifies the board of that  
32 finding, the board shall include that finding in the central file. For  
33 purposes of this paragraph, "peer review" has the same meaning  
34 as defined in Section 805.

35 (5) Information reported pursuant to Section 805.01, including  
36 any explanatory or exculpatory information submitted by the  
37 licensee pursuant to subdivision (b) of that section.

38 (b) (1) Each board shall prescribe and promulgate forms on  
39 which members of the public and other licensees or certificate  
40 holders may file written complaints to the board alleging any act

1 of misconduct in, or connected with, the performance of  
2 professional services by the licensee.

3 (2) If a board, or division thereof, a committee, or a panel has  
4 failed to act upon a complaint or report within five years, or has  
5 found that the complaint or report is without merit, the central file  
6 shall be purged of information relating to the complaint or report.

7 (3) Notwithstanding this subdivision, the Board of Psychology,  
8 the Board of Behavioral Sciences, and the Respiratory Care Board  
9 of California shall maintain complaints or reports as long as each  
10 board deems necessary.

11 (c) (1) The contents of any central file that are not public  
12 records under any other provision of law shall be confidential  
13 except that the licensee involved, or his or her counsel or  
14 representative, shall have the right to inspect and have copies made  
15 of his or her complete file except for the provision that may  
16 disclose the identity of an information source. For the purposes of  
17 this section, a board may protect an information source by  
18 providing a copy of the material with only those deletions necessary  
19 to protect the identity of the source or by providing a  
20 comprehensive summary of the substance of the material.  
21 Whichever method is used, the board shall ensure that full  
22 disclosure is made to the subject of any personal information that  
23 could reasonably in any way reflect or convey anything detrimental,  
24 disparaging, or threatening to a licensee's reputation, rights,  
25 benefits, privileges, or qualifications, or be used by a board to  
26 make a determination that would affect a licensee's rights, benefits,  
27 privileges, or qualifications. The information required to be  
28 disclosed pursuant to Section 803.1 shall not be considered among  
29 the contents of a central file for the purposes of this subdivision.

30 (2) The licensee may, but is not required to, submit any  
31 additional exculpatory or explanatory statement or other  
32 information that the board shall include in the central file.

33 (3) Each board may permit any law enforcement or regulatory  
34 agency when required for an investigation of unlawful activity or  
35 for licensing, certification, or regulatory purposes to inspect and  
36 have copies made of that licensee's file, unless the disclosure is  
37 otherwise prohibited by law.

38 (4) These disclosures shall effect no change in the confidential  
39 status of these records.

1 SEC. 2. Section 801 of the Business and Professions Code is  
2 amended to read:

3 801. (a) Except as provided in Section 801.01 and ~~subdivision~~  
4 ~~(b) subdivisions (b), (c), (d), and (e)~~ of this section, every insurer  
5 providing professional liability insurance to a person who holds a  
6 license, certificate, or similar authority from or under any agency  
7 specified in subdivision (a) of Section 800 shall send a complete  
8 report to that agency as to any settlement or arbitration award over  
9 ~~ten thousand dollars (\$10,000)~~ *three thousand dollars (\$3,000)* of  
10 a claim or action for damages for death or personal injury caused  
11 by that person's negligence, error, or omission in practice, or by  
12 his or her rendering of unauthorized professional services. The  
13 report shall be sent within 30 days after the written settlement  
14 agreement has been reduced to writing and signed by all parties  
15 thereto or within 30 days after service of the arbitration award on  
16 the parties.

17 *(b) Every insurer providing professional liability insurance to*  
18 *a person licensed pursuant to Chapter 13 (commencing with*  
19 *Section 4980), Chapter 14 (commencing with Section 4991), or*  
20 *Chapter 16 (commencing with Section 4999.10) shall send a*  
21 *complete report to the Board of Behavioral Sciences as to any*  
22 *settlement or arbitration award over ten thousand dollars*  
23 *(\$10,000) of a claim or action for damages for death or personal*  
24 *injury caused by that person's negligence, error, or omission in*  
25 *practice, or by his or her rendering of unauthorized professional*  
26 *services. The report shall be sent within 30 days after the written*  
27 *settlement agreement has been reduced to writing and signed by*  
28 *all parties thereto or within 30 days after service of the arbitration*  
29 *award on the parties.*

30 *(c) Every insurer providing professional liability insurance to*  
31 *a dentist licensed pursuant to Chapter 4 (commencing with Section*  
32 *1600) shall send a complete report to the Dental Board of*  
33 *California as to any settlement or arbitration award over ten*  
34 *thousand dollars (\$10,000) of a claim or action for damages for*  
35 *death or personal injury caused by that person's negligence, error,*  
36 *or omission in practice, or rendering of unauthorized professional*  
37 *services. The report shall be sent within 30 days after the written*  
38 *settlement agreement has been reduced to writing and signed by*  
39 *all parties thereto or within 30 days after service of the arbitration*  
40 *award on the parties.*

1 (b)

2 (d) Every insurer providing liability insurance to a veterinarian  
3 licensed pursuant to Chapter 11 (commencing with Section 4800)  
4 shall send a complete report to the Veterinary Medical Board of  
5 any settlement or arbitration award over ten thousand dollars  
6 (\$10,000) of a claim or action for damages for death or injury  
7 caused by that person's negligence, error, or omission in practice,  
8 or rendering of unauthorized professional service. The report shall  
9 be sent within 30 days after the written settlement agreement has  
10 been reduced to writing and signed by all parties thereto or within  
11 30 days after service of the arbitration award on the parties.

12 (e) *Every insurer providing liability insurance to a person*  
13 *licensed pursuant to Chapter 9 (commencing with Section 4000)*  
14 *shall send a complete report to the California State Board of*  
15 *Pharmacy of any settlement or arbitration award over ten thousand*  
16 *dollars (\$10,000) of a claim or action for damages for death or*  
17 *injury caused by that person's negligence, error, or omission in*  
18 *practice, or rendering of unauthorized professional service. The*  
19 *report shall be sent within 30 days after the written settlement*  
20 *agreement has been reduced to writing and signed by all parties*  
21 *thereto or within 30 days after service of the arbitration award on*  
22 *the parties.*

23 (e)

24 (f) The insurer shall notify the claimant, or if the claimant is  
25 represented by counsel, the insurer shall notify the claimant's  
26 attorney, that the report required by subdivision (a) has been sent  
27 to the agency. If the attorney has not received this notice within  
28 45 days after the settlement was reduced to writing and signed by  
29 all of the parties, the arbitration award was served on the parties,  
30 or the date of entry of the civil judgment, the attorney shall make  
31 the report to the agency.

32 (d)

33 (g) ~~Notwithstanding any other provision of law, no insurer shall~~  
34 ~~enter into a settlement without the written consent of the insured,~~  
35 ~~except that this prohibition shall not void any settlement entered~~  
36 ~~into without that written consent. The requirement of written~~  
37 ~~consent shall only be waived by both the insured and the insurer.~~  
38 ~~This section shall only apply to a settlement on a policy of~~  
39 ~~insurance executed or renewed on or after January 1, 1971.~~

1 SEC. 3. Section 801.1 of the Business and Professions Code  
2 is amended to read:

3 801.1. (a) Every state or local governmental agency that  
4 self-insures a person who holds a license, certificate, or similar  
5 authority from or under any agency specified in subdivision (a) of  
6 Section 800 (except a person licensed pursuant to Chapter 3  
7 (commencing with Section 1200) or Chapter 5 (commencing with  
8 Section 2000) or the Osteopathic Initiative Act) shall send a  
9 complete report to that agency as to any settlement or arbitration  
10 award over ~~ten thousand dollars (\$10,000)~~ *three thousand dollars*  
11 *(\$3,000)* of a claim or action for damages for death or personal  
12 injury caused by that person's negligence, error, or omission in  
13 practice, or rendering of unauthorized professional services. The  
14 report shall be sent within 30 days after the written settlement  
15 agreement has been reduced to writing and signed by all parties  
16 thereto or within 30 days after service of the arbitration award on  
17 the parties.

18 (b) *Every state or local governmental agency that self-insures*  
19 *a person licensed pursuant to Chapter 13 (commencing with*  
20 *Section 4980), Chapter 14 (commencing with Section 4991), or*  
21 *Chapter 16 (commencing with Section 4999.10) shall send a*  
22 *complete report to the Board of Behavioral Science Examiners as*  
23 *to any settlement or arbitration award over ten thousand dollars*  
24 *(\$10,000) of a claim or action for damages for death or personal*  
25 *injury caused by that person's negligence, error, or omission in*  
26 *practice, or rendering of unauthorized professional services. The*  
27 *report shall be sent within 30 days after the written settlement*  
28 *agreement has been reduced to writing and signed by all parties*  
29 *thereto or within 30 days after service of the arbitration award on*  
30 *the parties.*

31 (c) *Every state or local governmental agency that self-insures*  
32 *a person licensed pursuant to Chapter 9 (commencing with Section*  
33 *4000) shall send a complete report to the California State Board*  
34 *of Pharmacy as to any settlement or arbitration award over ten*  
35 *thousand dollars (\$10,000) of a claim or action for damages for*  
36 *death or personal injury caused by that person's negligence, error,*  
37 *or omission in practice, or rendering of unauthorized professional*  
38 *services. The report shall be sent within 30 days after the written*  
39 *settlement agreement has been reduced to writing and signed by*

1 *all parties thereto or within 30 days after service of the arbitration*  
2 *award on the parties.*

3 SEC. 4. Section 802 of the Business and Professions Code is  
4 amended to read:

5 802. (a) Every settlement, judgment, or arbitration award over  
6 ~~ten thousand dollars (\$10,000)~~ *three thousand dollars (\$3,000)* of  
7 a claim or action for damages for death or personal injury caused  
8 by negligence, error or omission in practice, or by the unauthorized  
9 rendering of professional services, by a person who holds a license,  
10 certificate, or other similar authority from an agency specified in  
11 subdivision (a) of Section 800 (except a person licensed pursuant  
12 to Chapter 3 (commencing with Section 1200) or Chapter 5  
13 (commencing with Section 2000) or the Osteopathic Initiative Act)  
14 who does not possess professional liability insurance as to that  
15 claim shall, within 30 days after the written settlement agreement  
16 has been reduced to writing and signed by all the parties thereto  
17 or 30 days after service of the judgment or arbitration award on  
18 the parties, be reported to the agency that issued the license,  
19 certificate, or similar authority. A complete report shall be made  
20 by appropriate means by the person or his or her counsel, with a  
21 copy of the communication to be sent to the claimant through his  
22 or her counsel if the person is so represented, or directly if he or  
23 she is not. If, within 45 days of the conclusion of the written  
24 settlement agreement or service of the judgment or arbitration  
25 award on the parties, counsel for the claimant (or if the claimant  
26 is not represented by counsel, the claimant himself or herself) has  
27 not received a copy of the report, he or she shall himself or herself  
28 make the complete report. Failure of the licensee or claimant (or,  
29 if represented by counsel, their counsel) to comply with this section  
30 is a public offense punishable by a fine of not less than fifty dollars  
31 (\$50) or more than five hundred dollars (\$500). Knowing and  
32 intentional failure to comply with this section or conspiracy or  
33 collusion not to comply with this section, or to hinder or impede  
34 any other person in the compliance, is a public offense punishable  
35 by a fine of not less than five thousand dollars (\$5,000) nor more  
36 than fifty thousand dollars (\$50,000).

37 (b) *Every settlement, judgment, or arbitration award over ten*  
38 *thousand dollars (\$10,000) of a claim or action for damages for*  
39 *death or personal injury caused by negligence, error or omission*  
40 *in practice, or by the unauthorized rendering of professional*

1 services, by a marriage and family therapist, a clinical social  
2 worker, or a professional clinical counselor licensed pursuant to  
3 Chapter 13 (commencing with Section 4980), Chapter 14  
4 (commencing with Section 4991), or Chapter 16 (commencing  
5 with Section 4999.10), respectively, who does not possess  
6 professional liability insurance as to that claim shall within 30  
7 days after the written settlement agreement has been reduced to  
8 writing and signed by all the parties thereto or 30 days after service  
9 of the judgment or arbitration award on the parties be reported  
10 to the agency that issued the license, certificate, or similar  
11 authority. A complete report shall be made by appropriate means  
12 by the person or his or her counsel, with a copy of the  
13 communication to be sent to the claimant through his or her  
14 counsel if he or she is so represented, or directly if he or she is  
15 not. If, within 45 days of the conclusion of the written settlement  
16 agreement or service of the judgment or arbitration award on the  
17 parties, counsel for the claimant (or if he or she is not represented  
18 by counsel, the claimant himself or herself) has not received a  
19 copy of the report, he or she shall himself or herself make a  
20 complete report. Failure of the marriage and family therapist,  
21 clinical social worker, or professional clinical counselor or  
22 claimant (or, if represented by counsel, his or her counsel) to  
23 comply with this section is a public offense punishable by a fine  
24 of not less than fifty dollars (\$50) nor more than five hundred  
25 dollars (\$500). Knowing and intentional failure to comply with  
26 this section, or conspiracy or collusion not to comply with this  
27 section or to hinder or impede any other person in that compliance,  
28 is a public offense punishable by a fine of not less than five  
29 thousand dollars (\$5,000) nor more than fifty thousand dollars  
30 (\$50,000).

31 (c) Every settlement, judgment, or arbitration award over ten  
32 thousand dollars (\$10,000) of a claim or action for damages for  
33 death or personal injury caused by negligence, error or omission  
34 in practice, or by the unauthorized rendering of professional  
35 services, by a person licensed pursuant to Chapter 9 (commencing  
36 with Section 4000) who does not possess professional liability  
37 insurance as to that claim shall within 30 days after the written  
38 settlement agreement has been reduced to writing and signed by  
39 all the parties thereto or 30 days after service of the judgment or  
40 arbitration award on the parties be reported to the California

1 *State Board of Pharmacy. A complete report shall be made by*  
2 *appropriate means by the person or his or her counsel, with a copy*  
3 *of the communication to be sent to the claimant through his or her*  
4 *counsel if he or she is so represented, or directly if he or she is*  
5 *not. If, within 45 days of the conclusion of the written settlement*  
6 *agreement or service of the judgment or arbitration award on the*  
7 *parties, counsel for the claimant (or if he or she is not represented*  
8 *by counsel, the claimant himself or herself) has not received a*  
9 *copy of the report, he or she shall himself or herself make a*  
10 *complete report. Failure of the person licensed pursuant to Chapter*  
11 *9 (commencing with Section 4000) (or, if represented by counsel,*  
12 *his or her counsel) to comply with this section is a public offense*  
13 *punishable by a fine of not less than fifty dollars (\$50) nor more*  
14 *than five hundred dollars (\$500).*

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**SENATE COMMITTEE ON  
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**

Senator Jerry Hill, Chair  
2015 - 2016 Regular

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<b>Bill No:</b>	SB 1217	<b>Hearing Date:</b>	April 18, 2016
<b>Author:</b>	Stone		
<b>Version:</b>	April 12, 2016		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Sarah Mason		

**Subject:** Healing arts: reporting requirements: professional liability resulting in death or personal injury

**SUMMARY:** Increases the dollar amount for judgement and settlement information required to be kept in a licensee's central file by the Board of Pharmacy (Board) and increases the dollar amount for settlements that trigger mandatory reporting to the Board about Board licensees.

**Existing law:**

- 1) Requires health care licensing boards to create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority. Requires the central file to be created and maintained to provide an individual historical record for each licensee and must include specified information including the following: any conviction of a crime, any judgment or settlement in excess of \$3,000, any public complaints as specified, and any disciplinary information, as specified. States that the content of the central file that is not public record under any other provision of law is confidential. Allows a licensee to submit any exculpatory or explanatory statements or other information to be included in the central file. (BPC § 800)
- 2) Establishes a number of mandatory reporting requirements to health care licensing boards intended to inform boards about possible matters for investigation according to the following:
  - a) Requires every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from either the Board of Psychology, Dental Hygiene Committee of California, State Board of Chiropractic Examiners, Board of Registered Nursing, Board of Vocational Nursing and Psychiatric Technicians of the State of California, State Board of Optometry, Physical Therapy Board of California, California State Board of Pharmacy, Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board, California Board of Occupational Therapy, Acupuncture Board, and Physician Assistant Board to send a complete report to that board as to any settlement or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by a licensee's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services but requires every insurer providing professional liability insurance to a person licensed by the Board of Behavioral Sciences (BBS), Dental Board of California or Veterinary

Medical Board of California to send a report for any award over \$10,000. Specifies that the report shall be sent within 30 days. (BPC § 801)

- b) Requires reporting of settlements over \$30,000 and arbitration awards or civil judgments of any amount to the Medical Board of California (MBC), Osteopathic Medical Board of California (OMBC), California Board of Podiatric Medicine (BPM) and Physician Assistant Board (PAB). Specifies the report must be filed within 30 days by either the insurer providing professional liability insurance to the licensee, the state or local government agency that self-insures the licensee, the employer of the licensee, or the licensee if not covered by professional liability insurance and that failure to provide the report is a public offense punishable by a fine of \$500, not to exceed \$5,000. (BPC § 801.01)
- c) Requires every state or local government agency that self-insures a licensee of a health care licensing board above (except for licensees of the MBC, OMBC, BPM and PAB) to report to that board any settlement or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by a licensee's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services but requires a report to BBS for awards over \$10,000 for BBS licensees. Specifies the report must be filed within 30 days. (BPC § 801.1)
- d) Requires reporting to the health care licensing boards above (except for licensees of the MBC, OMBC, BPM and PAB) of any settlement, judgment or arbitration award over \$3,000 of a claim or action for damages for death or personal injury caused by a licensee's negligence, error, omission in practice or by his or her unauthorized rendering of services for licensees who do not possess professional liability insurance but requires a report to BBS for awards over \$10,000 for BBS licensees. Specifies the report must be filed within 30 days by the licensee or his or her counsel, with a copy sent to the claimant or his or her counsel and that failure to provide the report is a public offense punishable by a fine of \$500, not to exceed \$50,000. (BPC § 802)
- e) Requires the clerk of a court that renders a judgment that a licensee of a health care licensing board has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by the licensee's negligence, error, or omission in practice, or his or her rendering of unauthorized professional services, to report that judgment to the board within 10 days after the judgment is entered. The court clerk is also responsible for reporting criminal convictions to a health care licensing board. (BPC §§ 803 and 803.5)

**This bill:**

- 1) Raises the threshold from \$3,000 to \$10,000 for the central file maintained by the Board for licensees to include any judgment or settlement pursuant to BPC § 800.
- 2) Raises the threshold from \$3,000 to \$10,000 for awards required to be reported by a professional liability insurer to the Board pursuant to BPC § 801 about a Board licensee.

- 3) Raises the threshold from \$3,000 to \$10,000 for awards required to be reported by a state or local government agency to the Board pursuant to BPC § 801.1 about a Board licensee.
- 4) Raises the threshold from \$3,000 to \$10,000 for awards required to be reported by a licensee or his or her counsel, if the licensee does not possess professional liability insurance, to the Board.

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

**COMMENTS:**

1. **Purpose.** The Author is the Sponsor of this bill. According to the Author, "existing law contains an arbitrary distinction between certain healing arts practices and others with regards to their reporting requirements. Licensed professional clinical counselors, licensed dentists, and licensed veterinarians among others have a \$10,000 threshold while licensed educational psychologists, licensed nurses, and licensed pharmacists have a \$3,000 threshold."
2. **Background.** Current law requires all healing arts boards to report information on settlements or arbitration awards. The BBS, the DBC, and the VMB must report those in excess of \$10,000; and the MBC, the OMBC, the BPM, and the PAB must report information in amounts higher than \$30,000. All other boards must report those above \$3,000.

SB 158 (Peace, Chapter 5, Statutes of 1995), which increased the reporting threshold for dentists from \$3,000 to \$10,000, noted that the \$3,000 figure was originally determined in 1975. Legislative history for the original bill was not provided by the Author's office, so it is unclear whether that amount was indeed "arbitrary." However, since that time, there have been deliberate efforts to raise certain reporting thresholds and not others.

According to the Board, it received 674 reports for amounts above \$3,000 between 2011 and 2015. Information is not available for the average amount of these reports, nor what happened as a result of the information. However, the Board's Legislation and Regulation Committee considered, but failed to take a support position, on this bill at its March 24, 2016 meeting.

Reports received pursuant to the Section 800 provisions outlined above are used to launch disciplinary reviews. It is conceivable that, should this bill pass, certain offenses may not rise to the Board's attention and future consumers may be harmed. While the \$3,000 amount may appear dated and arbitrary, it is urged that a more thorough review of current practices and policies be conducted before reporting requirements themselves are changed arbitrarily to ensure consumer protection.

3. **Prior Related Legislation.** SB 146 (Wyland, Chapter 381, Statutes of 2011) added Licensed Professional Clinical Counselors to the BBS reporting requirements.

SB 1548 (Figueroa, Chapter 467, Statutes of 2004) required every insurer providing liability insurance to a licensed veterinarian to send a complete report to VMB as to any settlement or arbitration award over \$10,000 for a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or of rendering unauthorized professional service.

AB 103 (Figueroa, Chapter 359, Statutes of 1997) increased reporting and dissemination of information about health care providers regarding medical malpractice arbitration awards and judgments and required specified information to be posted on the Internet.

SB 158 (Peace, Chapter 5, Statutes of 1995) raised the reporting requirement from \$3,000 to \$10,000 for a malpractice insurer to report to the DBC.

**SUPPORT AND OPPOSITION:**

Support: None on file as of April 12 2016.

Opposition: None on file as of April 12, 2016.

-- END --

SB

1334

AMENDED IN SENATE APRIL 19, 2016  
AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 1334**

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**Introduced by Senator Stone**

February 19, 2016

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An act to amend Section 11160 of the Penal Code, relating to crime reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1334, as amended, Stone. Crime reporting: health practitioners: ~~human trafficking~~; *reports*.

Existing law requires a health practitioner, as specified, who, in his or her professional capacity or within the scope of his or her employment, provides medical services to a patient who he or she knows, or reasonably suspects, has suffered from a wound or other physical injury where the injury is by means of a firearm or is the result of assaultive or abusive conduct, to make a report to a law enforcement agency, as specified. Existing law defines "assaultive or abusive conduct" for these purposes as a violation of specified crimes. Under existing law, a violation of this provision is a crime.

This bill would require a health care practitioner who provides medical services to a patient who discloses that he or she is seeking treatment due to being the victim of assaultive or abusive conduct, to additionally make a report to a law enforcement agency. ~~The bill would also add the crime of human trafficking to the list of crimes that constitute assaultive or abusive conduct for purposes of the above reporting requirements and the reporting requirements added by this bill.~~ By increasing the scope of an existing crime, this bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section 11160 of the Penal Code is amended to  
2 read:

3 11160. (a) (1) A health practitioner employed in a health  
4 facility, clinic, physician's office, local or state public health  
5 department, or a clinic or other type of facility operated by a local  
6 or state public health department who, in his or her professional  
7 capacity or within the scope of his or her employment, provides  
8 medical services for a physical condition to a patient who he or  
9 she knows, or reasonably suspects, is a person described as follows,  
10 shall immediately make a report in accordance with subdivision  
11 (b):

12 (A) A person suffering from a wound or other physical injury  
13 inflicted by his or her own act or inflicted by another where the  
14 injury is by means of a firearm.

15 (B) A person suffering from a wound or other physical injury  
16 inflicted upon the person where the injury is the result of assaultive  
17 or abusive conduct.

18 (2) A health practitioner employed in a health facility, clinic,  
19 physician's office, local or state public health department, or a  
20 clinic or other type of facility operated by a local or state public  
21 health department who, in his or her professional capacity or within  
22 the scope of his or her employment, provides medical services to  
23 a patient who discloses that he or she is seeking treatment due to  
24 being the victim of assaultive or abusive conduct, shall immediately  
25 make a report in accordance with subdivision (b).

26 (b) A health practitioner employed in a health facility, clinic,  
27 physician's office, local or state public health department, or a  
28 clinic or other type of facility operated by a local or state public  
29 health department shall make a report regarding persons described  
30 in subdivision (a) to a local law enforcement agency as follows:

- 1 (1) A report by telephone shall be made immediately or as soon  
2 as practically possible.
- 3 (2) A written report shall be prepared on the standard form  
4 developed in compliance with paragraph (4) of this subdivision  
5 adopted by the Office of Emergency Services, or on a form  
6 developed and adopted by another state agency that otherwise  
7 fulfills the requirements of the standard form. The completed form  
8 shall be sent to a local law enforcement agency within two working  
9 days of receiving the information regarding the person.
- 10 (3) A local law enforcement agency shall be notified and a  
11 written report shall be prepared and sent pursuant to paragraphs  
12 (1) and (2) even if the person who suffered the wound, other injury,  
13 or assaultive or abusive conduct has expired, regardless of whether  
14 or not the wound, other injury, or assaultive or abusive conduct  
15 was a factor contributing to the death, and even if the evidence of  
16 the conduct of the perpetrator of the wound, other injury, or  
17 assaultive or abusive conduct was discovered during an autopsy.
- 18 (4) The report shall include, but shall not be limited to, the  
19 following:
- 20 (A) The name of the injured, assaulted, or abused person, if  
21 known.
- 22 (B) The injured, assaulted, or abused person's whereabouts.
- 23 (C) The character and extent of the person's injuries, if any.
- 24 (D) The identity of a person the injured, assaulted, or abused  
25 person alleges inflicted the wound, other injury, or assaultive or  
26 abusive conduct upon the injured person.
- 27 (c) For the purposes of this section, "injury" shall not include  
28 any psychological or physical condition brought about solely  
29 through the voluntary administration of a narcotic or restricted  
30 dangerous drug.
- 31 (d) For the purposes of this section, "assaultive or abusive  
32 conduct" includes any of the following offenses:
- 33 (1) Murder, in violation of Section 187.
- 34 (2) Manslaughter, in violation of Section 192 or 192.5.
- 35 (3) Mayhem, in violation of Section 203.
- 36 (4) Aggravated mayhem, in violation of Section 205.
- 37 (5) Torture, in violation of Section 206.
- 38 (6) Assault with intent to commit mayhem, rape, sodomy, or  
39 oral copulation, in violation of Section 220.

- 1 (7) Administering controlled substances or anesthetic to aid in  
2 commission of a felony, in violation of Section 222.  
3 ~~(8) Human trafficking, in violation of Section 236.1.~~  
4 ~~(9)~~  
5 (8) Battery, in violation of Section 242.  
6 ~~(10)~~  
7 (9) Sexual battery, in violation of Section 243.4.  
8 ~~(11)~~  
9 (10) Incest, in violation of Section 285.  
10 ~~(12)~~  
11 (11) Throwing any vitriol, corrosive acid, or caustic chemical  
12 with intent to injure or disfigure, in violation of Section 244.  
13 ~~(13)~~  
14 (12) Assault with a stun gun or taser, in violation of Section  
15 244.5.  
16 ~~(14)~~  
17 (13) Assault with a deadly weapon, firearm, assault weapon, or  
18 machinegun, or by means likely to produce great bodily injury, in  
19 violation of Section 245.  
20 ~~(15)~~  
21 (14) Rape, in violation of Section 261.  
22 ~~(16)~~  
23 (15) Spousal rape, in violation of Section 262.  
24 ~~(17)~~  
25 (16) Procuring a female to have sex with another man, in  
26 violation of Section 266, 266a, 266b, or 266c.  
27 ~~(18)~~  
28 (17) Child abuse or endangerment, in violation of Section 273a  
29 or 273d.  
30 ~~(19)~~  
31 (18) Abuse of spouse or cohabitant, in violation of Section  
32 273.5.  
33 ~~(20)~~  
34 (19) Sodomy, in violation of Section 286.  
35 ~~(21)~~  
36 (20) Lewd and lascivious acts with a child, in violation of  
37 Section 288.  
38 ~~(22)~~  
39 (21) Oral copulation, in violation of Section 288a.  
40 ~~(23)~~

1 (22) Sexual penetration, in violation of Section 289.

2 ~~(24)~~

3 (23) Elder abuse, in violation of Section 368.

4 ~~(25)~~

5 (24) An attempt to commit any crime specified in paragraphs

6 (1) to ~~(24)~~ (23), inclusive.

7 (e) If two or more persons who are required to report are present  
8 and jointly have knowledge of a known or suspected instance of  
9 violence that is required to be reported pursuant to this section,  
10 and if there is an agreement among these persons to report as a  
11 team, the team may select by mutual agreement a member of the  
12 team to make a report by telephone and a single written report, as  
13 required by subdivision (b). The written report shall be signed by  
14 the selected member of the reporting team. A member who has  
15 knowledge that the member designated to report has failed to do  
16 so shall thereafter make the report.

17 (f) The reporting duties under this section are individual, except  
18 as provided in subdivision (e).

19 (g) A supervisor or administrator shall not impede or inhibit the  
20 reporting duties required under this section and a person making  
21 a report pursuant to this section shall not be subject to sanction for  
22 making the report. However, internal procedures to facilitate  
23 reporting and apprise supervisors and administrators of reports  
24 may be established, except that these procedures shall not be  
25 inconsistent with this article. The internal procedures shall not  
26 require an employee required to make a report under this article  
27 to disclose his or her identity to the employer.

28 (h) For the purposes of this section, it is the Legislature's intent  
29 to avoid duplication of information.

30 SEC. 2. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the penalty  
35 for a crime or infraction, within the meaning of Section 17556 of  
36 the Government Code, or changes the definition of a crime within  
37 the meaning of Section 6 of Article XIII B of the California  
38 Constitution.

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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair  
2015 - 2016 Regular Session

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### SB 1334 (Stone) - Crime reporting: health practitioners: mandated reporting

**Version:** April 19, 2016  
**Urgency:** No  
**Hearing Date:** April 25, 2016

**Policy Vote:** PUB. S. 7 - 0  
**Mandate:** Yes  
**Consultant:** Jolie Onodera

**This bill meets the criteria for referral to the Suspense File.**

**Bill Summary:** SB 1334 would expand the existing mandatory reporting law applicable to health practitioners to include making reports for patients who disclose they are seeking treatment due to being the victims of assaultive or abusive conduct, as specified.

#### **Fiscal Impact:**

- Local health practitioners: Non-reimbursable local costs (Local Funds) to the extent the bill results in additional reports of abuse made to law enforcement.
- Local law enforcement agencies: Non-reimbursable local enforcement costs (Local Funds) resulting from additional mandated reports received and investigated.
- State prisons/county jails: Potential future increase in state and local costs (Local/General Fund) to the extent additional mandatory reports of assaultive or abusive conduct that otherwise would have remained unreported lead to subsequent convictions for the offenses enumerated under the mandatory reporting law. To the extent practitioners are largely reporting on these types of cases would reduce the potential for such costs.
- Office of Emergency Services (Cal OES): Negligible fiscal impact to Cal OES for costs associated with the administration of victims' services programs. Potential increase in utilization of victims' services grants (Federal Funds/General Fund) to the extent additional mandated reports result in more referrals to local domestic violence services, as is recommended for all persons for whom a mandated report is submitted (PC § 11161).
- VCGCB: Potential increases or decreases in claims paid (General Fund) for health practitioners for reasonable attorney's fees incurred, to the extent a greater or lesser number of legal actions are filed against health practitioners under the expanded reporting requirements. Despite the provision of liability immunity, PC § 11163 authorizes up to \$50,000 per claim in cases dismissed or prevailed.

**Background:** Under existing law, a health practitioner employed in a health facility, clinic, physician's office, local or state public health department or clinic, and who, in his or her professional capacity or within the scope of his or her employment, provides medical services for a physical condition to a patient who he or she knows, or reasonably suspects, is a person described as follows, is required to immediately make a report to a local law enforcement agency:

- A person suffering from a wound or other physical injury inflicted by his or her own act or inflicted by another where the injury is by means of a firearm.

- A person suffering from a wound or other physical injury inflicted upon the person where the injury is the result of assaultive or abusive conduct. (Penal Code (PC) § 11160(a).)

Existing law requires a report to be made by telephone immediately or as soon as practically possible, and for a written report to be completed and sent to a local law enforcement agency within two working days of receiving the information from the person. (PC § 11160(b).)

Failure to report under the mandatory reporting law is a misdemeanor, punishable by imprisonment in a county jail for up to six months, by a fine of up to \$1,000, or both the imprisonment and fine. (PC § 11162.)

Existing law provides health practitioners with immunity from civil and criminal liability for the mandated reporting of assaultive or abusive conduct, however, Legislative findings and declarations provide that “even though the Legislature has provided for immunity from liability,...that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse pursuant to other laws.”

As a result, existing law authorizes a health practitioner to present a claim to the Victim Compensation and Government Claims Board (VCGCB) for reasonable attorney’s fees incurred in any action against that person on the basis of that person reporting in accordance with existing law if the court dismisses the action or if that person prevails in the action. The VCGCB is to submit the claim to be paid from an appropriation to be made for that purpose of up to the maximum amount of \$50,000 per claim.

**Proposed Law:** This bill would expand the existing mandatory reporting law applicable to health practitioners to include making reports for patients who disclose they are seeking treatment due to being the victims of assaultive or abusive conduct, as specified.

**Prior Legislation:** AB 1652 (Speier) Chapter 992/1993 required a health practitioner with knowledge of or who observed a patient whom he or she knows or reasonably suspects is suffering from a wound inflicted by means of a knife, gun, or other deadly weapon, to report to a law enforcement agency. AB 1652 increased the maximum fine for failure to report from \$500 to \$1,000, and provided for criminal and civil immunity for health practitioners making the mandated reports.

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