

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



MEETING NOTICE

October 24, 2016
Ketchum Health
Multi-Purpose Room #2107, 2nd Floor
5460 E La Palma Ave
Anaheim, CA 92807

8:00 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 (Caldwell)
3. Approval of April 18, 2016 Meeting Minutes (Sachs)
4. Approval of July 11, 2016 Meeting Minutes (Sachs)
5. Approval of August 25, 2016 – Special Teleconference Meeting Minutes (Sachs)
6. 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).])
7. Nomination and Election of Physician Assistant Board Officers (Forsyth)
8. Reports
 - a. President's Report (Sachs)
 - i. California Academy of Physician Assistants (CAPA) Annual Conference: Update
 - ii. National Commission on Certification of Physician Assistants (NCCPA) Survey to State Regulator Boards
 - iii. Announcement of Appointment of Executive Officer
 - b. Executive Officer's Report (Forsyth)
 - i. BreZE Implementation: Update
 - ii. Quality Business Intelligence Reporting Training (QBIRT)
 - c. Licensing Program Activity Report (Caldwell)
 - d. Diversion Program Activity Report (Forsyth)
 - e. Enforcement Program Activity Report (Forsyth)
9. Department of Consumer Affairs
 - a. Director's Update (Staff)
10. Approval of Passing Score for 2017 PA Initial Licensing Examination and 2017 Dates and Locations for PA Initial Licensing Examination (Sachs/Caldwell)
11. Schedule of 2017 Board Meeting Dates and Locations (Sachs)

12. Discussion and possible action regarding SB 1083 (Pavley, 2013-2014) - January 1, 2017
Implementation of Physician Assistants' Authority to Certify Unemployment Disability Certifications (Sachs)

13. Regulations

- a. Proposed Amendments to Title 16, California Code of Regulations, Section 1399.523 – Disciplinary Guidelines: Update (Caldwell)
- b. Proposed Amendments to Title 16, California Code of Regulations, Section 1399.546 – Reporting of Physician Assistant Supervision: Update (Caldwell)
- c. Proposed Repeal of Title 16, California Code of Regulations, Sections 1399.531 – Curriculum Requirements for an Approved Program for Primary Care Physician Assistants and 1399.532 – Board Requirements for Approving Specialty Training for Physician Assistants: Update (Caldwell)
- d. Discussion and Possible Action to Initiate a Rulemaking to Add Section 1399.515 to Title 16, California Code of Regulations – Retirement Status for Physician Assistant Licenses. (Schieldge)
- e. Discussion and Possible Action to Amend Title 16, California Code of Regulations, Section 1399.514 – Renewal of License (Schieldge)

14. **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

RETURN TO OPEN SESSION

15. Lunch break will be taken at some point during the day's meeting.
16. The Education/Workforce Development Advisory Committee: Update (Grant/Alexander)
 - a. Update and possible action regarding next steps in seeking possible legislation to offer tax deductions for preceptors.
17. 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)
18. Medical Board of California Activities (Sachs)
19. Budget Update (Forsyth)
20. Presentation by Medical Board staff on the Recruitment/Training of Medical Consultants .
21. 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.
22. Agenda Items for Next Meeting (Sachs)
23. 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. 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 Julie Caldwell at (916) 561-8781 or email Julie.Caldwell@mcb.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

ITEM

3

43 **4. Public Comment on items not on the Agenda**

44
45 There was no public comment at this time.

46
47 **5. Reports**

48
49 a. President's Report

- 50
51 1) Mr. Sachs stated that as of January 1, 2016, Business and Professions Code
52 section 3505 states that the members of the board shall include four
53 physician assistants, one physician and surgeon who is a member of the
54 Medical Board of California, and four public members.

55
56 Upon the expiration of the term of the physician member of the Medical Board
57 of California, that position shall be filled by a physician assistant.

58
59 Upon expiration of the term of the physician member, there shall be appointed
60 to the Board a physician who is a member of the Medical Board of California
61 and shall serve as an ex officio, nonvoting member, whose functions shall
62 include reporting the actions and discussions of the Board to the Medical
63 Board of California.

- 64
65 2) Mr. Sachs reported that the Senate Committee on Business, Professions and
66 Economic Development and Assembly Committee on Business and
67 Professions completed their Sunset Oversight Review of the Board on March
68 9, 2016.

69
70 He added that in preparation of the oversight hearing, staff of the Committees
71 developed a "background paper" which summarized the contents of the
72 Board's sunset report. The paper also reviewed the Board's prior sunset
73 report to determine if the Board implemented prior Committee
74 recommendations. Finally, the paper addressed current sunset issues.
75 Committee staff identified 10 issues for the Board.

76
77 Out of these ten issues, Committee staff identified four issues which were
78 discussed at the Sunset hearing. These issues included:

- 79
- Fund Condition – is there a need for a fee increase.
 - Enforcement – specifically, the Board's request to amend the
81 Physician Assistant Practice Act to include provisions allowing the
82 Board to bring disciplinary action against a licensee who has another
83 California health care related license that has been disciplined.
 - An update on Breeze implementation.
 - AS pathway, including the effect on military applicants.
- 84
85
86

87 Mr. Grant, Mr. Mitchell and Mr. Sachs attended the Sunset hearing and
88 addressed these issues.

89
90 Mr. Sachs noted that the Board was required to submit a written response to
91 the Legislature addressing the issues and recommendations raised in the
92 background paper or during the Sunset hearing. A copy of the response was
93 included in the meeting materials packet.

95 Mr. Sachs was happy to report that the Committees recommended that the
96 Board continue to regulate physician assistants.

- 97
98 3) Mr. Sachs introduced the Board's new public member Mariam Z. Valencia.
99 Ms. Valencia was appointed by Senate pro Tempore Kevin De Leon and
100 replaces Ms. Cristina Gomez-Vidal.

101
102 Ms. Valencia, from Tujunga, is Regional Government Affairs Manager for
103 OUTFRONT Media. She is a member of the Valley Industry and Commerce
104 Association, Los Angeles County Business Foundation, and Los Angeles
105 World Affairs Council. Her term expires January 1, 2019. Mr. Sachs
106 congratulated and welcomed Ms. Valencia to the Board.

107
108 b. Executive Officer's Report

- 109
110 1) Update on BreEZe Implementation

111
112 Mr. Mitchell reported that the Department of Consumer Affairs successfully
113 deployed "Release 2" boards (eight in total) to BreEZe on January 19, 2016.

114
115 It appears that the rollout went well and the Physician Assistant Board was
116 not negatively impacted by the cutover.

117
118 Mr. Mitchell stated that Board staff is working with the BreEZe team to update
119 the online version of the physician assistant application. With this update,
120 applicants will only be required to submit an attestation page to the Board,
121 once they complete the online application. This change should take place in
122 May 2016.

123
124 Mr. Mitchell reported that staff is also working on a BreEZe system change
125 that will allow licensees to change their addresses online. This change should
126 take place in June 2016. This BreEZe enhancement will make it more
127 convenient for licensees to update their addresses with the Board. Licensees
128 will still have the option of submitting address change requests to the Board in
129 writing or via our website.

130
131 Mr. Mitchell noted that the Board continues to work with the BreEZe team to
132 make corrections to licensing and enforcement reports to ensure that they are
133 reflecting accurate data.

134
135 Once again, Mr. Mitchell thanked the BreEZe and MBC ISB for their
136 continued support.

- 137
138 2) CURES update

139
140 Mr. Mitchell report that a CURES 2.0 has been released to all users in
141 compliance with the system's minimum security requirements.

142
143 Mr. Mitchell stated that the Board has been receiving a few call from
144 licensees unable to register with the system. One issue for example, is the
145 licensee attempting to register is selecting the "Medical Board of California"
146 and instead of "Physician Assistant Board."

147 Mr. Mitchell noted that the CURES website has been updated to include user
148 guides and registration instruction for both prescribers and dispensers.
149 Additionally, instructional videos have been created for registration, searches,
150 logging on, updating user profiles, and password management. Hopefully,
151 these instructional aids will assist licensees in registering and utilizing
152 CURES.

153
154 c. Licensing Program Activity Report

155
156 Between January 4, 2016 and April 11, 2016, 198 physician assistant
157 licenses were issued. As of April 11, 2016, 10,732 physician assistant
158 licenses are renewed and current.

159
160 d. Diversion Program Activity Report

161
162 As of April 1, 2016, the Board's Diversion Program has 14 participants, which
163 includes five self-referral participants and nine board-referral participants.

164 A total of 137 participants have participated in the program since implementation
165 in 1990.

166
167 e. Enforcement Program Activity Report

168
169 Between January 1, 2016 and March 31, 2016, there were:

- 170 • Seven Accusations filed;
- 171 • No Statement of Issues filed;
- 172 • No probationary licenses issued;
- 173 • No licenses Surrendered;
- 174 • No Petitions to Revoke;
- 175 • No licenses denied;
- 176 • One licensee placed on probation,
- 177 • Two Public Reprimands; and
- 178 • One Revocation

179 We have five pending citations and there are currently 57 probationers.

180
181 **6. Budget Report**

182
183 Wilbert Rumbaoa, Budget Analyst, Department of Consumer Affairs, reported that
184 after reviewing Fiscal Month 8 (February) of the Board budget, the Board should
185 revert back \$32,000 at the close of the fiscal year. He informed the Board that an
186 \$180,000 Attorney General augmentation was approved and added to the budget.

187
188 Mr. Rumbaoa explained that when contract fee amounts exceed the budget
189 allotment, internal redirects of funds are made to address any issues. In response to
190 the Board's Attorney General Budget line item, itemized monthly statements are sent
191 to the Board depicting actual costs. He also mentioned that the General Fund loan is
192 scheduled for repayment this year.

7. BreEZe: Security of Personal Data

Mr. Mitchell introduced Sean O’Conner, Chief IT Legislation and Data Governance, Department of Consumer Affairs (DCA) who presented a brief overview of BreEZe security measures.

Mr. O’Conner briefly explained that BreEZe is an enterprise data base system that is used by the Physician Assistant Board, as well as 18 other boards and bureaus to conduct their application processing, license maintenance, and enforcement case tracking. The system most notably allows applicants to submit various types of licensure online.

Mr. O’Conner informed the Board of the various industry-standard security measures within the BreEZe system:

- In order for an applicant to link their online application to their back-office license information the licensee is required to input the last four digits of their social security number, birthdate and the legal spelling of their last name as it appears on their license. DCA has incorporated security measures to ensure it is collecting data from only that individual and not fraudulently from someone else, as this should be information that only the licensee should know.
- DCA does not collect or store any credit card information on their servers because of the high security thresholds required, therefore, they contract out this service to a third party payment vendor who meets all of the security protocols necessary to protect individual personal information.

Mr. O’Conner explained that DCA uses industry standard security on applications that can detect an attack on the system using common techniques. DCA has a security system that is similar to what other organizations have for systems comparable to BreEZe. The transmission of the application data is also encrypted between a webserver and browser thus allowing the individuals information to remain private. Mr. O’Conner concluded that DCA has some evident security features for individuals using the system as well as back-office technical security, down to the server level that enables individual’s data to be protected.

Mr. O’Conner updated the Board on the current statistics for online renewals. Last year around this time, with online renewal being available for only a few months, the Board had approximately 35% usage. He informed the Board that current information indicates that 46% of the physician assistant population is using the BreEZe online renewal system. Mr. O’Conner noted the tremendous opportunity for licensee to utilize the online system as it facilitates instantaneous approval of the renewal application.

Mr. O’Conner concluded that DCA continues to have BreEZe updates to support the needs of the boards and bureaus. Regular maintenance on the system is performed every 6-8 weeks to correct any deficiencies within the system, as well as emergency fixes that might have a legal impact.

Ms. Hazelton inquired about applicants needing to submit a wet signature when applying, including the entire application.

Mr. O’Conner clarified that the requirement for a wet signature related to initial applicant and renewals were handled with an online agreement page where wet

250 signatures are not required. Mr. Mitchell confirmed that the wet signature
251 requirement is for initial applications and as of May 2016 our online application will
252 only require an attestation page and not all the pages within the initial application.
253

254 Ms. Earley asked if the employer checked the status of a license would it show as
255 updated within 24 hours.
256

257 Mr. O'Conner responded that once payment is received the system instantaneously
258 up dates to the next renewal cycle and that is shown within the Consumer License
259 Verification on BreEZe.
260

261 Mr. Esquivel-Acosta queried whether additional questions could be added to the
262 system to collect feedback from the licensees.
263

264 Mr. O'Conner informed the Board that additional questions could be added through
265 updates and then scheduled into a release.
266

267 **8. Department of Consumer Affairs (DCA): Update**

268
269 Christine Lally, Deputy Director, Board and Bureau Relations reported on several
270 issues that impact the Board.
271

272 Ms. Lally welcomed new Board member, Mary Valencia, congratulating her on being
273 prepared for her first Board meeting by attending the Board member orientation
274 meeting in March 2016.
275

276 Ms. Lally congratulated Mr. Mitchell on his retirement. She spoke of Mr. Mitchell's
277 leadership of the Board and what a great partner he has been between the Board
278 and DCA. Ms. Lally told him that he will definitely be missed, but was happy that the
279 Board and DCA still had some time to with him. She thanked Mr. Mitchell for his
280 service.
281

282 Ms. Lally informed the Board that one of the most significant responsibilities of Board
283 members is the hiring of an Executive Officer (EO). She informed the Board that
284 DCA Personnel Officer Ricardo De La Cruz will be speaking with the Board
285 regarding the hiring process for an Executive Officer. Ms. Lally informed the Board
286 that the process may take up to 3-4 months, so the Board has time to complete the
287 process before Mr. Mitchell's retirement in September 2016. Ms. Lally
288 communicated to the Board that Mr. De La Cruz and herself would be assisting the
289 Board's EO Selection Committee in the EO hiring process. She thanked the Board
290 for their efforts.
291

292 Ms. Lally spoke to the Board in regard to the departure of Chief Deputy Director
293 Tracy Rhine. Ms. Rhine accepted a position with the Rural County Representatives
294 of California and will be leaving the Department April 15, 2016. Ms. Lally expressed
295 her loss for the Department, as well as her excitement for Ms. Rhine's new
296 endeavors.
297

298 Ms. Lally congratulated the Board on their timely completion of the Statement of
299 Economic Interests (Form 700) that was due by April 1, 2016. She stated that DCA
300 implemented its first paperless, online system this year and it was very successful.
301 The Department received a lot of positive feedback from the Boards and Bureaus,

302 especially on the convenience and ease of the system. Ms. Lally informed the Board
303 that next year's filing process would be much easier as the system populates the
304 previous year's information, thus suppling members with a constant record at their
305 disposal.

306
307 Ms. Lally reported to the Board that DCA is in the process of developing a training
308 program for new Executive Officers. She informed the Board that surveys will be
309 going out to Board members and Executive Officers to access current training
310 needs. Ms. Lally requested Board members to participate in the survey so DCA
311 would have feedback to tailor the training needs to specific Boards and future
312 Executive Officers. Ms. Lally spoke about a new feature facilitated by the DCA
313 SOLID Team entitled "Brown Bag Gatherings". These meetings will take place on a
314 quarterly basis for the Executive Officers to establish a peer networking atmosphere
315 within DCA. The first meeting is scheduled for May 21, 2016.

316
317 Ms. Lally updated the Board on the most recent Little Hoover Commission Hearing
318 (Commission) held on March 30, 2016 in Clover City. Tracy Rhine, DCA Deputy
319 Director testified at the second meeting conducted regarding Occupational
320 Licensing. Ms. Lally added that DCA continues to work closely with the Commission
321 to provide data and answer questions regarding licensing within DCA. The
322 Commission is scheduled to release their findings in a report later this year.

323
324 Lastly, Ms. Lally gave a brief update to the Board on SB 1195 (Hill). On April 6, 2016
325 the bill was amended to include a number of provisions that address antitrust issues
326 included in the North Carolina State Board of Dental Examiners v. Federal Trade
327 Commission. Ms. Lally commented that one of the most significant changes
328 proposed in SB 1195 is that it grants the Department's Director, expanded authority
329 over regulations to ensure that they are not anticompetitive. Currently, the Director
330 can only disapprove regulations if they injure the health, safety, and welfare of the
331 public. Ms. Lally clarified for Ms. Hazelton that DCA did not have any specific
332 concerns regarding SB 1195; she wanted to be sure the Board understood the
333 authority the Director would have over proposed regulations.

334 335 **9. Executive Officer Hiring Process**

- 336
337 a. Presentation from the Department of Consumer Affairs (DCA) Human Resources
338 (HR) Office regarding the selection process of an Executive Officer.

339
340 Ricardo DeLaCruz, Personnel Officer, discussed the Departments Executive
341 Officer (EO) selection and hiring process. This process may take approximately
342 4-6 months to complete. Mr. DeLaCruz suggested that the Board may want to
343 form a selection hiring committee to work with DCA HR office to review
344 applications, qualify, and select candidates. The final candidates would be
345 interviewed and ultimately selected by the full Board.

346
347 Mr. Sachs expressed concern about the process taking four months. He queried
348 whether there were any new rules that would prevent the Board from hiring a
349 new EO in a timelier manner.

350
351 Mr. DeLaCruz explained that this is a typical time frame for a recruitment period,
352 which allows for advertising, screening applicants and having first and second
353 level interviews. He also informed the Board that should the selection process

354 extend beyond Mr. Mitchell's retirement date an interim or acting capacity EO
 355 may be selected until a final candidate has been selected. He explained that both
 356 an interim EO and an acting EO are administered the Oath of Office, but the
 357 interim EO is compensated as opposed to an acting EO who is not.
 358

- 359 b. Discussion of Executive Officer recruitment and selection process, possible
 360 appointment of a Search Committee, and review of Executive Officer's Job Duty
 361 Statement.
 362

363 Mr. DeLaCruz reviewed the EO Duty Statement with the Board. He explained
 364 that the current duty statement, which includes the basic functions of the EO,
 365 was crafted by DCA Human Resources and was previously voted on by the
 366 Board. Mr. DeLaCruz explained that the selection committee is generally
 367 comprised of two Board members, which may be selected by the Board
 368 President or voted on by the Board members. The selection committee would
 369 then work with DCA Human Resources through the preliminary selection
 370 process.
 371

372 Ms. Freedman advised the Board that the selection committee may wish to work
 373 as a task force without the authority of making any final decisions to comply with
 374 the Bagley-Keene Open Meeting Act. The committee's role would be to complete
 375 the first part of the process and bring the next level of the decision making to the
 376 full board.
 377

378 M/ Robert Sachs S/ Xavier Martinez C/ to:

379
 380 Appoint Charles Alexander, public member and Jed Grant, licensed member, to
 381 the Search Committee for the Executive Officer appointment.
 382

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant				X	
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

383
 384 Motion approved.
 385

386 M/ Catherine Hazelton S/ Sonya Earley C/ to:

387
 388 Adopt the proposed duty statement with the revisions that were discussed. Those
 389 revisions include:

- 390 • Inserting the authority pursuant to Title 16 California Code of Regulations
- 391 §1399.503 into sub (A);
- 392 • Add a sentence that reflects the Executive Officer's need to step-in and
- 393 possibly perform staff level job duties at times, especially when staff is
- 394 unavailable;
- 395 • Add into (G) the ability to work BreZze or another computer data base and
- 396 manage that;

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398
399
400

- Add a requirement that a Conflict of Interest Filing is required per DCA usual statement;
- Make sure the duty statement reflects ADA compliance.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant				X	
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

401
402
403

Motion approved.

404
405

10. Regulations

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- a. Proposed amendments Title 16 California Code of Regulations
Section 1399.523 – Disciplinary Guidelines: Update to guidelines for imposing
Discipline/Uniform Standards regarding substance abusing health arts licensees.

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414

Mr. Mitchell reported that a regulatory hearing on the Proposed Language for
Guidelines for Imposing Discipline/Uniform Standards Regarding Substance-
Abusing Healing Arts Licensees, Section 1399.523 of Division 13.8 of Title 16 of
the California Code of Regulations was held on February 9, 2015.

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419

He added that the rulemaking file was submitted to the Department of Consumer
Affairs for their review. It was then forwarded to the Office of Administrative Law
(OAL). It was approved by OAL on April 11, 2016. The regulation will become
effective on July 1, 2016.

420
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422
423

- b. Proposed amendments to Title 16 California Code of Regulations Section
1399.546 – Reporting of Physician Assistant Supervision. Related to the
implementation of SB 337.

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425
426

Mr. Mitchell reported that we are in the process of starting the rulemaking file for
this proposal. A hearing will be scheduled for the July 11, 2016 Board meeting.

427
428
429

- c. Proposed amendments to Title 16 California Code of Regulations (CCR) Section
1399.514 – Renewal of License: amending conviction fine reporting amount.

430
431
432
433
434

At the last Board meeting concerns were raised regarding whether the \$300
threshold for reporting infractions was too low and that the Board might be
receiving too many disclosures for convictions, such as minor traffic violations,
unrelated to the practice of physician assistants.

435
436
437
438

Mr. Sachs discussed the report that staff created depicting traffic infraction costs
(most not exceeding \$300) and the threshold cost established by other boards.
These boards have thresholds that range from \$300 to \$1000.

439 Ms. Freedman explained that licensees must disclose convictions on their
440 renewal document. If the threshold is raised then certain convictions may not be
441 reported to the Board. The original language for the regulation was
442 recommended by DCA which covered the fine and well as any fees. She
443 suggested that staff collect additional data in regard to what is reported verses
444 how many of these infractions report incur any action from the Board.
445

446 Mr. Mitchell indicated he did not think there was a reason to change the
447 threshold.
448

449 M/ Xavier Martinez S/ Mary Valencia C/ to:

450
451 Take no action.
452

453 Ms. Caldwell explained that she did think there was a reason to change the
454 threshold because most of the infractions she received on initial applications are
455 red light, speeding, and driving under the influence (DUI). She informed the
456 Board that most moving violations are now over \$300. She noted that
457 approximately 10% of applications received list a moving violation over \$300 and
458 most of these have no effect on the licensee. Since DUI's are well over \$300 and
459 a concern the Board, Ms. Caldwell indicated that the applicant would have to
460 report the DUI even at the higher threshold. She suggested that the threshold
461 would be better at \$500.
462

463 Ms. Freedman stated that all alcohol and drug infractions are reportable to the
464 Board no matter what the cost is. She also noted that this regulation would
465 address both renewal and initial applications.
466

467 The motion was withdrawn.
468

469 M/ Xavier Martinez S/ Javier Acosta-Esquivel C/ to:

470
471 Raise the limit to \$500.
472

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant				X	
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

473
474 Motion approved.
475

476 Staff will begin the preparation of the rulemaking file to amend Title 16 CCR
477 §1399.514.
478

479
480
481

482 **11. Closed Session**

483

- 484 a. Pursuant to Section 11126(c)(3) of the Government Code, the Board moved into
485 closed session to deliberate on disciplinary matters.
486 b. Pursuant to Government Code section 11126(a) to discuss the selection process
487 and the possible appointment of an executive officer.

488

489 **Return to open session**

490

491 **12. A lunch break was taken.**

492

493 **13. Business and Professions Code Section 3502.3(A)(3) Performance of a**
494 **Physical Examination by a Physician Assistant and Certification of Disability**
495 **Pursuant to Unemployment Insurance Code Section 2708.**

496

497 Mr. Sachs reminded the Board that this statute becomes effective January 1, 2017
498 and will enhance patient care giving the physician assistant authority to complete the
499 Certification of Disability form.

500

501 **14. Title 16 California Code of Regulations Section 1399.532 – Requirements for**
502 **an Approved Program for the Specialty Training of Physician Assistants:**
503 **Program Approval Process**

504

505 Mr. Sachs introduced Mr. Fred Wu, UCSF-Fresno Emergency Medicine PA
506 Residency Program Director.

507

508 Mr. Wu is seeking approval of the post graduate residency program developed by
509 UCSF-Fresno. He stated that he believes the program meets the requirements of
510 Title 16, California Code of Regulations sections 1399.530 and 1399.531. Mr. Wu is
511 seeking the Board's approval since the Accreditation Review Commission on
512 Education for the Physician Assistant (ARC-PA) no longer approves these post
513 graduate training programs.

514

515 Public Comment: Gaye Breyman, Executive Director, California Academy of PAs
516 (CAPA), commented on the Board's need to approve these programs, especially
517 since there are other post graduate programs that appear to not have been
518 approved by the Board. These residency programs offer additional training that
519 increase job opportunities for physician assistants and assist in underserved areas.
520 Ms. Breyman suggested that the Board may wish to consider repealing Title 16,
521 California Code of Regulations section 1399.532.

522

523 There was discussion by the Board members about whether there is a need for the
524 Board to approve post graduate programs, especially since no special certification is
525 issued to the participant. Ms. Earley stated that she believes the Board should
526 continue to set guidelines for the program requirements, but not be required to
527 approve the programs.

528

529 Ms. Freedman noted that the Board had a regulation that required approval. She
530 also noted that since there is not an application available for this program to
531 complete to seek the approval from the Board, the Board's discussion today was
532 only to determine how the Board could approve the program. She recommended
533 adding the repeal of the regulation to be put on a future meeting agenda.

534 The Board did not agree or reach any consensus. Therefore, they agreed to put this
535 regulation item on a future agenda for further discussion.

536
537 Public Comment: Teresa Anderson, Public Policy Director, CAPA, commented that
538 programs such as the UCSF-Fresno program strive to increase the physician
539 assistant workforce and requested that the Board expedite the review and approval
540 process for the program.

541
542 M/ Catherine Hazelton S/ Sonya Earley C/ to:

543
544 Create a committee to consider the application for approval of a program pursuant to
545 CCR sections 1399.531 and 1399.532 to consist of three members, two licensed
546 and one public, to be appointed by the Chair and staff to notice the meeting within
547 one week from today's date.
548

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant				X	
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

549
550 Motion approved.

551
552 Mr. Sachs appointed Jed Grant, Sonya Earley, and Xavier Martinez to the
553 committee.

554
555 The Board asked that the repeal of Title 16 CCR §1399.531 and §1399.532 be place
556 on a future agenda.
557

558 **15. Title 16 California Code of Regulations Section 1399.540(B) – Delegation of** 559 **Services Agreement**

560
561 a. Electronic Signature

562
563 Mr. Sachs reported that electronic signatures are used in a variety of medical and
564 health care settings and are legally recognized by the California Civil Code
565 section 1633.7 as equivalent to wet signatures, although the Board still requires
566 wet signatures for delegation of services.
567

568 Ms. Freedman explained that the long standing interpretation for the Board is that
569 a signature on the Delegation of Services Agreement (DSA) is a physical, pen to
570 paper signature. She added that the Board may wish consider amending the
571 regulation to include the acceptance of electronic signatures if they wanted to
572 allow their use. She suggested the Board discuss the merits of wet signatures
573 versus electronic signatures and determine what qualifies as an electronic
574 signature. Ms. Freedman suggested to the Board that the regulation be updated
575 to include the use of electronic signatures and define what type of e-signature
576 was sufficient.

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583

The Board members acknowledged that electronic signatures are widely used throughout healthcare systems, including patient records. It was mentioned that, currently, supervising physicians may electronically sign off on patient records but not able to electronically sign a DSA. The Board agreed that the regulation needed to be updated to include the use of electronic signatures.

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Public Comment: Gaye Breyman, Executive Director, California Academy of PAs (CAPA), commented that there are over 10,000 licensees and she felt there are at least 75-80% of physician assistant providers using electronic signatures on their DSAs. She requested that the Board adopt a policy to accept electronic signatures and update the regulation to include the use of electronic signatures. Ms. Breyman noted that CAPA is encouraging the Board to make a policy at today's meeting to accept electronic signatures.

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596

Teresa Anderson, Public Policy Director, CAPA, expressed some confusion as to why this issue was included on the agenda as physician assistants have been using electronic signatures for quite some time. She noted that the Civil Code was enacted in 2000 and now 16 years later the Board is having a discussion on electronic signatures. Ms. Anderson noted for the record that CAPA does not support solely using wet signatures.

597

598

M/ Catherine Hazelton S/ Xavier Martinez C/ to:

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604

Accept the interpretation that electronic signature are acceptable for Delegation of Services Agreements and to proceed with developing language for a regulation to allow the use of electronic signature on the DSA and to clarify what types of e-signatures are acceptable.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant				X	
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

605

606

Motion approved.

607

608

b. Required updates to the Delegation of Services Agreement

609

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611

612

613

Mr. Sachs explained that the regulations do not specify how often the Delegation of Services Agreement (DSA) should be updated. He noted that he updates his DSA every two years.

614

615

Ms. Earley commented that the DSA should be reviewed and updated whenever the physician assistant's duties change.

616

617

618

619

620 **16. Public Inquiries Regarding Physician Assistant Laws and Regulations:**
621 **Review and Approve Typical Written Responses.**
622

623 Mr. Sachs noted that Board staff receives regular phone calls and emails from the
624 general public, licensees, and medical staff offices requesting information. Over the
625 years staff has developed standard responses to these queries. It was suggested
626 that the Board review these standard responses.
627

628 Ms. Freedman commented that when advice is given to consumers, applicants,
629 licensees, and interested others staff should not offer legal advice and only
630 reference the appropriate statutes or regulations. She suggested that the standard
631 responses be developed as information bulletins.
632

633 **17. The Education/Workforce Development Committee: Update**
634

635 Dr. Alexander reported that the committee had nothing to report at this time.
636

637 **18. Developments since the February 2015 United States Supreme Court decision**
638 **in North Carolina State Board of Dental Examiners v. Federal Trade**
639 **Commission (FTC)**
640

641 Ms. Freedman reported that SB 1195 is the Legislature's response to this decision.
642 She provided background about the decision, which establishes requirements that
643 would create board immunity from antitrust allegations. She also discussed the
644 recently proposed bill, SB 1195 which is detailed in agenda item 20 Legislation
645 Report below. The primary of areas the director sought to address includes:

- 646 1. The Director's authority over the regulations and to disapprove them.
- 647 2. The indemnification of board members with respect to damages
- 648 3. Deleting the active license requirement for certain executive officer positions.
649

650 **19. Medical Board of California (MBC) Activities Report**
651

652 Dr. Bishop reported that MBC held its quarterly meeting on January 21 and 22, 2016
653 in Sacramento. In addition, MBC held an Interim Board Meeting on February 26,
654 2016 via teleconference to discuss the Vertical Enforcement Report, which MBC
655 approved at that meeting and the approved report can be found on MBC's website.
656 This Vertical Enforcement Report had four recommendations included in it. The
657 report stated that MBC should continue with the Vertical Enforcement Model, but
658 MBC is recommending some legislative amendments to improve this program.
659

660 Dr. Bishop stated that at the January Board Meeting, the Enforcement Committee
661 heard an update from both the Attorney General's Office and the Division of
662 Investigation regarding the Vertical Enforcement Program. Of note, it was discussed
663 that the Division of Investigation has a significant vacancy rate. This vacancy rate
664 continues, and will also impact the Physician Assistant Board. Mr. Chriss and Ms.
665 Nicholls from the Division of Investigation, Health Quality Investigation Unit
666 explained how they were going to prioritize complaints in order to ensure they are
667 working on all the cases that are being investigated. The Enforcement Committee
668 also heard an extensive overview of MBC's Probation Unit. This unit is made up of
669 25 staff that ensures probationers are being monitored and are in compliance with
670 their terms and conditions. The overview was very educational.
671

672 Dr. Bishop spoke about MBC's newly renamed Public Outreach, Education, and
673 Wellness Committee which also met on January 21, 2016. At this meeting, the
674 Committee Chair, Dr. Lewis unveiled MBC's new outreach campaign. The name of
675 the campaign is "Check Up on Your Doctor's License" and is intended to get the
676 word out to the public that they should look up their physician on MBC's website
677 before they see the physician. Dr. Lewis and staff also developed a new brochure
678 with the messaging for the campaign. In addition, staff walked through the outreach
679 plan and its efforts that will carry on throughout the year. MBC is looking to put
680 information out via employee pay checks, PSAs, news interviews, publications and
681 other outreach events. MBC staff also presented a new MBC home page for the
682 website. This new web page will be more user-friendly and indicate how the public
683 can look up a doctor, file a complaint, and look up public documents, with pictures
684 and links. The staff presented a lot of great changes to the website.
685

686 Dr. Bishop reported on MBC's Patient Notification Task Force which also held its first
687 meeting on January 21, 2016. This Task Force was developed after MBC denied a
688 petition for a rulemaking to require physicians to notify their patients that they are on
689 probation. The task force developed and approved a mission statement that was
690 also approved by the full Board. The Task Force had a lengthy discussion about
691 what information a patient can currently obtain about their physician, if he/she is on
692 probation. MBC staff walked the members through all the ways patients are notified,
693 including information posted on the physician's profile, an email subscriber's list that
694 proactively notifies the public when disciplinary action has been taken against a
695 physician, information in MBC's Newsletter and in the public documents found on
696 MBC's website. The Task Force also discussed the signage that has to be posted in
697 a physician's office regarding MBC. Several members thought that sign should be
698 amended, however, in doing an analysis on the legislation authorizing the signage
699 regulations, legal counsel determined that a statutory change would need to be
700 made in order to change this sign. The Task Force thought this should be
701 something MBC includes in its Sunset Review Report as a possible legislative
702 amendment. Lastly, the Task Force looked at MBC's current disciplinary guidelines
703 and identified which conditions required some form of patient notification. The Task
704 Force determined that they would hold another meeting to review the discussion
705 during the meeting and the feedback from the public and then determine future
706 action that may be necessary. After this meeting, Senate Bill 1033 was introduced,
707 which if it were to pass, would require physicians to notify their patients they are on
708 probation. Therefore, this Task Force will see what happens with this legislation
709 before moving forward.
710

711 Dr. Bishop noted that at the Full Board, the Members reviewed a school that had
712 applied for recognition by MBC, and held a discussion on the consultant's findings
713 regarding this school. The Medical Board also discussed several bills related to the
714 practice of medicine impacting physicians and also discussed the upcoming
715 Legislative Day. It has been determined that MBC will hold its Legislative Day on
716 May 11, 2016. This provides an opportunity for Members to meet with Legislative
717 Members to describe MBC's roles and functions, as well as to ask the Legislative
718 Members to post information on MBC's outreach campaign.
719

720 Dr. Bishop stated that MBC heard updates from several programs within MBC and
721 on the CURES registration process and the issue of overprescribing of psychotropic
722 medications to foster children.
723

724 The Medical Board will be meeting next on May 5 and 6, 2016 in the Los Angeles
725 Area. The main focus at this meeting will be MBC's action on pending legislation, as
726 there have been several bills recently introduced that will require MBC's input and a
727 decision on what position to take. MBC will also be looking at a few regulatory
728 changes and begin that process.

729
730 Dr. Bishop stated that the Medical Board is appreciative of the great relationship it
731 has with the Physician Assistant Board, specifically with Mr. Mitchell and his staff.
732 MBC continues to offer any assistance it can provide to the Physician Assistant
733 Board with any future issues.

734

735 **20. The Legislative Committee Report**

736

737 Ms. Hazelton discussed specific bills that are of interest to the Board.

738

739 AB 1566 (Wilk) Reports

740 This bill would require any report submitted to the Legislature or member of the
741 Legislature to include a signed declaration by the head of the submitting agency to
742 attest to the accuracy of the report. Anybody who knowingly signs such declaration
743 while knowing information contained in the report to be false could be subject to a
744 fine up to \$20,000.

745

746 Ms. Hazelton informed the Board that the bill failed in the Policy Committee and
747 would probably not move forward.

748

749 The Board did not take a position on this bill.

750

751 AB 1707 (Linder) Public records: response to request.

752 This bill would require any agency that responds to a Public Records Act (Act)
753 request to identify records that were withheld and the specific exemption from the
754 Act that allows the record to be withheld.

755

756 Ms. Freedman explained that this bill would require a more detailed disclosure to the
757 requestor as to why a document is being withheld from the request. This might
758 create a workload issue as well as an increase in litigation.

759

760 The Board did not take a position on this bill.

761

762 AB 2193 (Salas) Physician Assistant Board: extension.

763 This bill serves as the sunset extension for the Physician Assistant Board through
764 January 1, 2021.

765

766 Ms. Hazelton reported that the bill has passed in the Assembly and is on to
767 Appropriations.

768

769 The Board did not take a position on this bill.

770

771 SB 482 (Lara) Controlled substances: CURES database.

772 This bill would require prescribers, except veterinarians, and dispensers prescribing
773 or dispensing a Schedule II or III drug to a patient for the first time to consult that
774 patient's record on the CURES database prior to issuing the prescription or
775 dispensing the drug. It would also require the prescriber or dispenser to check the

776 database annually when the prescription remains a part of the patient's treatment.
 777 Failure to consult the CURES database as specified would be considered
 778 unprofessional conduct and subject the licensee to discipline by the appropriate
 779 board. This bill would affect boards that license individuals with the authority to
 780 prescribe and/or dispense Schedule II or III drugs, including the Dental Board,
 781 Medical Board, Board of Optometry, Osteopathic Medical Board, Board of
 782 Pharmacy, Physician Assistant Board, Board of Podiatric Medicine, and Board of
 783 Registered Nursing.

784
 785 Ms. Hazelton informed the Board that this bill was recently amended to create some
 786 exceptions to accessing the CURES database. These exception include surgical
 787 settings, hospice care, and if the practitioner was administrating the drug directly to
 788 the patient. It was also amended that the provider would not be liable for a civil
 789 action solely for consulting the CURES database.

790 Dr. Bishop expressed his concerns about how burdensome this bill could be
 791 especially to emergency room physicians. He questioned whether other medical
 792 providers would be able to access the database for the patient's provider. Dr. Bishop
 793 felt that as currently drafted SB 482 could inhibit the practice of care and suggested
 794 the Board watch this bill.

795
 796 The Board agreed with Dr. Bishop's comments and thought it was important for
 797 another member of the health care team to be authorized to access the CURES
 798 database on behalf of the patient's primary health care provider.

799
 800 Public Comment: Teresa Anderson, Public Policy Director, California Academy of
 801 PAs (CAPA), informed the Board that CAPA has these same concerns. CAPA has
 802 questioned whether medical assistants can run the report for the providers; they felt
 803 there should be a mechanism in place for other to be able to run the report. Ms.
 804 Anderson noted that there should be additional discussion on how this bill would
 805 affect providers and what to do with the information provided by the database.

806
 807 M/ Robert Sachs S/ Xavier Martinez C/ to take a

808
 809 Watch position on SB 482 and direct staff to send a letter the Board's concerns
 810 about the bill's ability to balance between the need for timely patient care and patient
 811 safety and whether to explore the possibility of having a second person to run the
 812 report and provide that data to the provider.

813

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant				X	
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

814
 815 Motion approved.

816
 817
 818

819 SB 960 (Hernandez) Medi-Cal: telehealth: reproductive health care.
820 This bill would enact provisions relating to the use of reproductive health care under
821 the Medi-Cal program by authorizing, to the extent that federal financial participation
822 in available, telehealth, as defined to mean the asynchronous transmission of
823 medical information to be reviewed at a later time by a licensed physician or
824 optometrist, as specified, at a distant site.

825
826 Public Comment: Teresa Anderson, Public Policy Director, California Academy of
827 PAs (CAPA) noted this bill was a good way to extend services in different health
828 care settings.

829
830 The Board did not take a position on this bill.

831
832 SB 1140 (Moorlach) Legislature: operation of statutes.
833 This bill would require the automatic repeal of regulatory authorization statute two
834 years after the statute goes into effect, except under specified circumstances.
835 Ms. Hazelton noted that this bill had failed through the committee and would not be
836 going forward.

837
838 The Board did not take a position on this bill.

839
840 SB 1155 (Morrell) Professions and vocations: licenses: military service.
841 This bill would require the Department of Consumer Affairs to develop a program to
842 waive the initial application and license fees for veterans who have been honorably
843 discharged from the California National Guard or United States Armed Forces.

844
845 Ms. Hazelton reported that after discussion with Mr. Mitchell on the possible impacts
846 this bill would have on the Board, it was determined that the loss of revenue would
847 be negligible to the Board.

848
849 The Board did not take a position on this bill.

850
851 SB 1195 (Hill) Professions and vocations: board actions
852 This bill would do the following:
853 1) specify that the Director of the Department of Consumer Affairs may not review
854 decisions of boards with respect to passing candidates or disciplining licenses;
855 2) authorize the Director to review non-ministerial market-sensitive actions or
856 decisions upon his or her initiative, at the request of the board taking the action,
857 or request of the Legislature to determine whether it furthers state law and to
858 approve, disapprove, or modify the board decision or action, as specified;
859 3) prohibit board executive officers from being active licensees regulated by that
860 board;
861 4) require the Director to approve, disapprove, or modify regulations on the basis of
862 injury to public health and safety and whether it furthers state law, and removes
863 the ability of a board to override a disapproval;
864 5) provide state indemnification for liability of board members for antitrust violations;
865 6) require regulatory actions by boards under the Department to include a statement
866 that it has been reviewed by the Director and furthers state law;
867 7) prohibit the Board of Registered Nursing from employing an executive officer that
868 is a Board licensee;
869 8) extend the effective date of the Veterinary Medical Board to January 1, 2021;
870 9) allow drug compounding;

871 10) authorize a university license type; and
872 11) prohibit premise registration after five years of nonrenewal among other
873 technical changes.
874

875 Ms. Freedman explained to the Board that the bill is designed to create immunity for
876 the Board and its members from any challenges to its decisions if they are
877 considered anticompetitive. Since a board is comprised of market participants, there
878 is concern that those licensed members have the authority and persuasive ability to
879 make decisions that could influence the impact on the public in a way that would
880 benefit licensees more than the public. Currently boards have fairly independent
881 autonomy with respect to setting standards, conducting exams, passing candidates,
882 and revoking licenses. The bill would significantly impact the independence of the
883 board's provisions.
884

885 Ms. Freedman explained that the Director of the Department of Consumer Affairs
886 (Director), on his or her own initiative or by request of a consumer or licensee would
887 be obligated to review any board decision that was claimed to be anticompetitive.
888 The bill would also authorize the Director to review every regulation the board
889 promulgates before it is finalized to determine if there is an anticompetitive impact,
890 allowing the Director to modify a rule or regulation, but not explaining the board's
891 role after that modification was made.
892

893 Ms. Freedman noted that the Office of Administrative Law (OAL) reviews and
894 approves regulations for procedural requirements and considerations. This bill would
895 give OAL the authority to disapprove the regulation if it has competitive impact that
896 wasn't properly justified by the board.
897

898 Ms. Freedman further explained the bill would address an issue raised by the
899 Attorney General's Office that certain types of damages are issued as a judgement
900 against the state agency, which lacked authority to pay it; this bill specifically grants
901 that authority.
902

903 Ms. Hazelton expressed concern that this bill gives the Director of DCA the power to
904 review and change any decision by the board. This bill could inhibit public access to
905 the decision making outside of the board setting to the private decision making of the
906 Director, which would transfer the authority from the Board to the Director.
907

908 Public Comment: Teresa Anderson, Public Policy Director, California Academy of
909 PAs (CAPA), requested clarification that the bill was strictly restraint of trade, and
910 anticompetitive acts and whether the issue with licenses and discipline are
911 addressed in this bill.
912

913 Ms. Freedman clarified that the review allows for balancing actions that were a
914 restraint of trade against public policy. The Director is required to review the
915 complaint and make a decision.
916

917 Doreathea Johnson, Deputy Director Legal Affairs, Department of Consumer Affairs,
918 informed the Board that the genesis of this bill is to address the concerns of the
919 Legislature as a result of the North Carolina State Board of Dental Examiners v.
920 Federal Trade Commission decision. The anticompetitive measures that were taken
921 as a result of this decision are to assist the boards of not becoming victim of any

922 actions that may come about from some charge of anticompetitive conduct. Ms.
923 Johnson recommended that the Board watch this bill.

924
925 The Board did not take a position on this bill.

926
927 SB 1217 (Stone) Healing arts: reporting requirements: professional liability resulting
928 in death or personal injury.

929 This bill would increase the threshold for the monetary amount of damages from
930 \$3,000 to \$10,000 for the purpose of Department programs to maintain historical
931 records containing any reported judgements or settlements involving a licensee.

932
933 Ms. Hazelton reported that this bill would bring all of the boards into alignment,
934 which would not affect this Board. The bill was also amended to include the Board of
935 Pharmacy.

936
937 The Board did not take a position on this bill.

938
939 SB 1334 (Stone) Crime reporting: health practitioners: human trafficking
940 This bill would add the crime of human trafficking to the list of crimes that constitute
941 assaultive or abusive conduct for purposes of reporting requirements for health care
942 practitioners who provide services to a patient who he or she knows, or reasonably
943 suspects, has suffered physical injury where the injury as a result of assaultive or
944 abusive conduct.

945
946 Ms. Hazelton informed the Board that the bill had been amended to remove human
947 trafficking.

948
949 The Board did not take a position on this bill.

950
951 **21. Agenda Items for the next Board Meeting**

- 952
953 a. Discussion and possible action to repeal Title 16, California Code of Regulations
954 sections 1399.531 and 1399.532.
955 b. Education/Workforce Development Advisory Committee update
956 c. Legislative Committee update
957 d. Approval of the UCSF – Fresno postgraduate physician assistant training
958 program.

959
960 **22. Adjournment**

961
962 The meeting was adjourned at 12:30 P.M.

AGENDA

ITEM

4

MEETING MINUTES

July 11, 2016

PHYSICIAN ASSISTANT BOARD

2005 Evergreen Street – Hearing Room #1150

Sacramento, CA 95815

9:00 A.M. – 5:00 P.M.

1. Call to Order by President

President Sachs called the meeting to order at 9:00 a.m.

2. Roll Call

Staff called the roll. A quorum was present.

Board Members Present:	Robert Sachs, PA-C
	Charles Alexander, Ph.D.
	Michael Bishop, M.D.
	Jennifer Carlquist, PA-C
	Sonya Earley, PA-C
	Javier Esquivel-Acosta, PA-C
	Jed Grant, PA-C
	Catherine Hazelton
	Xavier Martinez
	Mary Valencia

Staff Present:	Glenn L. Mitchell, Jr., Executive Officer
	Kristy Schieldge, Attorney III
	Ileana Butu, Attorney
	Lynn Forsyth, Enforcement Analyst
	Anita Winslow, Licensing Analyst

3. Approval of January 11, 2016 Meeting Minutes

The January 2016 meeting minutes were previously approved at the April 18, 2016 Board meeting. This agenda item should have noted the approval of the April 18, 2016 Board meeting minutes. Because the agenda did not reflect the approval of the April 18, 2016 meeting minutes the Board will be unable to approve them. Therefore, the April 18, 2016 meeting minutes will be reviewed and approved at the October 2016 Board meeting.

4. Acceptance of the May 16, 2016, Specialty Training Program Review Committee Meeting Minutes

M/ Jed Grant S/ Sonya Earley C/ to:

Accept the May 16, 2016 Specialty Training Program Review Committee meeting minutes.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

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Motion approved.

5. Public Comment on items not on the Agenda

There was no public comment at this time.

6. Reports

a. President's Report

- 1) Mr. Sachs introduced new Board member Jennifer Carlquist, recently appointed by the Governor. Ms. Carlquist has been an emergency room physician assistant at the Community Hospital of the Monterey Peninsula since 2013 and a physician assistant at Central Coast Cardiology since 2012. She was an emergency room physician assistant at the Salinas Valley Memorial Hospital from 2009 to 2015. Mr. Sachs welcomed Ms. Carlquist to the Board.
- 2) Mr. Sachs reported that the California Academy of PAs (CAPA) annual conference will be held on October 6 – 9, 2016 and CAPA provided the Board with a booth. CAPA will be celebrating their 40th anniversary and Mr. Sachs invited all to attend.
- 3) Mr. Sachs reported that the National Commission on Certification of Physician Assistants (NCCPA) has proposed changes to the physician assistant recertification requirements that would allow a 10 year renewal instead of the current 6 year renewal. According to the American Academy of Physician Assistants (AAPA) these changes 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 physician assistants from practice. The AAPA is also concerned that the change has antitrust issues.

Mr. Grant commented that this is not really an issue for California as the Board does not require NCCPA certification to maintain licensure. He noted that it is a much bigger issue for those states that do require national certification to maintain licensure. The physician assistant population is concerned as this is a high stakes recertification; therefore, it is a good thing for the Board to watch.

Ms. Schieldge noted that current regulation allows exemption from Continuing Medical Education (CME) if the physician assistant is nationally certified,

93 because the NCCPA CME requirement is more rigorous than the regulation
94 requirement if the physician assistant is not nationally certified. Therefore, this
95 issue will not affect the Board.
96

- 97 4) Mr. Sachs spoke in remembrance of Michael Scarano, former legal counsel of
98 the California Academy of PAs (CAPA). Mr. Scarano worked with the Board
99 for approximately three years in helping to develop the regulations for the
100 physician assistant profession. Through the efforts of Mr. Scarano the
101 physician assistant profession changed significantly. Because of his work with
102 the regulations, it is now possible for physician assistants to write
103 prescriptions. Mr. Scarano wrote a very concise and informative book on the
104 laws and regulations for physician assistant. Mr. Sachs noted that last year
105 Mr. Scarano was awarded CAPA's highest award "The Pride of the
106 Profession." Mr. Scarano will be greatly missed.
107

108 b. Executive Officer's Report

109
110 1) Update on BreEZe Implementation
111

112 Mr. Mitchell reported that the new online version of the physician assistant
113 application for licensure was added to BreEZe on June 17, 2016. With this
114 new application, applicants no longer are required to submit a complete paper
115 application when filing online. Now, if the applicant chooses to submit an
116 online application they are only required to submit an attestation page to the
117 Board.
118

119 Mr. Mitchell noted that another new feature of BreEZe will allow licensees to
120 update their addresses online. We anticipate this enhancement will be
121 available in late summer or early fall. This BreEZe feature will make it more
122 convenient for licensees to update their addresses with the Board. Mr.
123 Mitchell stated that licensees will continue to have the ability to update their
124 addresses in writing in addition to being able to do so online.
125

126 Mr. Mitchell reported that the BreEZe team in cooperation with the boards is
127 developing a new feature that will send licensees reminder emails regarding
128 their renewal. One email will be sent when the renewal is first available and
129 one 30 days before the renewal is due. Finally, a confirmation email will be
130 sent when the renewal has been processed. Additionally, a reminder email
131 will be sent if the license is delinquent. Mr. Mitchell noted that applicants will
132 also benefit from this new feature. When their license is issued they will
133 receive an email notifying them that the license was issued. If licensees wish
134 to receive these emails they must provide the Board with an email address.
135

136 Mr. Mitchell stated that we continue to work with the BreEZe team to make
137 corrections to licensing and enforcement reports to ensure that they are
138 reflecting accurate data.
139

140 Once again, Mr. Mitchell thanked the BreEZe and MBC ISB for their
141 continued support.
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2) CURES update

Mr. Mitchell reported that all California licensed health care practitioners authorized to prescribe Schedule II-IV controlled substance, were required to be registered with CURES before July 1, 2016. The Board assisted those individuals by updating the website with a CURES countdown calendar, as well as sending a blast regarding the CURES registration to our email subscribers.

3) End of Life Options Act

Mr. Mitchell reported that 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 became effective June 9, 2016 and will remain in effect until January 1, 2026.

Mr. Mitchell stated 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.

Mr. Mitchell noted that the Board developed an information bulletin for physician assistants regarding the Act. He explained that the bulletin states that specific requirements of the Act may only be performed by the patient's attending physician and not delegated to a physician assistant and has been posted on the website. Mr. Mitchell encouraged physician assistants to become familiar with all applicable laws pertaining to the Act.

Public Comment – Gaye Breyman, Executive Director, California Academy of PAs (CAPA) commented about the importance of keeping physician assistants informed about the Act and suggested that the Board send out an email blast to subscribers with a copy of the bulletin.

c. Licensing Program Activity Report

Between April 11, 2016 and June 30, 2016, 221 physician assistant licenses were issued. As of June 30, 2016, 10,731 physician assistant licenses are renewed and current.

d. Diversion Program Activity Report

As of July 1, 2016, the Board's Diversion Program has 14 participants, which includes five self-referral participants and nine board-referral participants.

A total of 139 participants have participated in the program since implementation in 1990.

e. Enforcement Program Activity Report

Between April 1, 2016 and June 30, 2016, there were:

- Six Accusations filed;
- No Statement of Issues filed;

- 196 • One Probationary License issued;
- 197 • Four licenses Surrendered;
- 198 • No Petitions to Revoke;
- 199 • No licenses denied;
- 200 • Three licensees placed on probation,
- 201 • No Public Reprimands;
- 202 • One Revocation;
- 203 • Five pending Citations from previous fiscal years;
- 204 • Twelve Citations issued;
- 205 • One Citation closed;
- 206 • 128 Complaints received;
- 207 • 140 complaints re assigned to investigation; and
- 208 • 54 current probationers.

209
210 The Board requested clarification on the complaint process. They expressed
211 concern about the amount of complaints received within a three month period
212 and asked if there is a trend to the complaints.

213
214 Ms. Forsyth explained that the complaint is reviewed by a Consumer Services
215 Analyst, who gathers all the information necessary to evaluate the complaint. If
216 additional information is needed, the complaint is reviewed by a medical
217 consultant, if it is determined that an investigation is needed, the case is then
218 referred to the Division of Investigation, and if warranted then it is sent to the
219 Attorney General's office.

220
221 Mr. Mitchell explained that many of the complaints the Board is receiving pertain
222 to over-prescribing. These complaints can be complex and require additional
223 evaluation using the CURES data bank and medical consultants. He also noted
224 that with BreEZe it is easier for consumers to file a complaint.

225 226 **7. Department of Consumer Affairs (DCA) – Update on Departmental Activities**

227
228 Shelly Jones, Manager, Board and Bureau Relations – Executive Office reported on
229 current Department of Consumer Affairs (DCA) activities to the Board.

230
231 Ms. Jones informed the Board of the changes within the Executive team staff.
232 Melinda McClain, Deputy Director of Legislation, has taken a position with the
233 Governor's office and Jeff Mason was appointed by the Governor on June 28, 2016
234 as the new Chief Deputy Director of DCA.

235
236 Ms. Jones discussed the survey that was sent to all the Executive Officers (EO) and
237 Board members to access the training needs for new EOs, as well as training
238 provided for Board members. DCA appreciates the feedback from the EOs and
239 Board members, once the information has been gathered and responses have been
240 reviewed, the data will be refined to develop new training.

241
242 Ms. Jones reported that the DCA SOLID Training Team held its first "Brown-bag"
243 meeting on May 11, 2016. These gatherings serve to generate networking
244 opportunities, as well as training, for executive officers. The next meeting will be held
245 on July 20, 2016.

247 Ms. Jones reminded the Board that the next Board Member Orientation Training is
248 scheduled for September 22, 2016 and members should contact the SOLID team to
249 register.
250

251 Ms. Jones informed the Board that in addition to developing specific executive officer
252 (EO) training, DCA is finalizing the process to assist boards with onboarding new
253 executive officers. Part of the process is to introduce all the division heads to the
254 new EO and enable them to brief the EO on the services provided by the division
255 and discuss any work that is currently in process between that division and the
256 board. DCA provides a transition binder to the new EO that includes information on
257 the department and the board, including contact lists, strategic plans, organization
258 charts, fund conditions, and any items that can assist the EO in their new position.
259

260 Ms. Jones reported that the SOLID training program is implementing a Mentoring
261 Pilot Program as part of the DCA strategic plan. This program affords line staff a
262 great deal of flexibility to learn from various participating managers. This is a
263 voluntary program that boards can participate in by contacting the SOLID manager
264 Damon Nelson.
265

266 Ms. Jones gave an update on the BreEZe system. She noted that the Board's
267 licensee population has significant usage of the online renewal application, and June
268 2016 indicated that 45% of our licensees were utilizing the BreEZe online renewal
269 process. In addition to BreEZe, DCA has implemented a new reporting tool called
270 "QBIRT" – Quality Business Intelligence Reporting. This new reporting system
271 allows direct access to build, edit, and run reports suited to each individual business
272 need. DCA resources are available for assistance and training. QBIRT is
273 supplemental to the reports and data available through BreEZe.
274

275 Ms. Jones concluded her report by informing the Board that AB 2193 (Salas), which
276 extends the operation of the Physician Assistant Board, has passed through the
277 Assembly and should pass the Senate on August 1, 2016.
278

279 **8. Discussion on Possible Changes to October 17, 2016 Board Meeting Date and** 280 **Location** 281

282 Mr. Sachs discussed the need to change the October 2016 Board Meeting due to
283 legal counsel's availability and the additional burden on the Board's budget with the
284 retirement of Mr. Mitchell.
285

286 Ms. Schieldge recommended that the meeting remain in southern California, as
287 Business and Professions Code section 101.7 states there must be at least three
288 meetings a year, with at least one northern California and one in southern California.
289 She also explained that the requirements for a teleconference would entail a Board
290 member at each public location and that location having audio and video capabilities
291 to accommodate any petitioner hearings scheduled for the meeting.
292

293 Mr. Sachs directed staff to find a location in southern California to hold the meeting.
294

295 Public Comment: Gaye Breyman, Executive Director, California Academy of PAs
296 (CAPA), informed the Board that she is on the Board of Directors for Marshall B
297 Ketchum and would try to assist the Board in getting accommodations at the school
298 for the October 2016 meeting.

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M/ Jennifer Carlquist S/ Jed Grant C/ to:

Change the date of the October 17, 2016 board meeting to October 24, 2016, in southern California, with an exact meeting place to be determined at a later date.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

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Motion approved.

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9. Regulations

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- a. Update on Rulemaking to amend Title 16, California Code of Regulations (CCR) section 1399.540 – Limitation on Medical Services: Related to the use of electronic signatures for the delegation of services agreement.

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Ms. Schiedge noted that at the April 18, 2016 meeting the Board directed staff and counsel to create some regulatory language for consideration in adopting standards for recognizing, authorizing or authenticating electronic or digital signatures for the Delegation of Services Agreement.

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320

Ms. Schiedge informed the Board that current regulation does not specify how an electronic signature would be authenticated or recognized by enforcement staff. She stated that in order to develop this language certain criteria is needed, and this criteria has yet to be established. Ms. Schiedge indicated that this is a very complex area and further research needs to be completed to ensure the correct regulatory language is developed. She stated that no other boards have a regulation that relate to this issue, the Physician Assistant Board is one of the first to develop a regulation for electronic signatures and needs to be diligent in developing these standards.

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

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331

Ms. Schiedge reported that 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.

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Ms. Schiedge explained that to repeal a regulation you must prove that it is no longer needed. Through review of the original rulemaking file, Ms. Schiedge

341 discovered that the Board adopted these regulations in 1983 to provide oversight
342 to address the fact that there were no accrediting bodies that specifically
343 reviewed and accredited post-graduate programs. Since the implementation of
344 these regulations there are accrediting agencies that do review these programs,
345 therefore, the question becomes is there still a need for the Board to approve
346 these post-graduate programs? She also noted that staff indicated that there are
347 currently no resources in place to perform full and qualitative reviews and
348 assessments of the post-graduate training programs. Ms. Schieldge stated that it
349 does not appear that the current regulations meet modern accreditation
350 standards accepted by state licensing boards and the current approval process is
351 insufficient and could be misleading to consumers. Therefore, she recommends
352 that regulation sections 1399.531 and 1399.532 either be updated to meet the
353 current state review and approval process or be repealed. She also noted that
354 there should not be any concerns regarding the antitrust issues that are typical to
355 rulemaking since the Board will be removing a potential barrier to educational
356 programs that wish to provide post-graduate specialty training to physician
357 assistants.

358
359 Mr. Grant stated that evaluating post-graduate programs falls outside of the
360 Board's mission of consumer protection. He noted that since these programs
361 have licensed physician assistants as participants, the Board would be able to
362 monitor the actions on the licensee. Therefore, he would like to repeal the
363 regulations.

364
365 Ms. Earley expressed the Board's need to have some knowledge of the post-
366 graduate programs. She noted that by keeping section 1399.531 the Board
367 would have the ability to set post-graduate program standards, thus ensuring the
368 physician assistants are attending a quality program.

369
370 Public Comment: Gaye Breyman, Executive Director, California Academy of PAs
371 (CAPA), commented that CAPA would support the motion to repeal sections
372 1399.531 and 1399.532 since they were implemented 15 years ago and the
373 curriculum requirements noted are not conducive to current programs. Ms.
374 Breyman noted that the Board would need to complete a more intensive review,
375 including site visits and class reviews of the programs before approving them.
376 Therefore, CAPA supports the repeal of sections 1399.531 and 1399.532.

377
378 M/ Jed Grant S/ Xavier Martinez C/ to:

379
380 Direct staff to take all steps necessary to initiate the formal rulemaking process to
381 repeal regulation sections 1399.531 and 1399.532 and authorize the Executive
382 Officer to make any non-substantive changes to the rulemaking package and set
383 the proposed regulations for a hearing.

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Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Jennifer Carlquist	X				
Sonya Earley		X			
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

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Motion approved.

10. Regulatory Hearing

- a. 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.

My name is Robert Sachs. I am the president of the Physician Assistant Board and I will be presiding over this hearing.

This is the time and place set for the Physician Assistant Board to conduct a public hearing on the proposed regulatory changes to Title 16, Division 13.8 of the California Code of Regulations as described in the notice published in the California Regulatory Notice.

As you may be aware, 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.

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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. For the record, today's date is July 11, 2016 and this hearing is beginning at approximately 10 a.m. Will the secretary please call the roll to establish for the record that a quorum of the Board is present?

CALL THE ROLL:

Member	Present	Absent
Charles Alexander	x	
Jennifer Carlquist	x	
Sonya Earley	x	
Javier Esquivel-Acosta	x	
Jed Grant	x	
Catherine Hazelton	x	
Xavier Martinez	x	
Robert Sachs	x	
Mary Valencia	x	

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A quorum was present.

At this time, the hearing will be opened to take oral testimony and or documentary evidence by any person interested in these regulations for the record which is now being made by tape recorder. All oral testimony and documentary evidence will be considered by the Physician Assistant Board pursuant to the requirements of the Administrative Procedure Act before the Board formally adopts the proposed amendment to these regulations or recommends changes which may evolve as a result of this hearing.

If any interested person desires to provide oral testimony, it will be appreciated if he or she will stand or come forward and give his or her name and address and if he or she represents an organization, the name of such organization, so that we will have a record of all those who appear. It is the desire of the Board that the record of the hearing may be clear and intelligible, and that the hearing itself may be orderly, thus providing all parties with fair and ample opportunity to be heard.

Since there were no questions concerning the nature of the proceedings, the Board will proceed to hear oral testimony in consideration of the Board's proposed regulation.

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The first person to testify is:

Teresa Anderson, California Academy of PAs (CAPA), thanked the Board for the effort that went into this regulatory change. She testified that CAPA is in support of the changes.

Since there were no other testimonies, Mr. Sachs closed the hearing at 10:05 a.m.

- b. Discussion and Possible Action to Amend Title 16, California Code of Regulations section 1399.546 – Reporting of Physician Assistant Supervision.

Ms. Schieldge stated that the reporting requirement is being amended to make it more consistent with the legislation that was enacted this year; that you can record in the medical record the supervising physician through the use of an electronic medical record (EMR) software program instead of manually entering the supervising physician in the medical record. The regulation is being amended to clarify that it is also acceptable to have an EMR software system enter the supervising physician automatically, as well as to update and make sure that the regulation is consistent with modern technological times.

Ms. Schieldge reviewed the comment received on June 28, 2016 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, so the language will read “supervising physician for each episode of care.” Ms. Schieldge recommended that the Board accept the comment from CAPA.

Public Comment: Teresa Anderson, California Academy of PAs (CAPA), informed the Board that CAPA appreciated the Board working with them in revising the text to reflect the original intent from the January 11, 2016 meeting.

M/ Jed Grant S/ Sonya Earley C/ to:

Accept CAPA’s comment to strike the word “assistant” from the third line of subdivision (b).

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

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Motion approved.

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Ms. Hazelton asked to clarify if the physician assistant is not using an electronic medical record software system, will they still be required to record the supervising physician's name within the medical record.

Ms. Schieldge responded that the regulation was amended to incorporate all types of record keeping to enter the supervising physician for each episode of care.

M/ Jed Grant S/ Mary Valencia C/ to:

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 regulation before completing the rulemaking process, and adopt Section 1399.546 of the proposed regulations with the modified text.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

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Motion approved.

11. Closed Session

- a. Pursuant to Section 11126(c)(3) of the Government Code, the Board moved into closed session to deliberate on disciplinary matters.
- b. Pursuant to Government Code section 11126(a) the Board moved into closed session to discuss the selection process and the possible appointment of an executive officer.

Returned to Open Session

12. Executive Officer Recruitment and Selection Process

Ms. Schieldge announced that the Board has taken action in closed session and will make an offer to a candidate. If that offer is accepted and all clearances are obtained, the Board will announce the new executive officer at the next board meeting, as well as in a press release.

13. A lunch break was taken.

14. The Education/Workforce Development Advisory Committee

Mr. Grant presented an update on the current status of physician assistant programs in California. He informed the Board that there are currently thirteen (13) programs in California, seven (7) that have conventional accreditation, two (2) that have provisional accreditation (which means these programs are in their first 2-3 years) and four (4) developing programs.

- a. Presentation by the Health Professions Education Foundation regarding scholarship and loan repayments for health professional students and graduates.

Norlyn S. Asprec, Outreach and Marketing Director, Health Professions Education Foundation, Office of Statewide Health Planning and Development, presented to the Board that the foundation was statutorily established in 1987 to provide scholarships and loan repayment programs to health professional students and graduates throughout the state in exchange for the licensee's agreement to provide patient care in underserved areas for two (2) years.

Ms. Asprec informed the Board that clinical nurse practitioners, dentists, physician assistants, nurse practitioners, pharmacists, and physical therapists are all eligible to apply for the Advanced Practice and Healthcare Scholarship and Loan Repayment Program. The purpose of this program is to increase the number of healthcare professionals practicing in medically underserved areas of the state. The amount of the award is up to \$50,000 in exchange for two (2) years of service in an underserved area.

Ms. Asprec explained that the scoring criteria for the grants and loan repayment programs are based on:

- Why the applicant is dedicated to working in an underserved area;
- Why the applicant decided to pursue a healthcare career;
- The applicant's dedication to providing healthcare in California

The applications are scored by the Advisory Board.

Ms. Asprec informed the Board that the number of applications have been increasing due to the increase in the grants. She also stated that the award pool fluctuates according to the grants. Applicants can access the website to find the underserved areas that qualify. They can also apply for a scholarship while in school and then for the loan repayment once they have graduated.

- b. Update on the approval of the UCSF-Fresno Postgraduate Physician Assistant Training Program.

Mr. Grant reported that the Board's Specialty Training Program Review Committee met via teleconference on May 16, 2016 to review and discuss the application submitted by the UCSF-Fresno PA postgraduate program. Upon review and discussion, the Committee approved the application pursuant to Business and Professions Code sections 3509 and 3513.

- c. Update and possible action regarding next steps in seeking possible legislation to offer tax deductions for preceptors.

609 Mr. Grant stated that at the April 18, 2016 meeting it was noted that the State of
610 Georgia recently passed legislation that provided tax deductions to physicians
611 who serve as preceptors for the education of mid-level health care providers
612 such as physician assistants.

613
614 Mr. Grant discussed that one of the factors for training physician assistants (PA)
615 is clinical training and the use of preceptors in this aspect of their training. This
616 clinical instruction may come from other PAs or physicians who are not generally
617 paid for their time but may receive Continuing Medical Education (CME) credit for
618 being a preceptor. Therefore, it is often difficult to find health care providers to be
619 preceptors because they are not financially reimbursed. Mr. Grant noted that
620 statistics show that 70% of PAs that are trained in California remain in the state
621 and practice as PAs.

622
623 Mr. Grant recommended inviting stakeholders to the October 2016 board
624 meeting for an open discussion.

625
626 Ms. Hazelton suggested that the stakeholders should explore additional solutions
627 to the tax relief to present to the Legislature. She expressed the importance to
628 demonstrate additional options as well as the tax relief. Ms. Hazelton also
629 suggested sending out a survey to stakeholders for their input.

630
631 Public Comment: Teresa Anderson, California Academy of PAs (CAPA),
632 commented that in CAPA's state action plan the need to increase rotation sites
633 and preceptors is a significant issue that needs to move forward. She also stated
634 that CAPA would be interested in the stakeholder meeting.

635
636 **15. Discussion and Possible Action to Approve Proposed Updates to the**
637 **Delegation of Services Agreement Questions and Answers Regarding**
638 **Acceptance of Electronic Signatures**
639

640 Mr. Grant stated that the current regulation that requires a signature on the
641 Delegation of Services Agreement (DSA) does not address electronic signatures. He
642 noted that the DSA is an agreement between the supervising physician and the
643 physician assistant and it does not matter how it is signed as long as both parties
644 are in agreement, then electronic signatures should be allowed. Mr. Grant suggested
645 that the fact sheet for DSAs on the Board's website be amended to allow for
646 electronic signatures until the regulation is amended to include electronic signatures.

647
648 Mr. Grant also noted that there are not any legal requirements to update the DSA,
649 but it should reflect the physician assistants' current practice.

650
651 Ms. Schiedge commented that there isn't any criteria set in any regulation for
652 electronic signatures. She noted that the Board needs to amend the regulation for
653 electronic signatures. Unfortunately, because of the complexity of the law involving
654 implementation of electronic signatures, the research to an appropriate
655 implementation language is creating a delay in the writing of the regulation. Ms.
656 Schiedge expressed concern with how the Board could defend or enforce the use of
657 electronic signatures without a standard in place. She recommended not
658 implementing the use of electronic signatures until the regulation is amended.

659

660 Mr. Grant opined that until the regulation that defines electronic signatures is
661 completed, the DSA fact sheet that reflects electronic signatures should be fine to
662 use.

663
664 Public Comment: Gaye Breyman, Executive Director, California Academy of PAs
665 (CAPA), questioned how other boards regulate electronic signatures, would each
666 board have their own regulation or would it be statewide. If each board has their own
667 then an investigator would have to know about all of the different acceptances of
668 electronic signatures.

669
670 Ms. Schieldge responded that if the board does not have its own regulation then
671 they would have to follow the Secretary of State's standard. Since this profession is
672 totally dependent upon the DSA for its scope of practice, the Board should proceed
673 carefully to implement a standard that is both fair to the regulated community and
674 protects the public, as well as legally defensible.

675
676 M/ Jed Grant S/ Sonya Earley C/ to:

677
678 Approve the DSA fact sheet to include the question about allowing electronic
679 signatures and to amend the answer to the question in regard to updating the DSA
680 to include the statement that it should reflect current practice.

681

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

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683 Motion approved.

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686 **16. Developments since the February 2015 United States Supreme Court decision**
687 **in North Carolina State Board of Dental Examiners v. Federal Trade**
688 **Commission (FTC)**

689

690 Ms. Schieldge reported that the Little Hoover Commission (LHC) had a round-table
691 discussion on collecting demographic data. LHC would like to expand the
692 demographic data to include types of crimes. She informed the Board that the
693 summary of the meeting would be reported to the Board when it becomes available.

694

695 **17. Medical Board of California (MBC) Activities Report**

696

697 Dr. Bishop started his report by taking a minute on behalf of the Medical Board of
698 California (MBC) and its staff to congratulate Mr. Mitchell on his retirement. He
699 noted how Mr. Mitchell has worked closely with numerous staff at the MBC and he
700 will be greatly missed. He has done a tremendous job as the Executive Officer of
the Physician Assistant Board and his hard work and dedication has led to

701 improvements for the consumers of the state of California. Dr. Bishop, the MBC and
702 its staff wished Mr. Mitchell the best in retirement and thanked him for his service.
703 The Medical Board held its quarterly meeting on May 5 and 6, 2016 in Los Angeles.
704

705 Dr. Bishop reported that at the May Board Meeting, the Licensing Committee heard
706 an update from staff regarding the MBC's project to change the length of
707 postgraduate training. Currently, MBC requires at least 1 year of ACGME approved
708 postgraduate training for US/Canadian medical school graduates and 2 years for
709 international medical school graduates. Based upon discussions and concerns, the
710 Board Members requested staff look into this issue and determine if MBC should
711 request that the law be changed to require more postgraduate training. The MBC is
712 currently looking at 3 years for both US/Canadian and international medical school
713 graduates. The MBC has held interested parties meetings and will continue to do so
714 to determine any unintended consequences. This will be something the MBC brings
715 up in its sunset review report. The plan at this time is to change the requirements to
716 3 years for all graduates. The Licensing Committee also had presentations on
717 special faculty permits and the MBC's special programs.
718

719 Dr. Bishop spoke about the Medical Board's Public Outreach, Education, and
720 Wellness Committee which also met on May 5, 2016. At this meeting, the
721 Committee Chair, Dr. Lewis provided an update on the MBC's new outreach
722 campaign, entitled "Check Up on Your Doctor's License." Dr. Lewis noted that staff
723 had already completed some of the activities in the outreach plan. One of those
724 completed activities included a message encouraging state employees, vendors and
725 contractors to check up on their physicians' licenses, which appeared on all pay
726 warrants issued by the State Controller's Office during the period of June 1 through
727 June 30, 2016. You all may have seen this on the bottom of your pay stub. Dr.
728 Lewis stated the message will reach approximately 440,000 individuals. In addition,
729 an article with information about the MBC and a link to the MBC's website was
730 included in the California State Teachers Retirement System (CalSTRS) and the
731 California State Retiree's Organization (CalSRO)'s April 2016 newsletter and will
732 again be in their spring and summer 2016 newsletters. He stated the target number
733 of these groups is 934,000 individuals.
734

735 Dr. Bishop added that the MBC just completed a website tutorial on how to look up a
736 physician. This tutorial is posted on the MBC's homepage. Staff will next begin
737 working on Public Service Announcements (PSA) that would be provided to various
738 media organizations and other interested parties discussing the importance of
739 checking their physician's profile.
740

741 Dr. Bishop noted that the Medical Board was also recently listed in a Consumer
742 Reports article, which listed the California Medical Board's website and physician
743 profile as the best in the nation. Although it was ranked the best, staff reviewed the
744 article for suggestions for website improvements and made what improvements
745 were allowable in the law.
746

747 Dr. Bishop reported that at the Full Board meeting, the Members discussed a
748 significant amount of legislative bills related to the practice of medicine impacting
749 physicians. The MBC also had an overview of the Sunset review process and
750 approved eleven items to be included in the MBC's sunset review report. These are
751 issues where the MBC would like legislative changes and therefore are bringing
752 them forward in its report. Some of the issues include requesting a licensee's

753 expiration date to be two years from the date the license is issued rather than the
754 physician's birth month, changes to data reporting for outpatient surgery settings,
755 changes to public disclosure laws, requesting penalties for facilities that do not
756 report as required in Business and Professions Code section 805.01, and changing
757 the language in the law requiring the posting of a sign in a physician's office.
758

759 Dr. Bishop spoke about the 2nd annual Legislative Day held by the MBC on May 11,
760 2016. The day was well attended by the MBC and 5 groups of Board members
761 visited members throughout the capitol explaining the MBC's roles and functions. In
762 addition, Members asked the Legislative Members to post information on the MBC's
763 outreach campaign. Several legislative members took pictures with board members
764 and tweeted the information about the MBC to their constituents. It was a very
765 successful day.
766

767 Dr. Bishop noted that the next Medical Board meeting will be on July 28 – 29, 2016
768 in the San Francisco Area.
769

770 Dr. Bishop commented that the MBC continues to be appreciative of the relationship
771 it has with the Physician Assistant Board, specifically with Mr. Mitchell and his staff.
772 The MBC offers any assistance it can provide to the Physician Assistant Board with
773 any future issues.
774

775 **18. Budget Update**

776
777 Wilbert Rumbaoa, Budget Analyst, Department of Consumer Affairs (DCA) reported
778 on the final expenditures for fiscal year 2015/2016. Mr. Rumbaoa made note of two
779 specific items from the budget report:

- 780 • Due to the complexity of the Board's enforcement cases the Board was
781 granted an Attorney General augmentation of \$180,000.
- 782 • The COP services line item was allotted \$114,000 and the projected
783 expenditure was \$40,000. The difference was due to the actual expenditure
784 from the Maximus contract, therefore, the COP services were able to be
785 reduced.

786 Mr. Rumbaoa informed the Board that the budget closed with \$36,000 referred.
787

788 Mr. Grant questioned if the upcoming retirement of the Board's current Executive
789 Officer would have an effect on the current fiscal year budget, and Mr. Sachs asked
790 if there would have to be another augmentation.
791

792 Mr. Rumbaoa responded that the current fiscal year would not be affected by the
793 retirement. He also noted that the Budget office is working with Board staff in
794 finalizing a Budget Change Proposal (BCP) to increase the Board's enforcement
795 expenditure.
796

797 Marina O'Conner, Budget Manager, DCA, explained that the BPC process is for the
798 2017/2018 fiscal year and if enforcement expenditure is over budget, through the
799 Governor's budget bill the Board would be able to request an augmentation if
800 necessary.
801

802 **19. The Legislative Committee Report**

803
804 Ms. Hazelton discussed specific bills that are of interest to the Board.

805 AB 2193 (Salas) Physician Assistant Board: extension.

806 This bill serves as the sunset extension for the Physician Assistant Board through
807 January 1, 2021.

808
809 Ms. Hazelton reported that the bill is in Appropriations and will be passed, extending
810 the life of the Board for another 3 years.

811
812 The Board did not take a position on this bill.

813
814 SB 482 (Lara) Controlled substances: CURES database.

815 This bill would require prescribers, except veterinarians, and dispensers prescribing
816 or dispensing a Schedule II or III drug to a patient for the first time to consult that
817 patient's record on the CURES database prior to issuing the prescription or
818 dispensing the drug. It would also require the prescriber or dispenser to check the
819 database annually when the prescription remains a part of the patient's treatment.
820 Failure to consult the CURES database as specified would be considered
821 unprofessional conduct and subject the licensee to discipline by the appropriate
822 board. This bill would affect boards that license individuals with the authority to
823 prescribe and/or dispense Schedule II or III drugs, including the Dental Board,
824 Medical Board, Board of Optometry, Osteopathic Medical Board, Board of
825 Pharmacy, Physician Assistant Board, Board of Podiatric Medicine, and Board of
826 Registered Nursing.

827
828 Ms. Hazelton reported that at the April 18, 2016 meeting the Board expressed
829 concerns about the timeliness of treatment and if other health providers, such as
830 medical assistants could run the reports. She informed the Board that the bill had
831 several amendments to address these concerns. The amendments included:

- 832
- 833 • CURES data base would not have to be checked if not reasonably possible
834 for the practitioner to access the information in a timely manner;
 - 835 • Another healthcare practitioner or designee is not reasonably available; and
 - 836 • Quantity of the controlled substance does not exceed a five (5) day supply.

837 Ms. Hazelton stipulated that these amendments met the concerns expressed by the
838 Board and she recommended removing the watch position and not send the letter
839 requested at the April 18, 2016 meeting.

840 Mr. Grant expressed concerns that the bill does not increase public protection. He
841 stated that in his opinion it interferes between the patient and provider by mandating
842 the CURES data base be checked for every patient, thus, taking the decision to use
843 CURES away from the provider.

844
845 Public Comment: Teresa Anderson, California Academy of PAs (CAPA),
846 commented that CAPA does have some concerns about the bill and they have been
847 working with the author's office to address their concerns about amending the bill to
848 be provider friendly. She noted that there is a long list of supports, mostly law
849 enforcement, and the provider groups have expressed concern in regard to how this
850 will impact patient care. CAPA has not taken an official position on this bill and they
851 are closely watching it.

852
853 M/ Catherine Hazelton S/ Sonya Earley C/ to

854
855 Remove the previous watch position with specific recommendations to the
856 Legislature.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

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Motion approved.

Dr. Bishop commented that the bill is designed to stop patients from doctor shopping. He explained that existing data shows that if the physicians don't supply the drugs, then the patients will go to the streets for it. The goal of the bill is to decrease addiction and opioid use. Dr. Bishop was not sure of the impact because as prescriptions are tightened by physicians, there is a notable increase in street use. He stated that this is a well-intended bill.

Mr. Grant questioned the enforcement aspect, whether physician assistants be disciplined. He also noted that the bill would decrease the amount of time the physician assistant has to spend with the patient.

Ms. Hazelton explained there is no private cause of action against the practitioner; the bill allows boards to administer sanctions. She also noted the exceptions of the bill which include hospice care, surgical procedures, emergency department or emergency transfer.

Public Comment: Teresa Anderson, Public Policy Director, California Academy of PAs (CAPA), commented that CAPA's original concerns were addressed with the amendments of the bill. One issue the bill was amended to address was compliance with CDC guidelines. CAPA continues to work with the author's office to address the concerns they have. Ms. Anderson stated that CAPA understands the intent of the bill is to curb the drug epidemic.

M/ Jed Grant S/ Jennifer Carlquist C/ to take an

Oppose position on SB 482 and direct staff to send a letter that addresses the Board's concerns about the bill's ability to balance between the need for timely patient care and patient safety and whether to explore the possibility of having a second person to run the report and provide that data to the provider.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Catherine Hazelton		X			
Xavier Martinez		X			
Robert Sachs	X				
Mary Valencia		X			

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Motion approved.

SB 1155 (Morrell) Professions and vocations: licenses: military service.

This bill would require the Department of Consumer Affairs to develop a program to waive the initial application and license fees for veterans who have been honorably discharged from the California National Guard or United States Armed Forces.

Ms. Hazelton reported that after discussion with Mr. Mitchell on the possible impacts this bill would have on the Board, it was determined that the loss of revenue would be negligible to the Board.

The Board did not take a position on this bill.

20. Agenda Items for the next Board Meeting

- 1) Discussion on how the Board recruits expert witnesses.
- 2) Education/Workforce Development Committee – possible legislation for preceptors.
- 3) Legislation update

21. Adjournment

With no further business the meeting was adjourned at 4:20 P.M.

AGENDA

ITEM

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BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDWIN G. BROWN, JR.

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



**DEPARTMENT OF CONSUMER AFFAIRS (DCA)
 PHYSICIAN ASSISTANT BOARD (PAB)**

**SPECIAL TELECONFERENCE MEETING OF THE PAB
 MEETING MINUTES
 August 25, 2016**

1. Roll Call & Establishment of a Quorum

Mr. Sachs called the meeting to order at 2:00 pm. Staff called the roll to establish a quorum. Each board member responded that they were present and at the locations listed below:

Robert Sachs
 1520 San Pablo Street, Suite 4300
 Los Angeles, CA 90095

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

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

Javier Esquivel-Acosta
 1735 Technology Drive, #800
 San Jose, CA 95110

Charles Alexander, Ph.D.
 UCLA
 405 Hilgard Avenue
 1232 Campbell Hall, Room 1232
 Los Angeles, CA 90095

Catherine Hazelton
 455 Golden Gate Avenue
 Suite 14300
 San Francisco, CA 94102

Sonya Earley
 2020 Zonal Ave, IRD Bldg, Rm 602
 Los Angeles, CA 90638

2. Finding of necessity for Special Meeting

Mr. Sachs indicated that California's Bagley-Keene Open Meeting Act requires the Physician Assistant Board to make a finding regarding the necessity of holding a special meeting and the waiver of the usual 10-days' advance notice requirement for board meetings (California Government Code Section 11125.4(c)). The finding must be made at the commencement of the board's meeting and provide specific facts to support the finding. Failure to adopt the finding terminates the meeting. The finding must be adopted by two-thirds of the board members or a majority of the members, if less than two-thirds are present.

Mr. Grant made a motion was made to adopt the following finding:

The Board finds that providing 10-days' advance notice of this meeting would pose a substantial hardship on the Board in that the Board would be deprived of the ability to discuss, deliberate and take a position on Senate Bill (SB) 482, legislation that could substantially impact consumer protection and enforcement, before the legislature completes its review and action.

The Board's next meeting is not until October 24, 2016, well after the bill would be acted on by the Legislature. There is insufficient time to schedule another meeting before the end of the legislative session August 31, 2016 to comply with the 10-days' advance notice requirement of the Bagley-Keene Open Meeting Act.

Xavier Martinez seconded the motion. The motion was approved unanimously.

3. Discussion and Possible Action regarding the Board's position on SB 482 – Controlled Substances: CURES Database.

Mr. Grant indicated that the Board had received a request from Senator Lara's office to review the updated version of SB 482 which addresses many of the concerns of the Board. The Board members had a brief discussion regarding changing the opposed position for this bill.

Dr. Alexander expressed his concerns regarding protocol and access to care. He also expressed concern regarding the time to review the CURES reports and the decrease in efficiency and patient care with the new amendments patient care wouldn't be decreased.

Motion was made to support SB 482.

M/Grant S/Dr. Alexander

There was no public comment. The motion was approved unanimously.

Staff was instructed to draft letter of support.

4. Public Comments

There were no public comments

5. Adjournment

Motion to adjourn the meeting.

M/Grant S/Early Motion approved unanimously. Meeting adjourned at 2:19 pm



PHYSICIAN ASSISTANT BOARD

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



August 25, 2016

The Honorable Ricardo Lara
State Capitol, Room 5050
Sacramento, CA 95814-4900

Re: Senate Bill 482

Dear Senator Lara:

On August 25, 2016, the Physician Assistant Board (Board) held a teleconference public board meeting to discuss SB 482.

The Board believes that the recent amendments to SB 482 will address the Board's concerns and has taken a support position on SB 482.

As a consumer protection agency, the Physician Assistant Board is interested in legislation related to the CURES database as the Board recognizes the valuable role CURES plays in allowing medical practitioners, including physician assistants, to make informed decisions about their patient's care, which may include the use of controlled substances. Additionally, querying CURES by medical practitioners will help to determine whether patients are "doctor shopping," which may lead to harmful overuse of prescription drugs.

Sincerely,

PHYSICIAN ASSISTANT BOARD

A handwritten signature in black ink that reads 'Robert E. Sachs'.

Robert E. Sachs
President, Physician Assistant Board

AGENDA

ITEM

8



CONTINUING MEDICAL EDUCATION AUDIT

«Date_Selected_for_CE_Audit»

«FIRST_NAME» «MIDDLE_NAME»

License: «RANK»

«LAST_NAME»

«License_Number»

«ADDRESSBLOCK»

Dear «First_Name» «Last_Name»:

This letter is to inform you that you have been randomly selected to participate in the Physician Assistant Board (Board) Continuing Medical Education (CME) audit. **Please provide proof of CME compliance from the period «CE_Audit_Period_Start_Date» through «CE_Audit_Period_End_Date».** The Board is conducting an audit of CME compliance pursuant to Title 16 CCR section 1399.617. The process for the audit is to select, at random, physician assistants who have certified compliance by signing the CME statement on their renewal notice.

Title 16 California Code of Regulations (CCR) section 1399.615 requires a licensee to complete not less than 50 hours of approved CME during each two-year period immediately preceding the expiration date of the license or be certified by the National Commission on Certification of Physician Assistants (NCCPA) at the time of renewal. Physician assistants selected for the audit are required to submit documents certifying their compliance with the CME requirement. Acceptable documents include letters or certificates of attendance that show: participant name, completion of CME course, name of provider, course name and date, and number of approved CME hours or a letter from the NCCPA verifying certification. If necessary, please contact your CME provider to obtain documents verifying your participation. Please send photocopies as originals will not be returned.

The documentation being requested is mandatory. Any physician assistant misrepresenting compliance with the CME requirement may be cited for unprofessional conduct. Failure to provide the requested information by your next renewal period will result in your ineligibility for renewal of your license until such time as the completion of the deficient hours of CME is documented to the Board.

On the reverse side of this letter, please check the section(s) which best describes your situation and **return it along with your documentation postmarked no later than «Return_Postmark_Date».** If you have any questions, please contact the CME auditor at (916) 561-8780.

Sincerely,

CME Coordinator
 Physician Assistant Board



Physician Assistant Board
 Annual Statistical Program Data
 07/01/2016 - 10/10/2016

AGENDA ITEM 8C

INITIAL APPLICATIONS RECEIVED

License Type	Count
9501	335

INITIAL LICENSES ISSUED

License Type	Count
9501	350
PA	350

LICENSES RENEWED

License Type	Count
ALL STATUS	
9501	1,406
PA	1,406

CURRENT STATUS

9501	1,395
PA	1,395

CURRENT INACTIVE

9501	9
PA	9

**LICENSING POPULATION REPORT
PHYSICIAN ASSISTANT BOARD
AS OF 10/10/2016**

Prepared By: PAAWINS

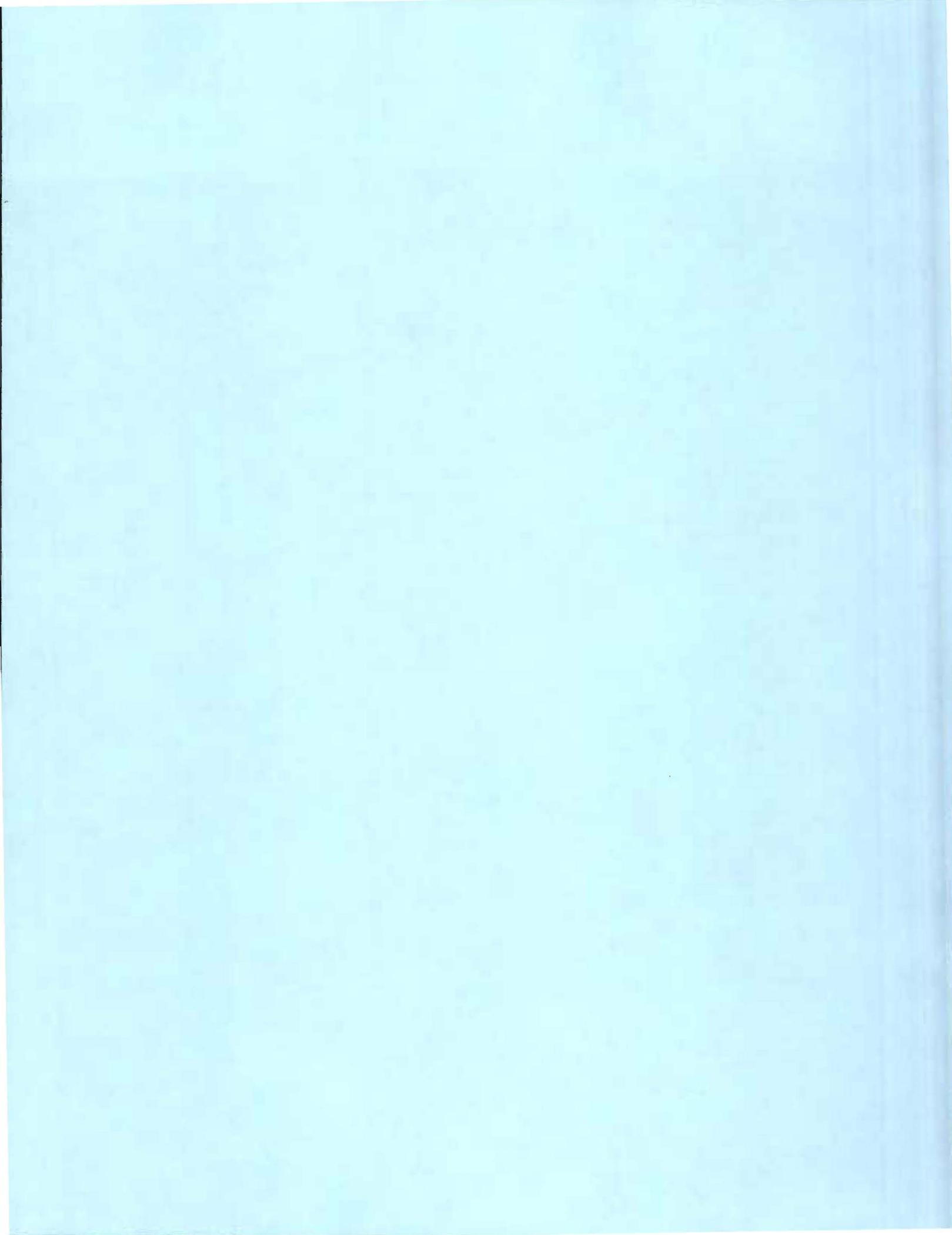
Parameters Selected

License Type(s): 9501

License Rank(s): PA

Status: 20,21,22,23,24,25,27,28

License Type	STATUS CODES																					Total	
	20	21	22	23	24	25	31	40	45	46	48	50	51	60	62	63	65	80	85	90	98		99
9501	10,998	41	2	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11,044
PA	10,998	41	2	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11,044
	10,998	41	2	0	3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	11,044
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																							



**PHYSICIAN ASSISTANT BOARD
 DIVERSION PROGRAM**

ACTIVITY REPORT

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

	As of October 1, 2016	As of October 1, 2015	As of October 1, 2014
Voluntary referrals	05	03	03
Board referrals	09	09	13
Total number of participants	14	12	16

HISTORICAL STATISTICS

(Since program inception: 1990)

Total intakes into program as of October 1, 2016:	139
Closed Cases as of October 1, 2016	
• Participant expired:	01
• Successful completion:	46
• Dismissed for failure to receive benefit:	04
• Dismissed for non-compliance:	27
• Voluntary withdrawal:	23
• Not eligible:	22
Total closed cases:	123

OTHER DCA BOARD DIVERSION PROGRAM PARTICIPANTS

(As of June 30, 2016)

Dental Board of California:	19
Osteopathic Medical Board of California:	12
Board of Pharmacy:	53
Physical Therapy Board of California:	22
Board of Registered Nursing:	411
Veterinary Board of California:	6

PHYSICIAN ASSISTANT BOARD
ENFORCEMENT ACTIVITY REPORT

July 1, 2016 to September 30, 2016

Disciplinary Decisions

License Denied	0
Probation	5
Public Reprimand/Reproval	1
Revocation	2
Surrender	2
Probationary Licenses Issued.....	0
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	7
Accusation Withdrawn	1
Statement of Issues Filed	0
Statement of Issues Withdrawn.....	0
Petition to Revoke Probation Filed	2
Petition to Compel Psychiatric Exam.....	0
Interim Suspension Orders (ISO)/PC23	0

Office of Attorney General Cases

Cases initiated.	7
Pending Cases.	45

Citation and Fines

Pending from previous FY	11
Issued	0
Closed	4
Withdrawn	0
Sent to AG/noncompliance	0
Pending	0
Initial Fines Issued	\$3,250.00
Modified Fines Due	\$0.00
Fines Received	\$1,250.00

Current Probationers

Active.....	52
Tolled.....	5

COMPLAINTS

Total Received	127
Closed W/O Investigation	0
Assigned for Investigation	126
Total Received from 1-1-2016 to 10-1-2016	1,134

AGENDA

ITEM

10

NCCPA Exam Development and Scoring

NCCPA's exam questions are developed by committees comprising PAs and physicians selected based on both their item writing skills, experience and demographic characteristics (i.e., practice specialty, geographic region, practice setting, etc.). The test committee members each independently write a certain number of test questions or items, and then, each item then goes through an intense review by content experts and medical editors from which only some items emerge for pre-testing. Every NCCPA exam includes both scored and pre-test items, and examinees have no way of distinguishing between the two. This allows NCCPA to collect important statistics about how the pre-test items perform on the exam, which informs the final decision about whether a particular question meets the standards for inclusion as a scored item on future PANCE or PANRE exams.

When NCCPA exams are scored, candidates are initially awarded 1 point for every correct answer and 0 points for incorrect answers to produce a raw score. After examinees' raw scores have been computed by two independent computer systems to ensure accuracy, the scored response records for PANCE and PANRE examinees are entered into a maximum likelihood estimation procedure, a sophisticated, mathematically-based procedure that uses the difficulties of all the scored items in the form taken by an individual examinee as well as the number of correct responses to calculate that examinee's proficiency measure. This calculation is based on the *Rasch model* and equates the scores, compensating for minor differences in difficulty across different versions of the exam. Thus, in the end, all proficiency measures are calculated as if everyone took the same exam.

Finally, the proficiency measure is converted to a scaled score so that results can be compared over time and among different groups of examinees. The scale is based on the performance of a reference group (some particular group of examinees who took the exam in the past) whose scores were scaled so that the average proficiency measure was assigned a scaled score of 500 and the standard deviation was established at 100. The minimum reported score is 200, and the maximum reported score is 80.

We do not publish the percent correct level necessary to pass our examinations any more. Given that we have multiple test forms this information would not be accurate since some test forms, while built to be exactly the same, are slightly different in their difficulty. Therefore, we convert the percent correct to a scaled score and report scores and the passing standard on that scale.

LICENSING INITIAL LICENSING EXAMINATION

PASSING SCORE

Business and Professions Code section 3517 provides in pertinent part:

“The board shall, however, establish a passing score for each examination.”

Motion to approve the passing score for the physician assistant initial licensing examination for year 2017 as established by the National Commission on Certification of Physician Assistants.

DATES AND LOCATIONS

Business and Professions Code section 3517 provides in pertinent part:

“The time and place of examination shall be fixed by the board.”

Motion to approve the dates and locations for the physician assistant initial licensing examination for year 2017.

Dates: The examination is given on a year-round basis. There will be no testing December 18-31, 2016.

Locations: Pearson VUE Professional Centers.

AGENDA

ITEM

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Proposed PA Board Meeting Dates for 2017 within the 100 Day Limit

Option 1

- Monday – January 9th (76 Days)
- Monday – April 10th (91 Days)
- Monday – July 10th (91 Days)
- Monday – October 9th (91 Days)

Option 2

- Monday – January 23rd (90 Days)
- Monday – April 17th (84 Days)
- Monday – July 17th (91 Days)
- Monday – October 16th (91 Days)

Medical Board Meeting Dates for 2017:

- January 27-28 (Friday-Saturday)
- April 27-28 (Thursday-Friday)
- July 27-28 (Thursday-Friday)
- October 26-27 (Thursday-Friday)

Ileana Butu will not be available:

- March 8-10
- March 14-16
- June 14-16
- August 16-18
- October 17-19

State Pay Period Calendar for 2017

JANUARY 2017

22 Days 176 Hours

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				

FEBRUARY 2017

21 Days 168 Hours

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	1			

MARCH 2017

22 Days 176 Hours

SU	M	TU	W	TH	F	SA
				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	

APRIL 2017

21 Days 168 Hours

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	1					

MAY 2017

22 Days 176 Hours

SU	M	TU	W	TH	F	SA
		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			

JUNE 2017

22 Days 176 Hours

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 2017

22 Days 176 Hours

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	1				

AUGUST 2017

22 Days 176 Hours

SU	M	TU	W	TH	F	SA
				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 2017

21 Days 168 Hours

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

OCTOBER 2017

22 Days 176 Hours

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				

NOVEMBER 2017

22 Days 176 Hours

SU	M	TU	W	TH	F	SA
			1	2	3	4
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DECEMBER 2017

21 Days 168 Hours

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AGENDA

ITEM

12

State of California

BUSINESS AND PROFESSIONS CODE

Section 3502.3

3502.3. (a) Notwithstanding any other provision of law, in addition to any other practices that meet the general criteria set forth in this chapter or the Medical Board of California's regulations for inclusion in a delegation of services agreement, a delegation of services agreement may authorize a physician assistant to do any of the following:

(1) Order durable medical equipment, subject to any limitations set forth in Section 3502 or the delegation of services agreement. Notwithstanding that authority, nothing in this paragraph shall operate to limit the ability of a third-party payer to require prior approval.

(2) For individuals receiving home health services or personal care services, after consultation with the supervising physician, approve, sign, modify, or add to a plan of treatment or plan of care.

(3) After performance of a physical examination by the physician assistant under the supervision of a physician and surgeon consistent with this chapter, certify disability pursuant to Section 2708 of the Unemployment Insurance Code. The Employment Development Department shall implement this paragraph on or before January 1, 2017.

(b) Nothing in this section shall be construed to affect the validity of any delegation of services agreement in effect prior to the enactment of this section or those adopted subsequent to enactment.

(Amended by Stats. 2014, Ch. 438, Sec. 1. (SB 1083) Effective January 1, 2015.)



SB-1083 Physician assistants: disability certifications. (2013-2014)

Senate Bill No. 1083

CHAPTER 438

An act to amend Section 3502.3 of the Business and Professions Code, and to amend Section 2708 of the Unemployment Insurance Code, relating to physician assistants.

[Approved by Governor September 18, 2014. Filed with Secretary of State September 18, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1083, Pavley. Physician assistants: disability certifications.

The Physician Assistant Practice Act authorizes a delegation of services agreement to authorize a physician assistant to engage in specified activities.

Existing law requires a claimant for unemployment compensation disability benefits to establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. Existing law defines the term "practitioner" to mean a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or a nurse practitioner, as prescribed.

This bill would amend the Physician Assistant Practice Act to authorize a physician assistant to certify disability, after performance of a physical examination by the physician assistant under the supervision of a physician and surgeon consistent with the act. The bill would correspondingly expand the definition of practitioner to include a physician assistant. This bill would require the Employment Development Department to implement these provisions on or before January 1, 2017.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 3502.3 of the Business and Professions Code is amended to read:

3502.3. (a) Notwithstanding any other provision of law, in addition to any other practices that meet the general criteria set forth in this chapter or the Medical Board of California's regulations for inclusion in a delegation of services agreement, a delegation of services agreement may authorize a physician assistant to do any of the following:

- (1) Order durable medical equipment, subject to any limitations set forth in Section 3502 or the delegation of services agreement. Notwithstanding that authority, nothing in this paragraph shall operate to limit the ability of a third-party payer to require prior approval.
- (2) For individuals receiving home health services or personal care services, after consultation with the supervising physician, approve, sign, modify, or add to a plan of treatment or plan of care.

(3) After performance of a physical examination by the physician assistant under the supervision of a physician and surgeon consistent with this chapter, certify disability pursuant to Section 2708 of the Unemployment Insurance Code. The Employment Development Department shall implement this paragraph on or before January 1, 2017.

(b) Nothing in this section shall be construed to affect the validity of any delegation of services agreement in effect prior to the enactment of this section or those adopted subsequent to enactment.

SEC. 2. Section 2708 of the Unemployment Insurance Code, as added by Section 2 of Chapter 350 of the Statutes of 2013, is amended to read:

2708. (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts, including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee needs to care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(5) (A) A statement that the serious health condition warrants the participation of the employee to provide care for his or her child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(B) "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging "third party" care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate, with the investigation. A physician or practitioner licensed by, and

practicing in, a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part:

(1) "Physician" has the same meaning as defined in Section 3209.3 of the Labor Code.

(2) (A) "Practitioner" means a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or a nurse practitioner, and in the case of a nurse practitioner, after performance of a physical examination by a nurse practitioner and collaboration with a physician and surgeon, or as to normal pregnancy or childbirth, a midwife or nurse midwife, or nurse practitioner.

(B) "Practitioner" also means a physician assistant who has performed a physical examination under the supervision of a physician and surgeon. Funds appropriated to cover the costs required to implement this subparagraph shall come from the Unemployment Compensation Disability Fund. This subparagraph shall be implemented on or before January 1, 2017.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the claimant's disability. The statement shall be completed by any of the following individuals:

(A) The physician or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

(h) This section shall become operative on July 1, 2014.

AGENDA

ITEM

13

PROPOSED REGULATION

RETIRED STATUS
Proposed Language

Add section 1399.515 to Article 1 of Division 13.8 of Title 16 of the California Code of Regulations to read as follows:

All proposed language is new.

§ 1399.515. Retired Status

(a) The board shall issue, upon application (Form PAB-RET Oct 2016, incorporated by reference), a retired license to a physician assistant who meets all of the following requirements:

(1) The applicant has been licensed by the board and is not actively engaged in practice as a physician assistant or any activity that requires them to be licensed by the board.

(2) The applicant's physician assistant license has not been canceled, suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under the Medical Practice Act (commencing with Section 2000 of the Code), Physician Assistant Practice Act (commencing with Section 3500 of the Code), and regulations adopted pursuant to those practice acts.

(3) Beginning one (1) year from the effective date of this regulation, the applicant's license is not delinquent. If the license is in a delinquent status, the applicant may satisfy this requirement by submitting payment for all outstanding fees with the retirement status application.

(b) The holder of a retired license:

(1) Shall not engage in any activity for which a license is required.

(2) Shall be exempt from the renewal requirements described in Section 3524.5 of the Business and Professions Code.

(3) May restore his or her license to active status by complying with the renewal requirements set forth in Section 1399.514 of the board's regulations, proof of completion of continuing medical education (CME) as set forth in Section 1399.615 of the board's regulations or proof of certification by the National Commission on Certification of Physician Assistants, license renewal fee as set forth in Section 1399.550 of the board's regulations, and the mandatory fee for the Controlled Substance Utilization Review and Evaluation System (CURES) as set forth in Section 208 of the Code.

(c) The board may upon its own determination, and shall upon receipt of a complaint from any person, investigate the actions of any licensee who may be in violation of this section.

Note: Authority cited: Sections 2018, 3510, 3521.3, Business and Professions Code. Reference: Sections 208, 464, 3521.3, Business and Professions Code.



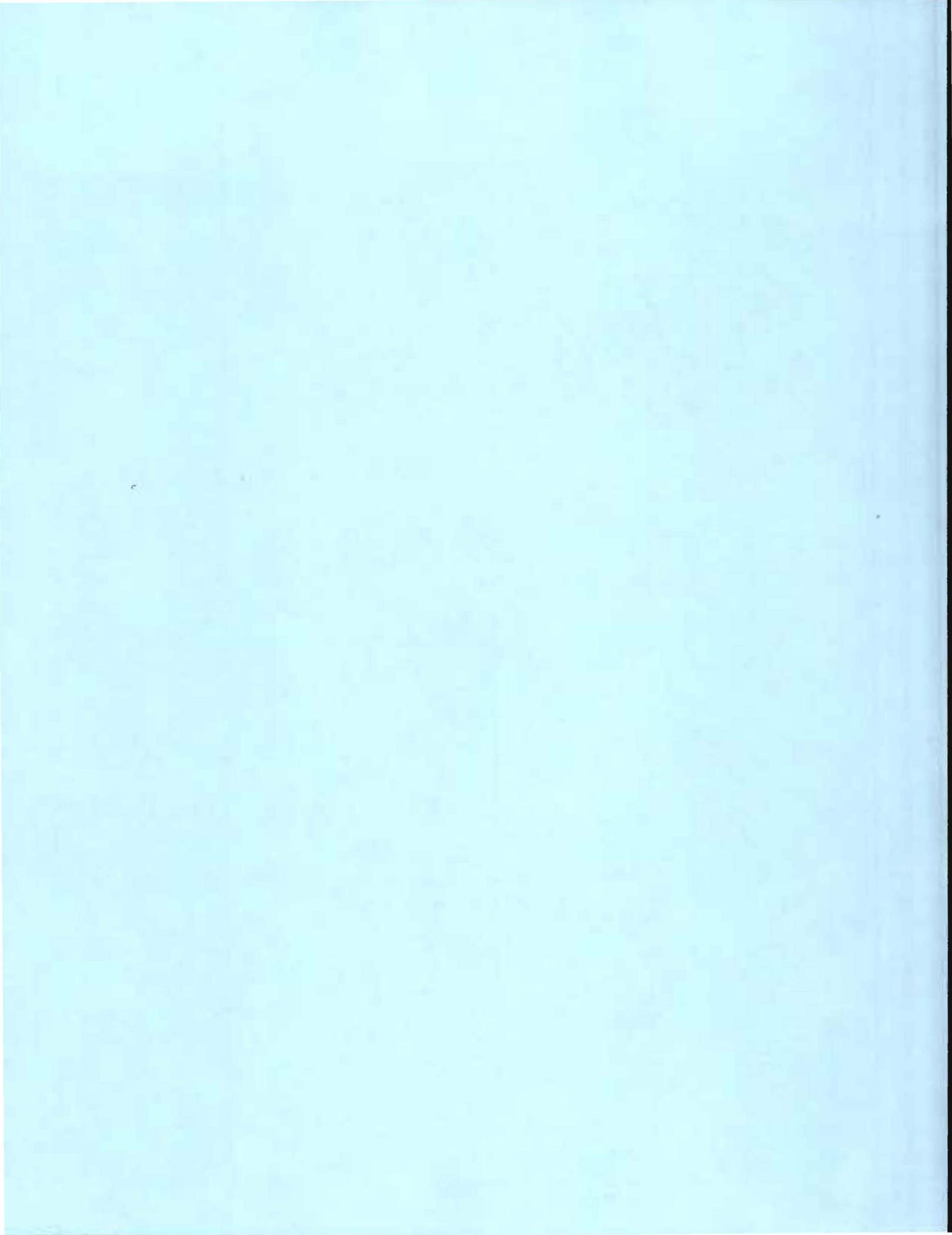
PHYSICIAN ASSISTANT BOARD

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

APPLICATION FOR RETIRED STATUS

- In order to be eligible for a retired license, an individual's license must be in current or current-inactive status. The license cannot be suspended, revoked or otherwise punitively restricted by the Physician Assistant Board or subject to disciplinary action by the Board.
• If the physician assistant license is delinquent, a payment of all accrued renewal fees, delinquent fee, and the mandatory CURES fees must be submitted with the Application for Retired Status.
• You must mail the application and any required fees to the Physician Assistant Board, 2005 Evergreen Street, Suite 1100, Sacramento, CA 95815-3893. Faxes are not acceptable.
• You may restore your license to active status by complying with the renewal requirements set forth in Section 1399.541 of the board's regulations, proof of completion of continuing medical education (CME) as set forth in Section 1399.615 of the board's regulations or proof of certification by the National Commission on Certification of Physician Assistants, license renewal fee as set forth in Section 1399.550 of the board's regulations and the mandatory fee for the Controlled Substance Utilization Review and Evaluation System (CURES) as set forth in Section 208 of the Code.
• Title 16, California Code of Regulations section 1399.515 provides an exemption from payment of the renewal fee if the licensee has been granted a retirement status.

PHYSICIAN ASSISTANT APPLICATION FOR RETIRED STATUS
NO PRACTICE IS PERMITTED
Please print or type. Illegible application will be returned.
Name: (first, middle, last)
Address of record: (Current public/mailing address. If using a PO Box, you must also provide a confidential street address.) This address is displayed on the Physician Assistant Board's website.
Change of address: Yes ___ No ___
Confidential street address:
License Number: Expiration Date:
Last 4 digits of SSN: Date of Birth:
Telephone Number: E-mail:
Signature: Date:
For PAB use only:
Entered in system: Renewal Application Canceled: Date:



PROPOSED LANGUAGE

Amend section 1399.514 of Article 1 of Division 13.8 of Title 16 of the California Code of Regulations to read as follows:

1399.514. Renewal of License.

(a) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been convicted of any violation of the law in this or any other state, the United States, or other country, omitting traffic infractions under ~~\$300~~500 not involving alcohol, dangerous drugs, or controlled substances.

(b) As a condition of renewal, a licensee shall disclose whether, since the licensee last applied for renewal, he or she has been denied a license or had a license disciplined by another licensing authority of this state, of another state, of any agency of the federal government, or of another country.

(c) Failure to comply with the requirements of this section renders any application for renewal incomplete and the license will not be renewed until the licensee demonstrates compliance with all requirements.

Note: Authority cited: Section 3510, Business and Professions Code. Reference: Sections 141, 490, 3504.1, ~~3523, 3524,~~ 3527 and 3531, Business and Professions Code

AGENDA

ITEM

17



JOBS FOR CALIFORNIANS: STRATEGIES TO EASE OCCUPATIONAL LICENSING BARRIERS

REPORT #234, October 2016



LITTLE HOOVER COMMISSION

*DEDICATED TO PROMOTING ECONOMY AND
EFFICIENCY IN CALIFORNIA STATE GOVERNMENT*

Little Hoover Commission

Pedro Nava
Chairman

Jack Flanigan
Vice Chairman

Scott Barnett

David Beier†

Anthony Cannella
Senator

Chad Mayes
Assemblymember

Don Perata

Sebastian Ridley-Thomas*
Assemblymember

Richard Roth
Senator

Jonathan Shapiro

Janna Sidley

Helen Torres

Sean Varner

Former Commissioners Who Served During The Study

Loren Kaye*

David Schwartz*

Sumi Sousa

† Served as subcommittee chair
* Served on study subcommittee

Commission Staff

Carole D'Elia
Executive Director

Jim Wasserman
Deputy Executive Director

Krystal Beckham
Project Manager

Matthew Gagnon
Research Analyst

Sherry McAlister
Administrative Analyst

Sierra Grandbois
Intern

Aleksander Klimek
Intern

To Promote Economy and Efficiency

The Little Hoover Commission, formally known as the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, is an independent state oversight agency.

By statute, the Commission is a bipartisan board composed of five public members appointed by the governor, four public members appointed by the Legislature, two senators and two assemblymembers.

In creating the Commission in 1962, the Legislature declared its purpose:

...to secure assistance for the Governor and itself in promoting economy, efficiency and improved services in the transaction of the public business in the various departments, agencies and instrumentalities of the executive branch of the state government, and in making the operation of all state departments, agencies and instrumentalities, and all expenditures of public funds, more directly responsive to the wishes of the people as expressed by their elected representatives...

The Commission fulfills this charge by listening to the public, consulting with the experts and conferring with the wise. In the course of its investigations, the Commission typically empanels advisory committees, conducts public hearings and visits government operations in action.

Its conclusions are submitted to the Governor and the Legislature for their consideration. Recommendations often take the form of legislation, which the Commission supports through the legislative process.

Contacting the Commission

All correspondence should be addressed to the Commission Office:

Little Hoover Commission
925 L Street, Suite 805,
Sacramento, CA 95814
(916) 445-2125
littlehoover@lhc.ca.gov

This report is available from the Commission's website at www.lhc.ca.gov.

LETTER FROM THE CHAIR

October 4, 2016

The Honorable Edmund G. Brown, Jr.
Governor, State of California

The Honorable Kevin de León
President pro Tempore of the Senate
and members of the Senate

The Honorable Anthony Rendon
Speaker of the Assembly
and members of the Assembly



The Honorable Jean Fuller
Senate Minority Leader

The Honorable Chad Mayes
Assembly Minority Leader

Dear Governor and Members of the Legislature:

One out of every five Californians must receive permission from the government to work. For millions of Californians, that means contending with the hurdles of becoming licensed. Sixty years ago the number needing licenses nationally was one in 20. What has changed? What once was a tool for consumer protection, particularly in the healing arts professions, is now a vehicle to promote a multitude of other goals. These include professionalism of occupations, standardization of services, a guarantee of quality and a means of limiting competition among practitioners, among others. Many of these goals, though usually well intentioned, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers.

In its study on occupational licensing, the Commission sought to learn whether the state properly balances consumer protection with ensuring that Californians have adequate access to jobs and services. It learned the state is not always maintaining this balance, as evidenced by discrepancies in requirements for jobs that pose similar risks to the consumer. Manicurists, for example, must complete at least 400 hours of education, which can cost thousands of dollars, and take a written and practical exam before becoming licensed. In contrast, tattoo artists simply register with their county's public health department and take an annual bloodborne pathogens class, which can be completed online for \$25.

The effects of occupational licensing extend well beyond people encountering hurdles to entering an occupation, the Commission learned. When government limits the supply of providers, the cost of services goes up. Those with limited means have a harder time accessing those services. Consequently, occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach. The Commission found that over time, California has enacted a thicket of occupational regulation that desperately needs untangling in order to ease barriers to entering occupations and ensure services are available to consumers of all income levels.

Fortunately, there is an effort underway to review licensing laws and adopt evidence-based approaches to consumer protection: The White House is providing \$7.5 million in grant funding for a consortium of states to assess whether their current levels of occupational regulation are appropriate.

California should be part of this effort. Additionally, the state should consider the impact of licensing on groups disproportionately harmed by these regulations, including:

- Former offenders. Witnesses testified there is no evidence demonstrating that having a criminal record is related to providing low quality services. Unnecessary restrictions on criminal convictions simply punish again people who have already served their time.
- Military spouses. When military spouses cannot transfer their licenses across state lines due to state restrictions, they spend precious time and resources re-completing requirements they already have, or taking, in all likelihood, a lower-paying, lower-skilled job. Married service members overwhelmingly report their spouse's ability to maintain a career affects their decision to remain in the military.
- Veterans. Veterans often face difficulty transferring their military education and experience into civilian licensing requirements. Sometimes they must repeat these requirements for a job they have been performing for years. Taxpayers then pay twice for them to learn the same set of skills: once while in the military and again through the G.I. Bill.
- Foreign-trained workers. Like veterans, foreign-trained workers often have difficulty translating their education and experience into state licensing requirements and often take lower-skilled jobs instead. With worker shortages looming in mid- and high-skilled professions, the state should embrace these workers instead of erecting barriers to keep them out of jobs.

Examining and assessing California's occupational regulations does not mean stripping consumer protection. Rather, experts should consider whether the current level of regulation strikes the appropriate balance between protecting consumers and limiting access to occupations and services.

California once tried an ambitious restructuring of its boards and commissions, including many licensing boards, as part of the 2004 California Performance Review. Governor Arnold Schwarzenegger, informed by the work of the California Performance Review, sent a Governor's Reorganization Plan to the Little Hoover Commission in January 2005 that went far beyond a review of occupational regulation: It was a complete overhaul of the state's boards and commissions. Facing insurmountable hurdles, Governor Schwarzenegger withdrew the plan from consideration a month later. No comprehensive attempts at reform have occurred since.

By participating in a more focused review of occupational regulation, potentially subsidized and supported by the federal government, by beginning reforms where the barriers are egregious and worker shortages loom, and by taking action based on the recommendations of independent experts, the state can avoid repeating the errors of the past and position itself to make a long-term difference for Californians.

The Commission respectfully submits these findings and recommendations and stands prepared to help you take on this challenge.

Sincerely,



Pedro Nava
Chair, Little Hoover Commission

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EXECUTIVE SUMMARY

Californians rely on occupational regulation to protect them. Doctors must prove proficiency in medical knowledge before they treat patients. Electricians must demonstrate they know their trade before they wire a house. Yet for all these important protections, there is a flip side of occupational licensing: The requirements to prove proficiency often serve as a gate, keeping people out of occupations.

Licensing is more stringent than other types of occupational regulation because not being able to obtain a license means someone cannot practice the profession. Certification or registration allows practitioners to demonstrate they meet certain standards of quality or allows the state to know certain types of businesses are operating without barring people from the occupation.

Since Statehood: A Jumble of Licensing Politics

When the Commission began its study on occupational licensing in California, it aimed to learn whether the State of California is striking the appropriate balance between protecting consumers and erecting barriers to entry into occupations. It found more than 165 years of accumulated regulations creating a nearly impenetrable thicket of bureaucracy for Californians. No one could give the Commission a list of all the licensed occupations in California. Licensing is heavily concentrated within the Department of Consumer Affairs, but it also is scattered throughout other government departments and agencies. Want to become a registered nurse? Go to the Board of Registered Nursing. Want to become a licensed vocational nurse? Go to the Board of Vocational Nursing and Psychiatric Technicians. Want to become a certified nursing assistant? Go to the Department of Public Health.

The Commission found that the licensing boards within the Department of Consumer Affairs are semi-autonomous, governed by a rulemaking process. But their considerable autonomy results in no holistic vision on how occupations should be regulated in California. Licensing authorities under the Department of Consumer Affairs undergo a sunset review process every four years to determine whether the authority is best serving Californians. If not, legislative fixes are made or the licensing authority is dissolved. But even when a licensing authority is disbanded it may not be gone for good. When the Legislature eliminated the Board of Barbering and Cosmetology in 1997, Senator Richard Polanco resurrected it with legislation in 2002.

This is the heart of problems the Commission found with occupational licensing: The process often is a political activity instead of a thoughtful examination of how best to protect consumers. Multiple witnesses told the Commission that consumers are not key players in creating and governing licensing regulations, even though the regulations are ostensibly made in their interest. Occupational licensing is not about consumers going to the Legislature and asking for protection, said one witness. It is about practitioners telling legislators that consumers need to be protected from them. Substantial benefits accrue to practitioners of licensed occupations. Working in occupations licensed in some, but not all, states raises wages by 5 percent to 8 percent. Working in occupations licensed in all states drives up wages by 10 percent to 15 percent, witnesses told the Commission.

Effects of Licensing on Consumer Prices

It stands to reason that if wages within licensed professions increase, so will costs to consumers. Witnesses shared research showing that, depending on occupation, instituting licenses raised consumer

prices by 5 percent to 33 percent. One Commission witness estimated that licensing costs consumers more than \$200 billion a year nationally. Meanwhile, there is not necessarily a corresponding increase in consumer safety due to licensing. Researchers reported to the Commission that for many occupations, bad outcomes did not increase when licensing restrictions were relaxed to make it easier to enter those occupations.

Some Groups are More Vulnerable to Licensing Regulations

The Commission learned that certain groups are especially vulnerable to licensing regulations:

- **Former offenders** must withstand scrutiny that is not always straightforward and typically have no advance guidance on whether a conviction will disqualify them from an occupation.
- **Military spouses** can spend a year or two recompleting requirements to meet California-specific regulations for a job they have practiced for years in other states. By the time they become licensed in California, their spouse is soon transferred to a new state.
- **Veterans**, too, often have to redo education and training that taxpayers already paid for while they were in the military. The state has enacted many bills to make it easier for veterans to become licensed. But that legislation has gaps: it is predominately directed at the Department of Consumer Affairs and not other licensing authorities, and no one tracks implementation.
- **Foreign-trained workers**, particularly bilingual professionals, are well suited to ease California's impending worker shortages. But they face many of the same obstacles as veterans: their education and experience abroad is difficult to apply to state licensing requirements.

Legitimate Arguments for Licensing

It would be unfair to characterize all attempts to license an occupation as a means to artificially inflate wages for licensed practitioners. Witnesses made compelling arguments to the Commission about why their

occupations should be licensed. Commercial interior designers, for example often do building code-impacted design work – moving walls that entail electrical, lighting, HVAC and other changes. They design the layout of prisons, where the safety of correctional officers and inmates is on the line. Even though the people performing this commercial work typically have extensive educational and work experience, city and county inspectors do not recognize their unlicensed voluntary credentials. Architects or engineers must sign off on their plans, resulting in time and cost delays.

Other advocates see licensing as a vehicle to professionalize an occupation. This is particularly true of low-wage caretaker occupations, often practiced by minorities. Licensing presents opportunities for practitioners to offer government-guaranteed quality of care in return for being treated like professionals.

Finally, many pleas for the health and safety benefits of licensing are, indeed, genuine. Different people are willing to accept different degrees of risk. As long as humans are allowed to practice an occupation, there will be human errors and bad outcomes. Stricter levels of regulation often will reduce, but never completely eliminate, those errors and outcomes. Where is the line for acceptable risk? One person might be comfortable with *caveat emptor*, while another might see a consumer threat that must be regulated.

California Needs a Holistic Regulatory Strategy

California needs a holistic well-reasoned strategy for regulating occupations. The specific details of who can and cannot practice will vary by occupation. But the underlying principles of what level of consumer protection the state hopes to achieve – and how difficult or easy it should be to enter occupations – should be set by state policymakers and implemented across all occupations. The Commission offers eight recommendations as guiding principles and a way forward. The first four recommendations address systemic issues in how California licenses occupations and governs its regulatory process. The last four recommendations offer ways to make it easier to enter licensed occupations without overhauling California's licensing structure or lowering standards.

Recommendations

Data Collection

It is difficult to assess the impact of licensing regulations on various demographic groups because no one collects demographic data for people who work in many licensed occupations or apply for licenses. Anecdotal reports say minorities are often negatively and disproportionately affected by licensing regulations. But without demographic information it is impossible to know for sure.

The Commission recommends collecting demographic information on licensed workers and applicants so policymakers better understand the impact of regulations on different groups of Californians. Yet safeguards must accompany the collection and analysis of demographic data. Race or gender should not be part of information officials consider when deciding to issue a license or when making disciplinary decisions. Demographic data will have to be tied to specific applicants in order to understand outcomes, such as whether they are issued a license or what reason they were denied. Modifying multiple IT systems used by licensing authorities to ensure this information is not visible to licensing and enforcement personnel will come with costs. The Legislature should ensure the department receives the funds necessary for this enterprise. Finally, supplying this demographic information should be voluntary, and not a requirement for licensure.

Recommendation 1: The Legislature should authorize the mandatory collection of demographic information for license applications across all licensed occupations in California, including those outside of the Department of Consumer Affairs. This demographic information should not be made available to staff members issuing licenses or conducting enforcement actions, but should be studied in the aggregate to determine the impact of licensing requirements on various demographic groups.

Comprehensive Licensing Review

California has created occupational licensing regulations for more than 165 years. It is long past time for a comprehensive review of these accumulated rules to determine whether gains for consumer health and safety justify the barriers they present to entering occupations.

This review should specifically analyze barriers to former offenders, military spouses, veterans and people with education, training or experience outside California. Federal funding exists to perform this analysis and California is invited to participate in a consortium applying for this funding. California should not pass up the opportunity.

Recommendation 2: The State of California should join a consortium of states organizing to attain federal funding to review their licensing requirements and determine whether those requirements are overly broad or burdensome to labor market entry or labor mobility. As part of this process, the state should consider whether there are alternative regulatory approaches that might be adequate to protect public health and safety, including, but not limited to, professional certification.

Reciprocity

License transferability across state lines is important to people who need immediately to begin working following a move to California. It is particularly important to military spouses, who move frequently. Licensing authorities should grant reciprocity to applicants licensed in other states. In occupations with dramatically differing requirements across the country, California should grant partial reciprocity to states with similar requirements as its own. California should start by assessing reciprocity in the occupations facing significant worker shortages, such as teachers and nurses. There may be some licenses for which California's standards are so unique that reciprocity is not an option, and in those cases, the licensing authority should justify why reciprocity or partial reciprocity is not feasible.

Recommendation 3: The Legislature should require reciprocity for all professionals licensed in other states as the default, and through the existing sunset review process, require boards to justify why certain licenses should be excluded. Specifically, licensing boards should be required to:

- Identify whether licensing requirements are the same or substantially different in other states.
- Grant partial reciprocity for professionals licensed in states with appropriately comparable testing and education requirements.

Sunrise and Sunset Review

In the sunrise review process, a group trying to become licensed supplies the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development with evidence demonstrating that consumers are best protected by licensing the occupation in question. In the sunset review process, the two committees evaluate information submitted by the licensing authority to determine its performance and whether it still continues to present the best method of consumer protection. The committees will introduce legislative bills to fix problems found during the review.

Though the Commission was impressed with the professionalism and dedication of the business and professions committee staff, the two committees are inundated with information that they must verify and analyze in a relatively short period of time. Some have suggested that the state might benefit from the automatic sunset of licensing authorities periodically, perhaps every four or eight years. Licensing authorities and their performance would then be scrutinized by the entire Legislature when bills to reauthorize them were introduced – a more robust process than tasking the two committees with reviewing licensing authorities. Short of that, the Legislature should provide additional resources to enhance the committees' capacity to verify and analyze the information used in the sunrise and sunset reviews. It also should authorize audits when the business and professions committees deem necessary.

Recommendation 4: The Legislature should provide additional resources, in the form of additional staff or outside support, to assist the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development in verifying and evaluating information for sunrise and sunset reviews. The Legislature should request the California State Auditor conduct an audit when warranted.

Former Offenders

Californians with convictions on their record face several challenges when trying to become licensed. Most licensing authorities do not list specific convictions that

automatically disqualify people. Those decisions are made on a case-by-case basis. This provides flexibility to allow people into occupations from which they might otherwise be excluded. Yet it also results in people investing time and money for education and training for occupations they might never be allowed to practice. The Commission recommends making publicly available the list of criteria by which applicants are evaluated. While it might not provide a firm answer to potential applicants on whether they will qualify, it will provide more information with which they can assess their educational decisions.

Applicants also sometimes face difficulty when asked to list their convictions. If significant time has passed since the conviction, if they had substance use disorders or mental health problems at the time or if they pled to a different charge than they remembered being arrested for, the convictions they list on their application might not match what returns on a background check. Even when this mistake is unintentional they can be disqualified for lying on their application. When criminal conviction history is required, the Commission recommends asking only for official records and not relying on applicants' memories. The Commission also urges expediting the background check fee waiver process so lower-income applicants can begin working sooner.

Applicants who are denied a license may engage in an appeals process, but many find it intimidating. Further, some licensing authorities rely on an administrative law hearing to process denials. The Commission learned that some applicants – particularly those who are legally unsophisticated or have lower levels of education – believe that the appeals process involves simply explaining the red flags on their application. Most are unprepared for an encounter with a judge and state attorney. The Commission recommends creating an intermediate appeals process where applicants can explain the problems with their application before encountering an administrative law hearing.

Recommendation 5: With the Department of Consumer Affairs serving as a clearinghouse of best practices and providing guidance to other departments as needed, all licensing authorities should take the following steps to make it easier for former offenders to gain employment:

- Post on their website the list of criteria used to evaluate applicants with criminal convictions so that potential applicants can be better informed about their possibilities of gaining licensure before investing time and resources into education, training and application fees.
- When background checks are necessary, follow the Department of Insurance model and require applicants with convictions to provide certified court documents instead of manually listing convictions. This will prevent license denials due to unintentional reporting errors. The State of California also should expedite the fee-waiver process for all low-income applicants requesting background checks.
- Follow the Bureau of Security and Investigative Services model and create an informal appeals process between an initial license denial and an administrative law hearing.

Implementation of Veteran and Military Spouse Legislation

California has passed many laws to make it easier for veterans and military spouses to become licensed quickly and easily. These laws are summarized in the box to the right. Some of these laws have only just begun to take effect, and others, the Commission heard anecdotally, are not having the intended effects. Veterans and military spouses still face delays in receiving licenses. Helping veterans transition to civilian jobs has long been a goal of state policymakers. Military spouses' ability to get and hold jobs is important in retaining experienced military personnel: A U.S. Department of Defense witness testified that the military loses good people because of spouses having difficulty finding work, making it a national security issue. The Commission recommends that the Legislature authorize a research institute to study the implementation of laws designed to ease transitions of veterans and their spouses. The study should determine if they are being implemented effectively, identify how to bridge gaps between the intent of the legislation and current outcomes, and show how to better educate veterans and military spouses about these licensing benefits.

RECENT VETERAN AND MILITARY SPOUSE LICENSING BILLS

These bills were designed to make it faster and easier for veterans and military spouses to become licensed. Some have only recently taken effect, while others, anecdotally, have not been as effective as lawmakers hoped. The Commission recommends a study on the implementation of these bills:

SB 1226 (2014, Correa): Requires Department of Consumer Affairs (DCA) boards to expedite licensure of honorably-discharged veterans. Took effect July 1, 2016.

AB 186 (2014, Maienschein): Requires DCA boards to issue 12-month temporary licenses to military spouses with out-of-state licenses for the following occupations: registered nurse, vocational nurse, psychiatric technician, speech-language pathologist, audiologist, veterinarian, all licenses issued by the Board for Professional Engineers, Land Surveyors and Geologists and all licenses issued by the Medical Board.

AB 1057 (2013, Medina): Requires DCA boards to renew licenses that expire while an individual is on active duty without penalties or examination.

AB 1588 (2012, Atkins): Requires DCA boards to waive renewal fees for licenses that expire while the practitioner is on active duty.

AB 1904 (2012, Block): Requires DCA boards to expedite licensure for military spouses.

AB 2462 (2012, Block et al.): Requires the Chancellor of the California Community College to determine which courses should receive credit for prior military experience, using the descriptors and recommendations provided by the American Council on Education.

AB 2783 (2010, Salas et al.): Requires DCA boards to promulgate regulations to evaluate and credit military education, training, and experience if applicable to the profession.

Recommendation 6: *The Legislature should authorize a research institute, in conjunction with federal partners as needed, to study the implementation of recent legislation that requires the Department of Consumer Affairs to ease or waive licensing requirements for veterans and military spouses. The review should identify gaps between the intent of the laws and outcomes, and issue recommendations for executive or legislative action to bridge those gaps. The review also should assess the effectiveness of licensing authorities' outreach campaigns to inform veterans of their eligibility for expedited licensing.*

Bridge Education

Many people who move to California meet most of the state's licensing requirements, but fall short on a few components. Few options exist for them to quickly make up those missing requirements. The state has created a promising model with its veteran field technician-to-nurse program, in which nursing programs lose authorization to teach nursing if they do not fast track veterans. The state should replicate this model for all veterans and those qualified outside California in other occupations. This should begin in occupations facing worker shortages.

Recommendation 7: *The Legislature should require California colleges and training academies to create bridge education programs for veterans and workers trained outside of California to help them quickly meet missing educational requirements. Specifically:*

- California licensing boards and other departments providing licenses and credentials should identify common educational gaps between the qualifications of returning service members and state licensing requirements.
- California colleges should create and offer programs to fill these gaps and expedite enrollment – or risk losing authorization for these programs.

Interim Work and Apprenticeship Models

There are models to help people work while they are meeting California requirements for licensing or improving their skills to progress up a career path. In the California Teacher Credentialing Commission model, teachers licensed outside of California are allowed to work immediately, but must complete their missing requirements during the five years before their license needs to be renewed.

Additionally, the Department of Industrial Relations' Division of Apprenticeship Standards has a promising apprenticeship model. Individuals complete supervised hands-on training during apprenticeships and receive pay for the work they do. This model, applied as a bridge training program, would allow people to work and earn a living while completing missing requirements. It also would provide an income while training individuals wishing to improve their skills and education for upward mobility. The Legislature would have to adjust occupational practice acts to allow apprenticeships in some occupations. But since many of these occupations already allow or require student practicums, this represents a language change and not a shift in consumer protection.

Recommendation 8: *The State of California should develop interim work and apprenticeship models to provide opportunities for people missing certain qualifications to work while meeting their requirements, and to promote upward mobility within career paths.*

INTRODUCTION

The Little Hoover Commission began its study on occupational licensing in October 2015, following a review of the July 2015 White House report, *Occupational Licensing: A Framework for Policymakers*. Commissioners expressed interest in understanding how the barriers to entering occupations highlighted in the report applied to California. Licensed occupations in California often are good jobs that open a path for upward mobility for lower- and middle-income residents. Commissioners initiated the study to determine if the financial, time and opportunity costs imposed on a person trying to become licensed are justified by gains in consumer protection. The Commission decided not to study the requirements of specific occupations. Instead, Commissioners opted to examine and make recommendations on California's licensing system as a whole to serve as a guide for policymakers confronting licensing decisions across the entire spectrum of occupations.

The Commission's Study Process

The Commission held its first occupational licensing hearing in February 2016. The hearing broadly introduced the Commission to the economics and politics of occupational licensing. Commissioners heard from a leading economist about the linkages between occupational licensing and effects on wages and employment and the price, quality and availability of services. Researchers from national think tanks explained the impact of occupational licensing on upward mobility and entrepreneurship. The director of a state-focused public law institute discussed what it means to protect the public interest and offered his assessment of the state's licensing entities in protecting that interest. The Commission also heard from consultants from the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development on how licensing statutes are created and reviewed, through the sunrise and sunset process.

The Commission held a second hearing in March 2016, in which it heard from people representing those personally affected by occupational licensing laws. This included people who experienced difficulty becoming licensed due to past convictions or received training or education out of state, including the military. It heard from people who wanted their occupations to become licensed because they faced difficulties competing without state-recognized credentials. It also heard from people in licensed industries who discussed the consumer protection and accountability benefits of licensing.

In June 2016, the Commission held a roundtable with policymakers from several licensing authorities, business and professions committee consultants and Assemblymember Rudy Salas, Chair of the Assembly Committee on Business and Professions. Commissioners and participants discussed different ideas shared by witnesses in the preceding two hearings to assess whether it would be possible to implement those ideas, and if implemented, whether there might be unintended consequences.

PROFESSION VERSUS OCCUPATION

For the purpose of this report, the Commission uses the terms occupation and profession interchangeably. California courts, however, have drawn a distinction between the two. Licenses that require character, responsibility, good faith and sound financial status are considered to be for nonprofessional occupational services. Licenses that require education, training and a rigorous exam are considered to be for professional services.

Source: Julia Bishop, Legislative Manager - Division of Legislative & Regulatory Review, Department of Consumer Affairs. September 21, 2015. Written communication with Commission staff.

North Carolina State Board of Dental Examiners v. Federal Trade Commission

The Commission's report does not address a topic related to occupational licensing recently in the headlines: the February 2015 Supreme Court decision on *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. The Court ruled that the practicing dentist-dominated North Carolina Board of Dental Examiners wrongly sent cease-and-desist letters to non-dentist teeth whiteners and had no antitrust immunity from a federal challenge to its order. While many states, in response, have begun to review the composition of their licensing boards and California continues discussions about the ruling, the Commission did not assess whether California complies with the ruling.

The California Attorney General's Office, Legislature and Department of Consumer Affairs have paid close attention to the case and are reassessing the structure of California's licensing boards.¹ The Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions held a hearing on the topic in October 2015. Legislation subsequently was introduced that would give the director of the Department of Consumer Affairs more authority to review board decisions, but that bill failed to pass committee. Though discussions continue, representatives from the Attorney General's Office maintain the structure of California's licensing boards under the umbrella of the Department of Consumer Affairs, coupled with a robust rulemaking process, prevents a *North Carolina* scenario from occurring in California.

Report Format

The report largely follows the Commission's hearing format. The first chapter provides a high-level overview of occupational licensing, its effects and the justification for it, and a discussion of Commission findings on the barriers to entering occupations. It concludes with high-level recommendations to help the state better understand the effects of occupational licensing and guide future decision-making. The second chapter examines how the vulnerable groups outlined in the White House report – former offenders, military spouses, veterans, and people trained in other countries – fare in California. The chapter offers recommendations to better incorporate these groups into licensed occupations without loosening licensing standards.

OCCUPATIONAL LICENSING IN CALIFORNIA

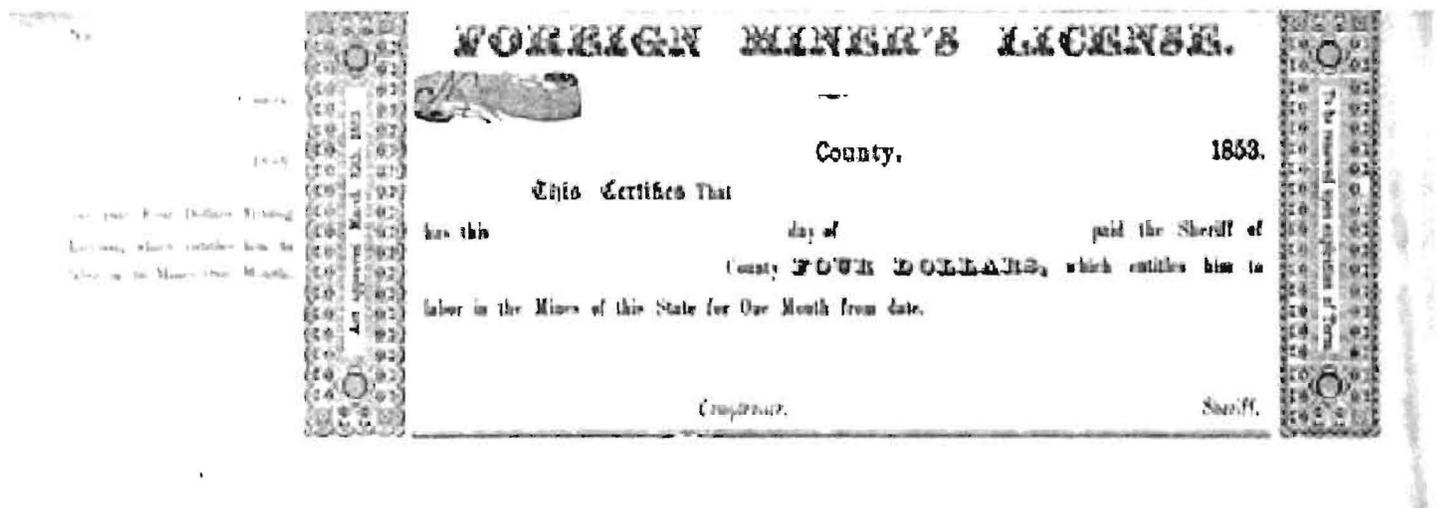
California's history of licensing began in its very infancy as a state. With hundreds of thousands of people pouring into California looking for gold, easily accessible claims were exhausted seemingly overnight. To ease competition, in April 1850 – five months before California was admitted to the union – the first session of California's Legislature required foreigners to become licensed before they could mine for gold. Specifically, non-Americans were required to pay \$20 per month for the license,² or an estimated \$569 per month in 2015 dollars.³ Over the next 20 years, the licensing requirements were repealed, reinstated and reinvented as part of anti-Chinese sentiment until nullified in 1870 through federal civil rights legislation.⁴

Again, on the heels of the 49ers flooding into California came disease and doctors to fight it.⁵ Alongside dedicated doctors serving their community were fraudsters who preyed on the uneducated, unsophisticated and desperate. Some borrowed liberally from religious texts to describe the miracles they could perform.⁶ In response, California's Legislature opted to regulate who could practice as a doctor. The 1876 Medical Practice Act resulted in practitioners having to prove they had completed medical school or pass

an exam to demonstrate proficiency in the field, plus pay a \$5 fee to cover the expenses of verifying their competency.⁷

These examples highlight the challenge that occupational licensing presents to policymakers. It can serve as a gatekeeper to keep people out of occupations or protect the public from harm. In many cases, it simultaneously does both. There is no one-size-fits-all policy for occupational licensing. Nuance matters – no easy task when it comes to creating and administering laws to regulate a workforce of 19 million to protect California's 40 million inhabitants. "The devil is in the implementation," the director of California's top licensing department told the Commission.⁸ The regulatory regime that makes sense for one occupation does not make sense for another, and new technologies and evolving consumer demand render even the most thoroughly-vetted rules and regulations obsolete. Racism, sexism and xenophobia are no longer explicitly written into licensing regulations, but lurk quietly in the outcomes.

Impeding entry into occupations matters in California. As one reporter noted, approximately 100 miles separates those with the highest quality of life in the in the United



An 1853 iteration of the Foreign Miner's License. Source: State Legislature Records, California State Archives

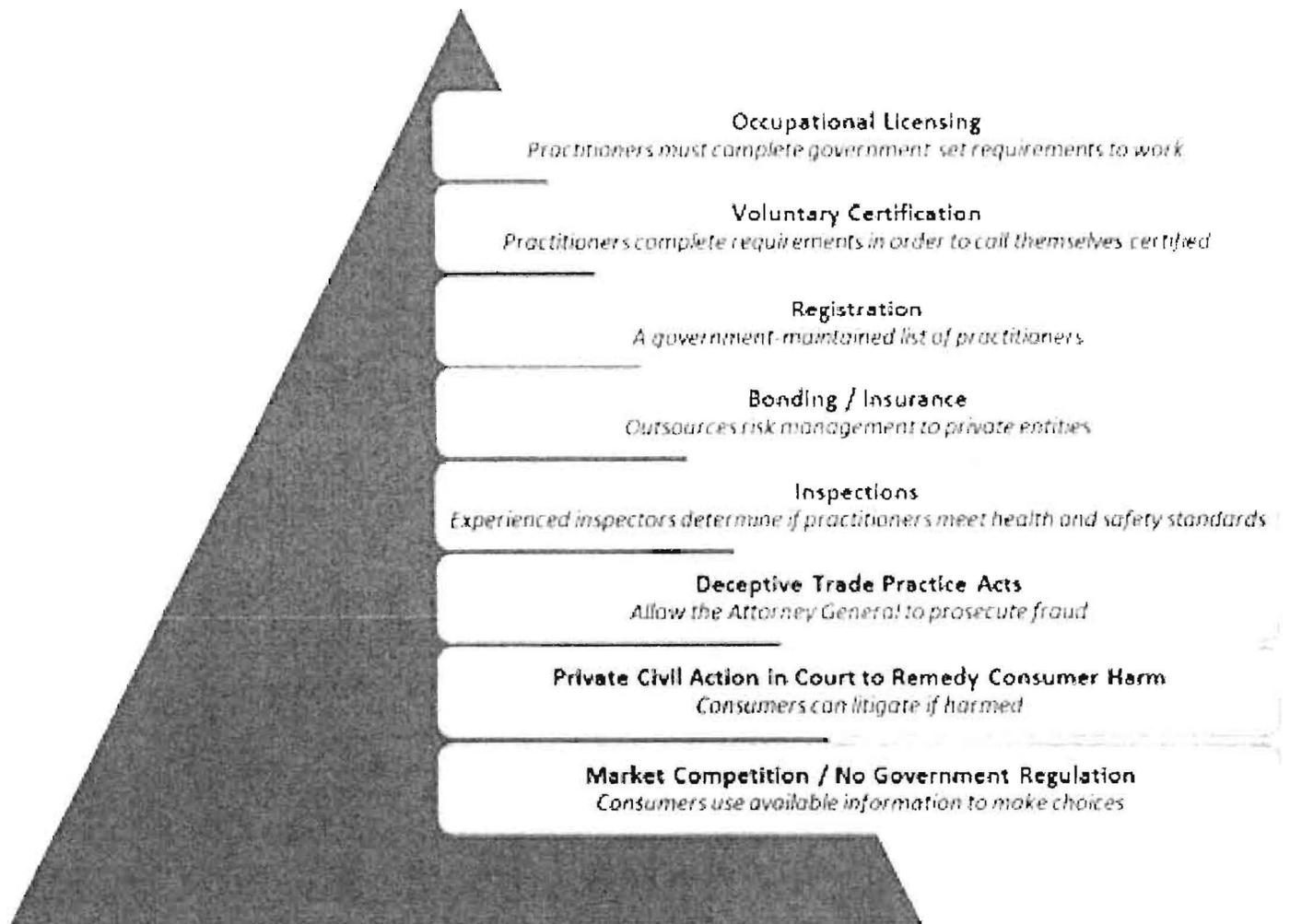
States from those with the lowest.⁹ Removing licensing barriers will not fix all the ills that contribute to this economic inequality. But it is an important step because the impacts of licensing fall hardest on some of the most difficult groups to employ: former offenders, military spouses, veterans, and people who were educated and trained outside of the state.¹⁰ Evaluating occupational regulation is bigger than simply modernizing the State of California’s regulatory regime: It allows the state to step out of people’s way as they seek a good job. Because every occupational regulation creates a barrier to entry into the occupation, there is one question that must be asked every time a new regulation is considered: Does that particular barrier provide the most appropriate level of consumer protection? Over the course of its study, the Commission consulted astute, dedicated and

conscientious state officials working diligently to answer that question, often in the face of powerful political forces. The Commission found silos and structural barriers that prevent people from answering those questions as effectively as they otherwise could.

This chapter provides a high level overview of occupational licensing, the justification for it, its effects and some of the obstacles the Commission found. It concludes with high-level recommendations to help the state better understand the effects of occupational licensing and to guide future decision-making. The next chapter will discuss the groups of people who face the most difficulties becoming licensed. It provides recommendations on how the state can help them move into licensed occupations – without relaxing licensing standards.

Spectrum of Occupational Regulation, from Most to Least Restrictive

Governments should select the least restrictive form of regulation necessary to protect consumer safety



Sources: Dick M. Carpenter II. February 4, 2016. Written testimony to the Commission. Also, Dick M. Carpenter II and Lee McGrath. July 2014. “The Balance Between Public Protection and the Right to Earn a Living.” Institute for Justice Research Brief.

What is Occupational Licensing?

Economist Morris Kleiner defines occupational licensing as the process by which a government establishes the qualifications required to practice a trade or profession.¹¹ The government may set its own standards or adopt those of a national body, but regardless of which qualifications it requires, practitioners may not legally practice without meeting them. This differs from certification in that individuals who do not meet the requirements for certification may continue to practice, but cannot present themselves as certified. The act of credentialing individuals is called different things by different authorities. The Commission refers to any occupation in which an individual cannot practice without meeting qualifications set by the government as licensed, regardless of what the credentialing agency calls it. For example, the Commission considers teachers to be licensed, even though the credential they receive is called a certification.

Occupational Licensing in California

Approximately 21 percent of California’s 19 million workers are licensed, a dramatic increase from the 1950s, when approximately one in 20 workers nationwide were required to apply for permission from the government to practice their profession.¹² California licenses a lower percentage of its workforce than many other states: According to data by economists Morris Kleiner and Evgeny Vorotnikov published in the White House report, 29 states license a higher percentage of their population than California.¹³

California compares poorly, however, to the rest of the nation in the amount of licensing it requires for occupations traditionally entered into by people of modest means. Researchers from the Institute for Justice selected 102 lower-income occupations – defined by the Bureau of Labor Statistics as making less than the national average income – and examined what, if any, licensing requirements were required to enter these professions in the 50 states and District of Columbia.¹⁴ These occupations ranged from manicurist to pest control applicator. Of the 102 occupations selected, California required licensure for 62 – or 61 percent – of them. Here it ranked third most restrictive among 50 states and the District of Columbia, following only Louisiana and

MOST STATES LICENSE MORE PEOPLE THAN CALIFORNIA

Rank	State	% of Workforce Licensed
1	Iowa	33.3
2	Nevada	30.7
3	Washington	30.5
4	Florida	28.7
5	Kentucky	27.8
6	Hawaii	26.6
6	North Dakota	26.6
8	Oregon	26.1
9	New Mexico	25.9
10	West Virginia	25.8
11	Alaska	25.5
12	Oklahoma	25
13	Connecticut	24.7
13	Illinois	24.7
15	Nebraska	24.6
16	Texas	24.1
17	Utah	23.8
18	Mississippi	23.1
18	Tennessee	23.1
20	Idaho	22.8
21	Arizona	22.3
21	Louisiana	22.3
23	North Carolina	22
24	South Dakota	21.8
25	Massachusetts	21.3
25	Missouri	21.3
25	Montana	21.3
28	Wyoming	21.2
29	Alabama	20.9
30	California	20.7
30	Maine	20.7
30	New Jersey	20.7
30	New York	20.7
34	Michigan	20.6
35	Arkansas	20.2
35	Pennsylvania	20.2
37	District of Columbia	19.7
38	Wisconsin	18.4
39	Ohio	18.1
40	Colorado	17.2
40	Maryland	17.2
40	Virginia	17.2
43	Vermont	16.8
44	Georgia	15.7
45	Delaware	15.3
46	Minnesota	15
47	Indiana	14.9
47	Kansas	14.9
49	New Hampshire	14.7
50	Rhode Island	14.5
51	South Carolina	12.4

Source: White House. July 2015. "Occupational Licensing: A Framework for Policy-makers." Quoting Kleiner and Vorotnikov (2015), Harris data.

Arizona. California ranked seventh of 51 when measuring the burden imposed on entrants into these lower- and moderate-income occupations: On average, California applicants must pay \$300 in licensing fees, spend 549 days in education and/or training and pass one exam.¹⁵

How Does Licensing Work in California?

California’s licensing boards, bureaus, commissions and programs are created by the Legislature. The creation of a new regulatory entity requires a “sunrise” review before a bill is introduced. In this review, the requestor of the new regulation completes a questionnaire that is disseminated to the Assembly Committee on Business and Professions, the Senate Committee on Business, Professions and Economic Development and other relevant committees to review when considering the necessity of the legislation. There are three concepts that guide the sunrise review process:

- The public is best served by minimal governmental intervention.
- The decision to regulate an occupation involves weighing the right of individuals to do work of their choosing against the government’s responsibility to protect the public when protection is needed.
- Small or poorly-funded groups should not be deterred from making legitimate requests for regulation. (Most requests for regulation come from professional associations that can provide extensive statistics and documentation in support of their proposal. Here, the Legislature is concerned that private citizens, even if they are not able to afford a formal data-collection process, have the ability to propose new statutes).¹⁶

The nine-part questionnaire seeks to establish:

- If the proposed regulation benefits public health, safety or welfare;
- If the proposed regulation is the most effective way to correct existing problems;
- And, if the level of proposed regulation is appropriate.

CALIFORNIA LICENSES MORE LOWER-INCOME JOBS THAN OTHER STATES

Rank	State	% of Low-Income Occupations Licensed
1	Louisiana	70
2	Arizona	63
3	California	61
4	Oregon	58
5	Mississippi	54
5	Nevada	54
7	Connecticut	53
7	Iowa	53
7	Washington	53
10	Tennessee	52
11	Arkansas	51
11	New Mexico	51
13	South Carolina	50
14	Delaware	48
14	Rhode Island	48
14	West Virginia	48
17	New Jersey	47
17	North Carolina	47
19	Alabama	46
19	Idaho	46
19	Wisconsin	46
22	Utah	45
22	Virginia	45
24	Florida	44
24	Nebraska	44
26	Alaska	43
26	Montana	43
26	Pennsylvania	43
29	Hawaii	42
30	Maryland	41
30	Michigan	41
32	District of Columbia	40
33	Illinois	39
33	North Dakota	39
35	Maine	38
36	Massachusetts	36
37	Minnesota	35
38	Kansas	33
38	New Hampshire	33
38	Texas	33
41	Georgia	32
41	New York	32
43	Missouri	30
43	Ohio	30
45	Oklahoma	28
46	Colorado	27
46	Indiana	27
46	South Dakota	27
49	Kentucky	26
49	Vermont	26
51	Wyoming	24

Source: Dick M. Carpenter II, Ph.D., Lisa Knepper, Angela C. Erickson and John K. Ross, Institute for Justice. May 2012. “License to Work.”

After creation, a licensing entity is reviewed every four years by a joint session of the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development. This process is called sunset review. The box on page 18 outlines the goals and objectives of the sunset review process. If problems are found with the licensing entity, legislators will introduce bills to provide fixes and it will be asked to reappear before the Legislature sooner than its regularly-scheduled four-year review. On rare occasions, the Legislature has used the sunset review to dissolve a licensing body. Notably, in 1997, the Legislature eliminated the Board of Barbering and Cosmetology and transferred its functions to the Department of Consumer Affairs. In 2002, Senator Richard Polanco successfully authored legislation to reconstitute the board. In 2016, the Legislature enacted Senate Bill 1039 (Hill), which sunsets the Telephone Medical Advice Services Bureau. In 1986, the Legislature dissolved the Board of Dry Cleaning and Fabric Care. But such dissolutions of licensing authorities are few and far between.

The 40 boards, bureaus, commissions and programs within the Department of Consumer Affairs (DCA) oversee most licensing in California. In addition to licensed individuals, the department also oversees many licensed facilities in California, such as smog check stations and funeral homes. In 2015, approximately 3.5 million individuals and facilities were licensed by DCA.¹⁷ Significant numbers of Californians, however, are licensed by other authorities: The Department of Insurance, State Bar Association, Department of Public Health and California Commission on Teacher Credentialing collectively license more than a million Californians.¹⁸

Why License?

Proponents of occupational licensing argue that it protects health and safety, prevents the privatization of health and safety standards, is sometimes necessary for upward mobility and provides an accessible means of accountability.

Health and Safety Concerns

California has a legal obligation to protect its residents' health and safety: This is the primary purpose of

TOP 10 LICENSED OCCUPATIONS IN CALIFORNIA

Occupation	Number Licensed
Registered Nurse	400,134
Insurance Agent/Broker	390,000
Teacher*	295,025
Investment Agent/Rep	287,197
Security Guard	282,189
Cosmetologist	254,271
Real Estate Salesperson	264,816
Contractor	230,204
Lawyer*	187,190
Real Estate Broker	138,121

*Indicates teachers in public schools.

*Active members.

Sources: Please see endnote 18 in Notes.

occupational licensing. Given that the health and safety components of licensing healthcare professions seem obvious to many, the Commission invited witnesses from seemingly less-intuitive industries to speak about their health and safety considerations. Myra Irizarry Reddy of the Professional Beauty Association told the Commission that many people think of the cosmetology industry as simply a haircut. "They think that if someone doesn't like their haircut, their hair will grow back and they can leave a bad review on Yelp – no harm done," she said.

The problem, she said, is that many of the procedures cosmetologists do can result in irreparable damage. The chemicals used by hair stylists to color hair are stronger than those available in drug stores. If used improperly, they can burn the scalp to the extent that hair will not grow back. Light chemical peels – the process of applying acid to the skin to cause it to blister and peel off for a more youthful appearance – are performed by estheticians, who must perform the procedure without going too deep and must assess if the patient is a good candidate for a peel, as the acid can change a poor candidate's skin color. Even simple manicures leave customers at risk for blood-borne diseases, viruses, and bacterial and fungal infections if the manicurist does not follow proper safety procedures.¹⁹

LEGISLATIVE GOALS AND OBJECTIVES IN SUNSET REVIEW

Goals of Sunset Review:

- Eliminate unneeded, nonfunctional or redundant boards or programs, or any unnecessary rules and regulations.
- Improve the quality of services provided to the consumer by examining the board's requirements for education, experience and testing of professionals and other actions to assure competency.
- Eliminate overly restrictive eligibility standards, or standards of practice that unduly limit competition between professionals or place undue burdens on those who want to enter the occupation.
- Ensure people know where to go if injured or harmed by a licensed or unlicensed person, what actions they can take and what the outcomes may be.
- Ensure the public's complaints are handled in a courteous and expeditious manner.
- Ensure boards are providing the appropriate remedy for the consumer: mediation, arbitration, restitution, disciplinary action and/or criminal action against the licensee or person posing as a licensee.
- Ensure the public is informed about any complaints, disciplinary actions, judgments and criminal actions against a licensed professional.
- Use information technology advancements to provide better and more uniform information on licensed professionals for the consumer to make informed decisions about using the services of particular professionals.

Objectives of the Sunset Review Process:

- Determine if the membership of the board adequately represents both consumer interests and the licensing population, and whether the board encourages public participation in its decision-making.
- Examine the board's organization and management and recommend elimination, consolidation and reorganization of programs where appropriate.
- Identify opportunities for improvements in the management of the board's daily operations and for providing more efficient and effective consumer services.
- Identify consumer concerns and those of the regulated profession regarding the way the board operates.
- Establish appropriate performance measures for each board reviewed.
- Evaluate the board's programs and policies to identify overlapping functions and outmoded methodologies.
- Determine whether the board's licensing, examination and enforcement programs are administered so as to protect the public, or if they are instead self-serving to the profession, industry, or individuals being regulated by the board.
- Review the law and regulations pertaining to the board and determine whether they restrict competition in the marketplace, the extent to which they are still necessary to regulate the profession and whether the board is carrying out its legal mandate or has exceeded its authority.
- Examine the board's fiscal management practices and financial relationships with other agencies.

Sources: Joint Committee on Boards, Commissions & Consumer Protection. Also, Le Ondra Clarke Harvey, Consultant, Assembly Committee on Business and Professions. October 6, 2015. Communication with Commission staff.

Deborah Davis, a commercial interior designer, said that the health and safety impacts of her work cannot be regulated by the free market. Many people think of interior designers as people who pick out pillows, carpets and curtains, she told the Commission. While those are components of her job, she continued, a lot of her job involves code-impacted work. Interior designers, who currently are not licensed in California, she said, can design all interior elements of a building outside of seismic components and load-bearing walls.²⁰ When she is hired to move a wall four feet, she adjusts the HVAC system, fire sprinklers, electrical wiring, lighting and other elements. “This is the interior designer’s purview,” she told Commission staff. “Architects don’t want this job. No one becomes an architect to move a wall four feet.”²¹

Licensing opponents say that there is a spectrum of activities to manage health and safety risks and that licensing should be considered the nuclear option. It can make sense to license many of the healing arts professions, for example, because of the potential adverse effects on public health. But for many occupations, they say, there are ways that the state and the private sector can work together to ensure standards are met. Lee McGrath, an attorney from the Institute for Justice, gave an example to Commission staff: Outside of driving, he said, eating out is one of the most harmful activities the average consumer will do on a regular basis. But the state doesn’t license food handlers, he continued. Consumers may spend time researching a restaurant, but outside of a few establishments with celebrity chefs, they don’t research who works for the restaurant and assess their qualifications. Yet, millions of people eat out every day without dying, thanks to inspections and shutting down unsafe establishments, quick action by public health officials on suspected food poisoning and restaurateurs’ concern for their reputations, he contended. The costs of regulations and standards to protect public safety do not fall on the backs of the cooks, servers and bussers.²²

Prevents Privatization of Health and Safety Standards

Some licensing opponents argue that certification offers a viable alternative to licensing. Dr. Morris Kleiner, the national expert on occupational licensing, advocates for certification because it allows more flexibility for workers:

They can still practice their occupation without a license. He also told the Commission that certification benefits consumers. This is because it signals that someone has met the government’s requirements to work in the occupation, yet uncertified individuals are still able to work so long as they do not call themselves certified. Consequently, certification identifies standards without lowering the supply of practitioners.²³

Licensing advocates argue that, in practice, governments often turn their authority over to a private certification authority, and the private certification authority then sets the standards instead of the state – essentially privatizing the protection of the public interest.²⁴ Assembly Bill 1279 (Holden, 2015) would have done just that, for example, had it not been vetoed by Governor Brown. The bill was a “right to title” act for music therapists, meaning that music therapists would have had to meet the standards set by the Certification Board for Music Therapists in order to use that title.²⁵

A representative for the California Nurses Association told the Commission that the rationale for occupational licensing is the protection of public health and safety. If the state identifies a threat to public health and safety that justifies intervening in the economy, she said, then the state – not a private entity – should set the standards.²⁶

Real World Conditions Disadvantage Some Unlicensed Occupations

Some people in unlicensed occupations face immediate disadvantages that cannot be discounted when considering upward mobility. Commercial interior designers, for example, push for occupational regulation because they are disadvantaged by other industries’ occupational regulations, according to industry advocates. Because commercial interior designers work in code-impacted environments, their plans must be approved by a licensed architect. A small percentage of interior designers work for architectural firms, where obtaining a colleague’s approval can be quick and inexpensive. However, if the interior designer is self-employed, this requirement results in a delay and increased costs to the interior designer. As 90 percent of the industry is women-owned small businesses,

this disproportionately impacts female small business owners.²⁷ By asking to be licensed, commercial interior designers are asking to drop the requirement that architects sign off on their plans, and establish qualifications so the public can trust their work without architectural oversight.²⁸

Practical Means of Accountability

Ms. Irizarry Reddy disputed the commonly-held idea that the court system should ensure accountability and be the first recourse in disputes between practitioners and consumers. It's just not practical, she told the Commission. The delays from an already-overwhelmed and backlogged court system would be extensive and expensive for the consumer, practitioner and the state. The mediation and complaint systems created through the licensing boards provide a practical resolution for most problems consumers have, she said, and the state should not switch to a system that disadvantages consumers and practitioners.²⁹

Effects of Occupational Licensing

Critics of occupational licensing contend that it raises prices, slows growth and costs jobs. They add that it does not provide the same benefits to lower-earning occupations as higher-earning occupations, inhibits entrepreneurship and is subject to political forces that favor practitioners over consumers and the unlicensed without justifiable protections to health and safety. In other words, licensing causes unwarranted barriers to entry to many occupations.

Raises Prices Without Always Increasing the Quality of Service

Witnesses told the Commission that occupational licensing essentially is the government granting a monopoly to a subsection of service providers within a given occupation. The results are what economists expect from a monopoly: higher prices and fewer providers. Dr. Kleiner's research found that licensing raises prices by 5 percent to 33 percent, depending on occupation. Restrictive licensing for dentistry, for example, raises prices between 8.5 percent and 18 percent. Restrictions on nurse practitioners raise the

price of well-child exams by 10 percent. Dr. Kleiner, citing his and colleagues' work with economic models on the topic, estimates that occupational licensing restrictions cost consumers nationwide \$203 billion annually.³⁰

Consumer health and safety does not necessarily increase with the price of the service, according to witnesses. Researchers found that more lenient dentistry licensing policies did not result in more bad outcomes. Stricter licensing, however, resulted in higher prices and a reduced supply of dentists.³¹ In the preceding nurse practitioner example, the 10 percent increase in cost that accompanied the restrictions had no effect on child mortality or malpractice insurance rates. A study in Louisiana and Texas found that licensed florists in Louisiana did not generate any perceivable increase in consumer protection while increasing the price of floral arrangements.

In some cases, however, licensure does improve the quality of service. A study found that giving building contractor licenses to people who previously did not meet licensing requirements resulted in a modest decrease in quality.³² These studies suggest that occupational regulation is nuanced and there is no "one-size-fits-all" policy of regulating who can work.

Slows Growth in Licensed Professions

According to Dr. Kleiner's research, working in a universally licensed occupation appears to increase hourly earnings by 10 percent to 15 percent compared to unlicensed individuals with similar qualifications.³³ Working in an occupation that is licensed in some states, but not others, results in a 5 percent to 8 percent increase in wages.³⁴ Due to grandfather clauses often included in legislation, it typically takes 10 years to see the effects of licensing on employment. By the end of the initial 10 years following the legislation, entry into occupations is limited. Employment growth in an occupation that is licensed in one state will be slower than in a state that does not license it.³⁵ Dr. Kleiner estimates that occupational licensing restrictions have resulted in approximately 2.8 million fewer jobs nationwide.³⁶

Benefits are Concentrated in Higher-Income Professions

Increases in wages and limited competition are most concentrated in higher-paying licensed occupations, such as physicians, dentists and attorneys.³⁷ The effect of licensing on wages and limiting competition for lower-income occupations, including those that have expensive educational or training requirements such as teachers, nurses and cosmetologists, range from little to none.³⁸ This suggests that middle- and lower-class occupations are the least likely to enjoy the financial benefits from licensing.

Services are Standardized, Entrepreneurship Suffers

Occupational licensing requirements standardize service. Professional and occupational organizations argue that standardization improves service and reduces uncertainty in consumers' minds. Critics argue that standardization inhibits innovation and entrepreneurship. Jason Wiens of the Kauffman Foundation offered the example of barbershops. The foundation worked with someone who wanted to open a mobile barbershop, though the regulations of that state required a fixed location for a barbershop. State officials were unwilling to work with the entrepreneur to find a solution that would allow for the mobile barbershop. Eventually he gave up on his idea even though he had data indicating demand for that service.³⁹

The problem becomes magnified with low-income entrepreneurship. Decades of research have shown entrepreneurship in low-income populations is an important path out of poverty. The University of Michigan's Panel Survey of Entrepreneurial Dynamics found that nearly 40 percent of nascent entrepreneurs live in low- and moderate-income areas. Nearly 10 percent of emerging entrepreneurs come from households below the poverty line. Researchers from the Aspen Institute followed 1,500 low-income entrepreneurs for five years, and found that 72 percent of them increased their household income by an average of \$15,000 during the study period. Fifty-three percent moved out of poverty.⁴⁰

Working under the assumption that policies that promote

entrepreneurship are key to upward mobility, researchers from the Goldwater Institute combined data from the Institute for Justice and Kauffman Foundation and found that states that license more lower-income occupations have a lower entrepreneurship rate. They also found the converse: states that license fewer lower-income occupations have a higher entrepreneurship rate.⁴¹

Professional and occupational organizations argue that consumers are receiving better services in exchange for the higher prices: Better-trained dentists with more training, for example, provide a higher quality of care for the consumer with higher-quality equipment because of better standards. But economists worry that, particularly in high-income income professions such as dentistry and law, wealthier consumers can steer the supply of services away from the reach of low- and middle-income consumers. If wealthier consumers demand the highest standards of cosmetic dentistry as the basis for licensing requirements, for example, lower-income consumers who might care more about access to fillings and root canals might find themselves with less access to services and at a higher price.

Inhibits Interstate Mobility

State licensing requirements make it difficult for many to work in states other than the one that licensed them due to different training or educational requirements. One expert gave the following example: Anyone who attended one of the approximately 40 non-American Bar Association (ABA)-accredited law schools in California is ineligible to sit for the bar exam in Minnesota, no matter whether his or her school was accredited by the California Committee of Bar Examiners, how well he or she performed on the California Bar Exam or how distinguished his or her career in California.⁴² The attorney would need to re-complete his or her law school education at an ABA-accredited school in order to sit for the Minnesota Bar Exam.

While these policies affect anyone who moves across state lines, they often fall hardest on those who can least afford them. In the example above, non-ABA law schools often educate people with families and are working full-time jobs while in school⁴³ – people who might move across state lines for reasons other than their job and who might not have the resources to take out more loans to repeat their law school education. Military families also are disproportionately affected

by occupational licensing laws, which will be discussed further in the next chapter. Veterans may be trained for an occupation in the military only to discover upon discharge that they do not meet state licensing requirements. Service members' spouses and sometimes working-age children may discover that they are not eligible to work in their occupation when the service member is transferred to a new state.

Simply requiring that all state licenses be portable across state lines would not necessarily solve the problem, however. With licensing regulations varying wildly across the nation, it often would be difficult to tailor a set of licensing requirements to meet every other state's requirements. Some occupations have a national standard developed by a credentialing or professional association. The standards set by a private organization do not always put consumers first, and sometimes may create as many barriers as would be removed by adopting a national standard. For example, the national standard to become a physician assistant, set by the Accreditation Review Commission on Education for the Physician Assistant, was recently changed to require a master's degree to become a physician assistant. California previously had a pathway to becoming a physician assistant through its community colleges. Because community colleges are unable to award masters degrees, this pathway is now no longer an option.⁴⁴ By adopting the national standard California has solved the reciprocity problem, yet has enacted more barriers to upward mobility for lower-income Californians.

The state should consider license portability and strive to make its licenses reciprocal where possible. In some cases, it may not make sense for the state to have reciprocity with every state, but it could grant partial reciprocity with some states with similar licensing requirements. In situations where meeting a national or other states' standards would create more barriers to entry for Californians, the licensing boards should explain to the sunrise and sunset review committees why the state is not opting for reciprocity.

The Political Forces of Licensing

Occupational licensing regulations are made in the name of protecting the public interest. The reality, witnesses told the Commission, is that occupational regulation often amounts to rent-seeking. Briefly

defined, rent-seeking is an attempt to influence the political, social or other environment to achieve an economic gain for oneself without contributing to productivity.⁴⁵ In occupational licensing, the rules serve to keep competitors out of the industry. Most of the time, experts told Commission staff, the groups behind requirements for occupational licensing are industry

"Usually it's not consumer groups going to the Legislature and saying that consumers need protections from certain practitioners. It's the other way around. It is practitioners telling legislators, 'you need to protect consumers from us.'"

Jason Wiens, Policy Director, Kauffman Foundation

associations trying to create regulations to keep out the competitors.⁴⁶

Robert Fellmeth of the Center for Public Interest Law explained that occupational regulation does not reflect the consumer's point of view due to the concept of concentrated benefits and diffuse (sometimes called dispersed) costs.⁴⁷ This is a key point in what political scientists call public choice theory. The higher costs caused by occupational licensing are dispersed among a large number of consumers, while the benefits are limited to a relatively small number of practitioners.

Therefore, the practitioners who receive the benefit have an incentive to lobby and take other action to protect their benefit. Consumers, on the other hand, might spend more to lobby against the regulation than the increase in cost they would pay for the service due to a functional monopoly. Quite simply, witnesses told the Commission, practitioners benefit from the system, not consumers, and certainly not the workers who are unable to become practitioners.

Gatekeeping and Inequality

The effects and political nature of occupational licensing combine to create formidable challenges for those with fewer means. Licensing requirements protect those who are already licensed at the expense of those who are not, and California licenses more occupations traditionally entered into by lower-income people than nearly every

other state. The financial and time costs to become licensed are not insignificant. Licensing results in higher prices and reduces the availability of services to lower-income people. The costs of organizing to be represented in occupational regulation often are insurmountable for the underrepresented. Though the testimony of economists, researchers and legal experts featured prominently in the Commission's hearings, it is important to remember that for most Californians, this conversation is not academic. It is many Californians' reality in a society with ever-increasing income inequality.

Licensing Silos and Missing Data

Policymakers focus much of their attention on the Department of Consumer Affairs because the boards, bureaus, commissions and programs under its umbrella license so many Californians. More than 3.5 million individuals and facilities are licensed by the department across more than 250 occupations.⁴⁸ Proposals to license new occupations under the department must undergo the sunrise review process discussed previously. New rules made by the boards and bureaus under the department are subjected to a public rulemaking process. Every four years the department's licensing authorities undergo legislative scrutiny to justify their

existence. Legislation to improve occupational licensing often targets the Department of Consumer Affairs. For example, if a recent bill, AB 1939 (Patterson, 2016), had passed, it would have required the Legislative Analyst's Office to review the occupations under the Department of Consumer Affairs and identify any unnecessary barriers to entry.⁴⁹

The focus on the Department of Consumers Affairs misses the enormous numbers of Californians who are licensed by other entities. More than 250,000 people are licensed by the State Bar.⁵⁰ The Department of Insurance licenses some 390,000 insurance agents and brokers.⁵¹ The California Teacher Credentialing Commission licenses more than 295,000 teachers.⁵² Other departments license smaller numbers of Californians. The California Department of Public Health licenses nursing home administrators and certified nursing assistants. The Division of Labor Standards Enforcement under the Department of Industrial Relations licenses farm labor contractors. No government official asked was able to provide the Commission with a comprehensive list of every licensed occupation in California.

It is impossible for the state to holistically evaluate its performance in protecting the public and determine

DISCREPANCIES IN OCCUPATIONAL REQUIREMENTS

The discrepancies in requirements to become manicurists and tattoo artists highlight the need to review California's occupational regulations. Both occupations involve hands-on contact with customers' bodies. Practitioners of these occupations are exposed to bloodborne diseases, bacteria and fungi, yet the requirements to work in each occupation vary dramatically.

Manicurists must complete at least 400 hours of classwork and training. At some schools this costs thousands of dollars. They then must take written and practical exams before becoming licensed. The practical exam only is offered in two cities: Fairfield and Glendale. Applicants are assigned dates for both portions of the exam and are unable to reschedule the date assigned to them for the practical exam. If they cannot travel to one of those two cities on the date assigned to them, their candidacy is terminated, they lose their application fee and they must begin the application process all over again.

Conversely, tattoo artists must register with their county's public health department, provide proof of Hepatitis B vaccination and take an annual two-hour bloodborne pathogens class, available online for \$25.

If state and local governments successfully protect consumers through the lighter regulatory regime for tattoo artists, state officials might consider whether the burdens imposed on aspiring manicurists are justifiable and whether lower levels of regulations might result in the same public safety outcomes.

whether it is unnecessarily acting as a gatekeeper to upward mobility if there is no single authority that knows who is licensed. Fortunately, there currently is an initiative underway that can provide the groundwork. Dr. Kleiner, funded in part by the Kauffman Foundation and Smith Richardson Foundation, is cataloguing the nation's universally licensed occupations. The goal is to provide data for a comprehensive cross-comparison study of licensing. Most academic studies of occupational licensing focus on a single occupation because getting data from multiple states is time-consuming and difficult. The work is expected to be completed within a year.⁵³ California officials across all departments that license one or more occupations should work with Dr. Kleiner to share their licensing data with this initiative, as the results of cross-comparison studies based on this data would help inform evidence-based policy decisions. They should then build on this effort and catalog all of California's licensing requirements in a single, easily and publicly accessible location, so that policymakers and stakeholders can better understand the extent of California's licensing regime.

Knowing which occupations are licensed in the state is only a start, however. For most occupations, demographic information is collected on a voluntary basis; the Legislature must authorize mandatory collection of information. The reasoning behind this is valid: "The person who decides whether someone receives a license should be blind to the individual's race and ethnicity," said Department of Consumer Affairs Director Awet Kidane. He went on to say that he believes in the utility of data and that demographic information in the aggregate would be helpful, but licensing and enforcement authorities should not have an individual's demographic information in front of them while they're making decisions.⁵⁴

Not collecting demographic data, however, leaves the state unable to track whether a licensing requirement is having an adverse racial, gender or other demographic impact. As will be discussed further in the next chapter, there is significant anecdotal evidence that some licensing requirements harm certain groups. But without data, it is difficult to know for certain. The Legislature should authorize the collection of demographic data, including race, ethnicity, gender, age, education level and languages spoken. For some occupations, it may be beneficial to collect other types of data, such as specific pre-licensure programs the applicant completed in order

to assess which pathways applicants are using to enter the occupation.

Given the impact of licensing on prices, availability, wages both inside and outside the licensed occupation, geographic mobility and entrepreneurship, it is critical that the state be absolutely sure that effects are justified by the consumer health and safety provided by each regulation. Most licensing authorities were created before the institution of the sunrise process, and never had to prove that the level of regulation requested was necessary to protect consumers. The sunset review process cannot completely escape political forces, and requires a small legislative staff to sort through a mountain of data compiled by the very boards under review in a relatively short period of time.

It is long past time for a nonpartisan research body to sift through the complete body of California's licensed occupations to determine whether each requirement justifiably protects public health and safety, then make recommendations for legislative action. California has the opportunity to participate in just such a venture. The U.S. Department of Labor is issuing a grant of up to \$7.5 million to consortia of states to examine licensing criteria, licensing portability issues and whether licensing requirements are overly broad or burdensome.⁵⁵ Additionally, the Department of Labor indicates that states may consider the approaches to licensing to protect public health and safety, such as certification.⁵⁶ The Upjohn Institute of Employment Research is organizing a consortium of states to apply for grant funding, and has invited California to participate. The opportunity to evaluate California's licensing laws with the assistance of federal funding, a nonprofit to coordinate the work, and the expertise of economists such as Dr. Kleiner is too valuable to squander. California should accept the Upjohn Institute's invitation and begin reviewing its licensing laws and regulations across all licensing authorities, not just the Department of Consumer Affairs.

Finally, California's sunrise and sunset review process is critical to ensuring occupational regulation erects the fewest barriers to entry into occupations while protecting health and safety. It is incumbent upon the state to provide the committees that carry out this important function with the resources they need. For future sunrise and sunset reviews, the Legislature should fund additional resources to assist the Assembly Committee

on Business and Professions and Senate Committee on Business, Professions and Economic Development to verify information submitted to the committees. This could take the form of dedicated analysts within the committees or funding for additional help from nonpartisan research bureaus or consultants outside the committees. When the data supplied by licensing entities is incomplete or questionable, legislators should request an audit by the state auditor.

Recommendations

Recommendation 1: The Legislature should authorize the mandatory collection of demographic information for license applications across all licensed occupations in California, including those outside of the Department of Consumer Affairs. This demographic information should not be made available to staff members issuing licenses or conducting enforcement actions, but should be studied in the aggregate to determine the impact of licensing requirements on different demographic groups.

Recommendation 2: The State of California should join a consortium of states organizing to attain federal funding to review their licensing requirements and determine whether those requirements are overly broad or burdensome to labor market entry or labor mobility, particularly for individuals who have moved to California from another state or country, transitioning service members, military spouses and former offenders. As part of this process, the state should consider whether there are alternative regulatory approaches that might be adequate to protect public health and safety, including, but not limited to, professional certification.

Recommendation 3: The Legislature should require reciprocity for all professionals licensed in other states as the default, and through the existing sunset review process, require boards to justify why certain licenses should be excluded. Specifically, licensing boards should be required to:

- Identify whether licensing requirements are the same or substantially different in other states.
- Grant partial reciprocity for professionals licensed in states with appropriately comparable testing and education requirements.

Recommendation 4: The Legislature should fund additional resources, in the form of additional staff or outside support, to assist the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development in verifying and evaluating information for sunrise and sunset reviews. The Legislature should request the California State Auditor conduct an audit when warranted.

PATHWAYS TO UPWARD MOBILITY

At the heart of all conversations about occupational regulation are people: protecting people, removing barriers for people, enabling upward mobility for people. The 2015 White House Report on occupational licensing described several groups of people particularly vulnerable to occupational licensing laws: former offenders, military spouses, veterans and immigrants.⁵⁷ With ever-increasing economic inequality, policymakers must think about the impact of occupational licensing policies on vulnerable groups. That is, how to create pathways for upward mobility for those who have the hardest time becoming employed – even though they may be qualified. In this chapter, the Commission explores how the groups identified in the White House report fare in California and offers recommendations on how the state can break down the barriers preventing them from finding good jobs:

- **Former Offenders:** People with convictions on their record often face difficulties in becoming licensed. They typically must demonstrate that their convictions were not substantially related to the duties of the occupation, or if their convictions were, that they have been rehabilitated. The problem is that “substantially related” and “rehabilitated” are not always clearly defined. Advocates report encountering some arbitrariness in licensing authorities’ decisions. Further, appealing a denial can be confusing and expensive for former offenders.
- **Military Spouses:** Military spouses suffer when their licenses do not transfer across state lines with them. Already at a disadvantage when job searching because employers know they will likely move again in a few years, starting over by spending a year or two redoing licensing requirements further diminishes their employability. The cost of lost job opportunities and of repeatedly meeting licensing requirements is considerable to military families. Most service members say their spouses’ ability to maintain their career is an important factor when deciding whether to remain in the service – and Department of Defense personnel say they lose some of their best people because of spouses’ career difficulties. Ensuring that military spouses have rewarding careers has a positive impact on national security.
- **Veterans:** Veterans may be trained in the service in occupations that are licensed in the civilian sector. Sometimes, upon separation from the military, they have difficulties gaining credit for their military education and experience and have to begin again. Not only does this impose a cost on the veteran, it also affects taxpayers who pay for the veteran to learn an occupation in the military, then pay for it again upon separation through the G.I. Bill. Lawmakers have been proactive in passing laws to make it easier for veterans to become licensed. The Commission learned, however, that there may be a disconnect between the intent of the laws that were passed and the reality on the ground.
- **Foreign-trained Workers:** Workers trained in other countries often possess the skill sets for occupations in which California faces shortages, but there are a number of obstacles preventing them from gaining licensure in the state. Many have gaps in their training or experience. But there are few gap, or bridge, education programs to quickly fill those gaps, forcing them to begin again. Even those fully qualified may not be able to practice due to licensing statutes and regulations. This matters because California not only needs qualified personnel to meet its impending shortages, but it particularly needs professionals who are fluent in languages other than English and familiar with other cultures – needs that foreign-trained workers can easily meet.

This chapter offers recommendations to help these groups more easily enter occupations, without overhauling California’s regulatory regime or reducing standards. Further, these recommendations will help all Californians – not just those belonging to vulnerable groups – more easily enter licensed occupations: a rising tide that lifts all boats.

Former Offenders

Approximately eight million Californians have criminal records.⁵⁸ Ninety-six percent of Californians who are sent to prison will re-enter their communities.⁵⁹ This figure does not include the thousands of Californians who are sent to county jails for lesser offenses, who also will re-enter their communities after completing their sentences. In 2012, more than 18,000 prisoners were paroled and nearly 29,000 offenders were released from prison to post-release community supervision.⁶⁰ Tens of thousands more are released from county jails every year. A 2015 survey found that nearly 35 percent of unemployed men had a criminal record.⁶¹ Former offenders are most likely to recidivate in their first year after release.⁶² A 2008 Urban Institute Justice Policy Center Study found that at fewer than half of the former offenders were employed at eight months after release.⁶³

“...no available evidence demonstrates that the mere existence of a criminal record is related to poor occupational performance or low-quality services. In other words, simply having some type of a past record does not predict an individual’s ability to perform in an occupation.”

Michelle Natividad Rodriguez, Senior Staff Attorney,
National Employment Law Project

A job does not guarantee successful re-entry into society. That requires housing, mental and physical health care and other services tailored to the specific needs of the individual. But researchers have found employment is essential to helping former offenders. In addition to allowing former offenders to support themselves and their families, a job develops pro-social behavior, strengthens community ties, enhances self-esteem and improves mental health – all of which reduce recidivism.⁶⁴ These effects are strengthened the longer the individual holds the job and especially when it pays more than

minimum wage.⁶⁵ The ability of former offenders to hold stable jobs is enormously important to society.

Nationally, there is an ongoing bipartisan conversation about the loss of employment as a collateral consequence of incarceration. In November 2015, President Obama directed federal agencies to “ban the box.” Ban the box refers to not asking applicants about their convictions on the initial job application, instead waiting until later on in the hiring process to discuss convictions. Twenty-four states and more than 100 counties and cities also have adopted ban the box policies.⁶⁶ More than 100 companies, ranging from Google to Coca Cola, also have pledged to give people with convictions opportunities to work there through actions such as banning the box, providing internship opportunities to ex-offenders and hosting job fairs for former offenders.⁶⁷ Yet these efforts are limited in their effectiveness if people with convictions on their records face barriers to obtaining the credentials needed to work.

The Problems Former Offenders Encounter in Being Licensed

Several levels of regulation and guidelines govern how former offenders may be licensed. Licenses issued by the entities under the Department of Consumer Affairs are regulated by the California Business and Professions Code, which states that a license may be denied if the offense is substantially related to “the qualifications, functions, or duties of the business or profession for which application is made.”⁶⁸ Convictions that are not substantially related are not supposed to be a cause for denial. The Business and Professions Code also says that licenses cannot be denied if applicants meet the criteria for rehabilitation. The Business and Professions Code goes on to give the boards, bureaus, commissions and programs under the Department of Consumer Affairs authority to develop the criteria for what constitutes “substantially related” and “rehabilitation.”⁶⁹

The many licenses issued by other licensing authorities are governed by a patchwork of laws across many legal codes that, as one witness told the Commission, may allow license denial even for a conviction not substantially related to the duties of the occupation.⁷⁰ Under federal law for example, the Insurance Commissioner must provide permission for anyone convicted of a felony

involving dishonesty or breach of trust who wants to work in the business of insurance, including jobs without access to sensitive information.⁷¹ Hearing witness CT Turney, a lawyer for the Los Angeles-based A New Way of Life Reentry Project, told the Commission that often licensing entities have internal guidelines that further determine how a former offender is evaluated. While these criteria usually can be obtained through a Freedom of Information Act request, they're sometimes not easily available to applicants.⁷²

Applicants face similar challenges in some occupations that technically are non-licensed. California licenses many types of facilities, and the regulations governing the facilities' licenses may have employment requirements that make it difficult for former offenders to find employment. Witnesses cited the California Department of Social Services and the Department of Developmental Services as two examples for which employees would "provid[e] care for children, elderly, and developmentally disabled adults".⁷³ CT Turney emphasized that the ability to work in these types of jobs is important to the re-entry community.⁷⁴

"When policies and decisions are made based on visceral fear rather than on a reasoned analysis of actual risk, they reach far beyond the justification of public safety. Instead they merely serve as additional punishment for a past offense. In the process, such policies impose greater burdens on individuals, who lose out on stable work and better pay, and on communities, who lose out on financially stable members as well as the services of otherwise qualified professionals."

CT Turney, Senior Staff Attorney,
A New Way of Life Reentry Project

The Tradeoff Between Certainty and Flexibility

There is a fine balance between outlining specific offenses that will disqualify an individual from licensure and leaving licensure requirements vague enough to allow for flexibility. For some occupations in California, there are a few crimes that automatically disqualify

people. For example, sex offenders may not be licensed as teachers.⁷⁵ Beyond that, however, it is often up to the discretion of the licensing entity. This is problematic for former offenders who must decide whether to invest in the education, training, and application process – which often requires an expensive test and fees – when there is no certainty they will be eligible for licensure. For example, individuals applying for employment at facilities licensed by the Department of Social Services technically may be denied employment for anything beyond a traffic violation.⁷⁶

The problem, however, with creating a list of automatic disqualifications is the state loses the flexibility to assess applicants according to the nuances of their offenses. Awet Kidane, director of the Department of Consumer Affairs told the Commission, "There is a difference between a doctor who gets a DUI driving home after a shift versus a doctor who gets a DUI on the way to the operating room."⁷⁷ Licensing officials reiterated the need for flexibility throughout the Commission's study process. One licensing board cited the case of a woman convicted of assault that, when it examined the case, transpired to be a mother confronting someone who assaulted her child. By outright rejecting assault convictions, licensing officials warned, people who pose no legitimate threat to consumers also will get caught in that net.

Director Kidane told the Commission that his department constantly evaluates room for improvement in licensing former offenders. He said there is significant discussion about what "substantially related" means and of what constitutes "mitigating circumstances."⁷⁸ Representatives from other licensing entities also told the Commission that they, too, aim to improve their licensing processes for former offenders.

Background Checks

Applicants with criminal convictions on their records face another barrier: what CT Turney called the candor trap. Applicants often are asked to list criminal convictions on their applications, as well as undergo background checks. If the convictions an applicant lists do not match the convictions on the background check, the applicant may be disqualified for lying. CT Turney explained there are reasons an applicant may unintentionally err when listing previous convictions. Many, particularly those who are less educated or legally unsophisticated, see three lines

on the application and assume they only need to write a broad overview instead of obtaining police reports and a lawyer to get the details right. People also often do not remember their conviction histories correctly. People with 30-year-old convictions or addiction or mental health issues, and those who have accepted plea agreements to charges differing from what they remember being arrested for, often unintentionally make misstatements on their application form. All of society loses when former offenders cannot get a good job because they were automatically disqualified due to unintentional misstatements not matching their background checks.

The Department of Insurance offers an alternative model to learn about applicants' criminal convictions. The department asks applicants to submit certified court documents regarding their convictions with their applications. In this way, applicants are not inadvertently caught in the candor trap. However, this model comes with a price: Applicants pay \$32 for a state background check, \$17 for a federal background check, plus fees charged by the live scan locations and the costs of procuring other requested documentation.⁷⁹ The state has a fee-waiver program for low-income applicants for the state background check, but there is room for improvement. Applicants must first apply for a fee waiver and cannot proceed with their background check until they receive a response, which can take several weeks. Then they must wait for the background check, which also takes several weeks.⁸⁰ Implementing instant responses to requests for fee waivers would make important progress in getting applicants to work faster, advocates said.⁸¹

Complex Appeals Process

Application processes vary by licensing authority. But in general, when individuals with convictions on their records apply for licenses, their applications are flagged and reviewed by analysts, who are not necessarily legal professionals. In many cases, these analysts work with internal guidelines based on the licensing authority's interpretation of substantially-related duties and rehabilitation. Advocates working with former offenders said that sometimes denials seem arbitrary.⁸²

Many applicants do not appeal denials because they are intimidated, advocates told the Commission.⁸³ When applicants do appeal, the process is expensive

and not straightforward. When applicants appeal denials, advocates said, they often believe they are simply meeting with licensing board officials to explain their convictions. In some cases, however, they find themselves in formal legal hearings overseen by administrative law judges with attorneys representing the licensing boards. There, they discover they need to present evidence and witnesses to prove they meet certain legal standards. People often do not understand the process, CT Turney said, and the client base A New Way of Life Reentry Project serves often cannot afford attorneys. Further, very few organizations provide *pro bono* occupational licensing-related legal services to low-income applicants. Applicants often lack the knowledge or experience to defend themselves against state attorneys, advocates said, and consequently, often lose.⁸⁴

An intermediate review process would help mitigate some of the barriers these applicants face. That process, between an applicant's initial denial and an administrative law hearing, allows applicants to meet with licensing officials and explain why they believe their denial was erroneous. Advocates cited the good results of the Bureau of Security and Investigative Services' intermediate review program as a model for other licensing authorities.⁸⁵ Further, because administrative law proceedings require judges, lawyers, and court reporters, they are costly for the state. Instituting an intermediate review process between licensing entity officials and the applicant could save the state money.

Steps to Help Former Offenders Gain Employment

The entire community benefits when former offenders are gainfully employed. Yet as a group they face severe obstacles when looking for work. Easing licensing barriers does not mean unconditionally allowing former offenders to work in any job. No one suggests allowing convicted child molesters to become schoolteachers or convicted elder abusers to become nurses. But a 10-year-old drug conviction should not keep individuals from finding a job to support themselves and their families.

As discussed in the previous chapter, a thorough review of all of California's occupational licensing regulations is needed and part of the review must include whether there are unnecessary barriers for ex-offenders. In the

meantime, the state can take steps to ease barriers to licensing for former offenders. Among them:

- Make the criteria licensing authorities use to evaluate former offenders more transparent. Some licensing authorities do this, and the rest should follow suit. The Commission recognizes that the final determination of whether a license is issued or not results from a conversation between the licensing authorities and the applicant. The Commission understands that addressing applicants with convictions on a case-by-case basis allows flexibility. But applicants should not have to file Freedom of Information Act requests to know the guidelines by which they will be evaluated. Having this information up front can help potential applicants make informed decisions about how to invest their time and resources.
- Follow the Department of Insurance model by relying on background checks and court documents for reviewing convictions. For occupations that require background checks, the licensing authority should not rely on applicants' recollection of convictions to make its decision. Requiring applicants to outline their criminal histories in addition to a background check serves no purpose. The state also could make its background check fee waiver more efficient for low-income applicants so they do not have to wait as long to begin working.
- Institute an intermediate review process within the licensing authorities that do not have one. Some licensing authorities keep the lines of communication open with applicants throughout the entire application process, while others do not. An intermediate review process allows applicants who are not legally sophisticated to discuss problems with their applications with licensing authorities before it turns into an administrative law hearing. This saves the state money as well.

Though the specific convictions that qualify as "substantially related" will vary by occupation, the principles guiding the development and application of those standards will not. As the umbrella organization over most of the state's licensing authorities, the

Department of Consumer Affairs is a logical choice to develop best practices for licensing former offenders. The Department of Consumer Affairs also should share its best practices with licensing authorities not under its purview, and periodically coordinate roundtables with these other authorities to promote the exchange of ideas and assess whether California is helping its eight million residents with criminal records find employment.

Those Who Serve

Separating service members and military spouses also are hard hit by occupational licensing regulations. Every few years there is a burst of legislation designed to ease the barriers they face, yet on-the-ground reports say that little changes. The men and women who serve our country, as well as their families, deserve better than to be kept out of occupations for which they qualify. California must focus less on new legislation and more on implementing past legislation.

Military Spouses

Military spouses are particularly vulnerable to state licensing laws. In the civilian population, approximately 1.1 percent of spouses move across state lines each year due to their spouse's job. In the military population, 14.5 percent of spouses move across state lines annually. Thirty-four percent of military spouses hold occupational licenses, and 19 percent of military spouses report challenges in maintaining their licenses through moves.⁸⁶

"We know that most decisions to stay in the military are made around the kitchen table and not in the personnel office. To retain our trained and experienced military, we must retain the family. ... Sixty-eight percent of married service members reported their spouse's ability to maintain a career impacts their decision to remain in the military by a large or moderate extent, thus making the ability of the spouse to obtain a professional license in each state of assignment an influence on national security."

Laurie Crehan, Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy

This affects more than the military spouse, however. Sixty-eight percent of married service members report their spouse's ability to maintain a career affects their decision to remain in the military.⁸⁷ "We lose good service members and we see this as a national security issue," a Department of Defense witness told the Commission.⁸⁸ Military spouses report that employment is critical for two reasons. One, it is difficult to support a family on the service member's salary alone, particularly

for lower-ranking service members. Secondly, being employed, many military spouses report, provides a distraction and boosts their morale while the service member is deployed.⁸⁹

HELPING MILITARY SPOUSES BECOME LICENSED

The Department of Defense asks state licensing boards to do three things to help military spouses gain licensure in a new state:

1. Endorse the license if a military spouse or separating service member holds a license significantly similar to the state's license. If military spouses must spend a year or two becoming re-credentialed, they become virtually unemployable – as employers know their service member spouse will soon be transferred again.
2. Issue temporary licenses. Allow military spouses to work under the direction of others who are fully licensed while they complete the state licensing process.
3. Expedite the licensing process. It takes too long to collect and validate paperwork, a problem compounded by licensing tests that are offered infrequently. The Department of Defense asks states to simply take the supporting documents applicants supply and allow them to practice instead of waiting while the documents are being verified. If there is a problem with the documents, the licensee's ability to practice can be revoked.

The Department of Defense stresses that it is not asking states to remove or dumb down standards, only to make the licensing process more flexible to support service members and their spouses.

Source: Laurie Crehan, Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy. February 12, 2016. Phone call with Commission staff.

Veterans

More than one million service members are expected to leave military service and enter the civilian workforce between 2014 and 2020,⁹⁰ joining the approximately 11 million veterans of working age.⁹¹ California, home to approximately 1.9 million veterans, has more veterans than any other state.⁹² Though the unemployment rate for veterans in general is not significantly different from that of the civilian population, there is an important exception: Male veterans between the ages of 25 and 35 post-September 2001 (what the U.S. Bureau of Labor Statistics defines as the Gulf War II era) have a significantly higher unemployment rate than their civilian counterparts, at 6.8 percent versus 5.4 percent.⁹³ As nearly half of the veterans in the Gulf War II era are 25-35 years old,⁹⁴ their higher rate of unemployment is a challenge states must address.

The primary occupational licensing problem for separating service members is licensing boards' not accepting their military-acquired knowledge, skills and abilities toward credentialing requirements. This common roadblock impacts taxpayers as well as service members, noted Commission witness Laurie Crehan, of the Department of the Defense. Taxpayers foot the bill twice to train service members for the same job: the first time while they're in the military, then again following discharge to meet licensing requirements.⁹⁵

The Department of Defense is taking steps to make it easier for state licensing boards to credit military experience and education to licensing requirements. In the past, each branch of the military had its own transcript for the education its service members received. The department now has a standardized transcript so that employers can more easily understand the document. The department has hired consultants to cross reference the knowledge, skills and abilities acquired in each military job to their civilian equivalent. Finally, the military is working with the American Council of Education to analyze military training to see if it meets the rigor, content and criteria for college credit. The goal is to prevent separating service members from having to

start from scratch. Many need only “bridge education” (also called gap education) to fill in the gap between what they learned in the military and what they need to learn for their license.⁹⁶ However, even after all this work, the Department of Defense cannot force licensing boards to use these translations to credit veterans for their past experience or to provide bridge education programs.

“Taxpayers pay for the service member to be trained twice. Once while in the military, then again when the service member returns, through the GI Bill.”

Laurie Crehan, Regional State Liaison, Southwest, Office of the Deputy Assistant Secretary of Defense, Military Community and Family Policy

Legislative Fixes, but What Progress?

Enacting legislation to make employing veterans and military spouses easier is popular. Since 2010, California has enacted numerous laws to ease licensing barriers for veterans and military spouses. Some are limited to specific occupations, while others are far-reaching, including:

- **SB 1226** (2014, Correa): Requires Department of Consumer Affairs (DCA) boards to expedite licensure of honorably-discharged veterans. Took effect July 1, 2016.
- **AB 186** (2014, Maienschein): Requires DCA boards to issue 12-month temporary licenses to military spouses with out-of-state licenses for the following occupations: registered nurse, vocational nurse, psychiatric technician, speech-language pathologist, audiologist, veterinarian, all licenses issued by the Board for Professional Engineers, Land Surveyors and Geologists and all licenses issued by the Medical Board.
- **AB 1057** (2013, Medina): Requires DCA boards to renew licenses that expire while an individual is on active duty without penalties or examination.
- **AB 1588** (2012, Atkins): Requires DCA boards to waive renewal fees for licenses that expire while the practitioner is on active duty.

- **AB 1904** (2012, Block): Requires DCA boards to expedite licensure for military spouses.
- **AB 2462** (2012, Block et al.): Requires the Chancellor of the California Community College to determine which courses should receive credit for prior military experience, using the descriptors and recommendations provided by the American Council on Education.
- **AB 2783** (2010, Salas et al.): Requires DCA boards to promulgate regulations to evaluate and credit military education, training, and experience if applicable to the profession.

Despite the state’s having enacted appropriate legislation, the Commission heard anecdotally that veterans and military spouses still face difficulties in becoming licensed. No studies or implementation tracking have been done to assess how effectively the legislation has been implemented. One glaring omission in the above legislation is state licensing authorities outside of the Department of Consumer Affairs.

Experts identify common problems in state laws nationwide intended to ease licensing barriers for veterans and military spouses:

- Broadly written laws provide too little guidance.
- Veterans may be unaware of their licensing eligibility.
- Legitimate skills gaps may go unaddressed.
- Insufficient partnerships between state, schools and the military.
- Lack of consistent metrics to measure licensure challenges.⁹⁷

Many laws are in place in California. But we do not know if they are having the desired effect. Because the retention of experienced military personnel depends on spouses’ ability to hold a job – making military spouse licensure a national security concern – and because helping veterans secure gainful employment after their service is often stated as a policymaker priority, the Commission recommends that the Legislature authorize a research institute to work in collaboration with the Department of Defense to conduct a study on the implementation of the legislation listed on this page. The

review should identify gaps between the intent of the laws and practice outcomes, and issue recommendations for executive or legislative action on how to bridge those gaps. The review should examine and include recommendations on whether the legislative focus on the Department of Consumer is sufficient or whether policymakers should encourage other departments to prioritize veterans and military spouses. The review also should assess licensing authorities' outreach efforts to inform veterans that they are eligible for expedited licensing, and provide recommendations on how the state can better educate veterans about these benefits.

The beneficial effects of finding work are personal. A representative from Swords to Plowshares, a San Francisco-based nonprofit that provides wraparound services for veterans including employment assistance, told Commission staff that the impact of not being able to secure a job in the field that the veteran has been working in for perhaps the last eight or 10 years is significant. Being experienced in a field and leaving the military only to discover that they are considered unqualified to work in that field is a rude awakening, she said.⁹⁸

Foreign-Trained Workers

The impacts of occupational licensing regulations on out-of-state workers were discussed in the first chapter. This problem is magnified when it comes to foreign-trained workers. Foreign-trained workers can be a sensitive subject. To some it conjures images of undocumented immigrants. To others the topic brings to mind the questionable use of H-1B temporary work permits to hire foreign professionals, often in the information technology industry, at lower wages than Americans.⁹⁹ While these issues deserve thoughtful attention by policymakers, they should not obscure the fact that foreign-trained workers are a legal and dynamic part of California's workforce, and in many cases, are native or naturalized Californians who were educated or trained abroad.

High-skilled workers who are trained abroad typically have a post-secondary degree, are more likely than others to speak English or take classes to build English proficiency, and often work in a high-demand field. Currently that field is STEM, or Science, Technology, Engineering and Math.¹⁰⁰ The licensing difficulties they face are similar to those of veterans: An applicant may have the appropriate skill set for the occupation, but

the licensing board may not be able to translate the applicant's foreign education and experience to the board's requirements. Often, there will be differences between the education and experience an individual needs to successfully practice in an individual's country of origin and what the individual needs to practice successfully in California. A researcher from the Migration Policy Institute writes:

"Perhaps the central problem that makes credential recognition difficult is that foreign professionals, especially the newly arrived, are not interchangeable with their locally trained counterparts. ... Professionals with the same job title do not always perform exactly the same set of tasks in different countries, creating real differences in knowledge and skills gained on the job. In the medical field, for example, different medical procedures and responsibilities may be delegated to nurses as compared to doctors, and to generalists as compared to specialists; certain medical devices are not as widely available in all countries, giving practitioners less experience in their use; institution or administrative functions such as medical referral processes can differ widely; and some health-care practitioners require relatively high levels of language proficiency to communicate with patients and colleges."¹⁰¹

José Ramón Fernández-Peña, associate professor at San Francisco State University and policy chair of IMPRINT, an immigrant advocacy organization, testified that there are few options for bridge education for foreign-trained workers in California who meet all but a few licensing requirements.¹⁰² Many find themselves having to start over. In some cases this borders on the absurd. Foreign-trained doctors with many years of experience, for example, must complete an entire residency program to be licensed in the United States, often enduring the same residency matching process and low pay as students freshly graduated from medical school.¹⁰³ A foreign-trained doctor cannot even work as a physician assistant in California without completing an approved physician assistant training program.¹⁰⁴ Dental hygienists can have equivalent experience in their home country and earn a perfect score on the exam, but cannot be licensed because they did not graduate from an accredited dental hygiene program.¹⁰⁵

Foreign-trained dentists used to be able to become licensed in California after successfully passing dental exams, Mr. Fernández-Peña testified. But professional associations lobbied to have that right removed. Now there are two ways foreign-trained dentists can become licensed in California. They can attend a foreign dental program that has been approved by the Dental Board of California. As the program must teach California Occupational Safety and Health Standards, few foreign schools qualify. Currently, only the University de La Salle in Leon, Guanajuato, Mexico is approved.¹⁰⁶ The second way to qualify is to take a two-year Advanced Standing Program and earn a Doctor of Dental Surgery degree. There are four schools in California that offer this two-year program, with an average total cost of \$150,000, Mr. Fernández-Peña told the Commission.¹⁰⁷

Why it Matters that Foreign-Trained Workers Face Barriers to Licensure

By 2025, California will have a shortfall of one million workers with four-year degrees and 2.5 million workers with other levels of degrees, certificates and diplomas.¹⁰⁸ When qualified foreign-trained workers are stuck working lower-level jobs because they did not graduate from an accredited school or are missing a couple of classes, it hurts all Californians. Consumers have a harder time finding service providers and may have to pay more. Lesser-qualified Californians are pushed out of lower-skilled jobs and face unemployment or menial tasks. Then there are the impacts of a lower income on workers and their families. This is an inefficient use of resources and it exacerbates growing economic inequality.

Professional Shortages are Looming

As described above, in fewer than 10 years, California will face a workforce shortfall of approximately 3.5 million workers with varying levels of education and expertise. Looking at shortfalls in specific industries gives a clearer picture of how this affects Californians. By 2030, California will have only two-thirds of the primary care physicians it needs to maintain its current physician-to-population ratio – which already is worse than the national average.¹⁰⁹ By 2030, according to projections, California will have 193,000 fewer registered nurses than it needs.¹¹⁰ California already is 60,000 teachers short to maintain pre-recession student-teacher

ratios and 135,000 teachers short of national average student-teacher ratios.¹¹¹ The greatest deficiency is in mathematics, science and special education.¹¹² Mathematics and science are the fields in which current waves of high-skilled immigrants are trained.¹¹³ Foreign-trained workers often possess many, if not all, the qualifications to fill these gaps, if the state eases barriers that keep them from practicing.

California Needs Professionals Fluent in Other Languages and Cultures

California has a diverse population and needs professionals and workers who can fluently serve its diversity. Lack of diversity in the health workforce, for instance, is a contributing factor to racial and ethnic health disparities, witnesses testified.¹¹⁴ In California, 37 percent of the population is Latino, yet only 5 percent of doctors, 8 percent of registered nurses and 7 percent of dentists are Latino.¹¹⁵ By 2025, 48 percent of the senior population in California will be non-white.¹¹⁶ Positive health outcomes will depend on access to geriatric care providers who can communicate with and understand them.

Inefficient Labor Market Outcomes Result in Lower Paychecks

Many high-skilled immigrants take lower-skilled jobs for which they immediately qualify, or which require only minimal training, instead of the occupations they practiced in their countries of training. The Migration Policy Institute found that many people accept a lower-skilled position as a more attractive option than starting from the beginning again in their own profession.¹¹⁷ California is home to approximately 1.7 million foreign-born, college-educated immigrants. (This figure includes foreign-born immigrants who were educated in California and excludes California-born residents who were educated abroad.) Of these, 400,000 are unemployed or working in low-skilled jobs.¹¹⁸ Sometimes this may be a lower-skilled job within the individual's industry, such as a physician becoming a laboratory technician. Sometimes this means taking a low-paying job outside of the industry. IMPRINT offered the Commission numerous examples, such as foreign psychologists becoming housekeepers and doctors becoming car wash attendants in the U.S.¹¹⁹ The problem is that these individuals and their families will live on less money than the market rate

for their skill sets, and they take lower-skilled jobs from those who legitimately have fewer qualifications. These situations aggravate California’s upcoming shortages of trained professionals.

Models to Get People Working

The state need not wait for a complete overhaul of occupational licensing regulation to reduce the barriers keeping people out of jobs. Several models exist that could be applied to other licensed occupations. Not all of these models are appropriate for all occupations. But collectively they present a variety of options for workers already qualified and licensed, and individuals who want to develop qualifications for upward mobility. The state could implement these programs now to help move people into good jobs. Moreover, none of these models require lessening requirements or abolishing licensing: They only require policy or statute changes to let people into the occupations.

California Commission on Teacher Credentialing Model

The California Commission on Teacher Credentialing has a straightforward model for teachers who possess out-of-state licenses. It issues licenses to teachers with a provision that they meet all of California’s education and training requirements during the five years before they are required to renew their licenses.¹²⁰ The state could use this model to allow people in other licensed occupations to work while meeting requirements.

Medical Service Technician-to-Registered Nurse Model

In 2015, the Legislature enacted a bill, SB 466, requiring nursing programs to grant credit for military education and training to fast track veterans who were medical service technicians in the military to become registered nurses.¹²¹ In this model, the Legislature took several steps to better position the initiative for success:

- It gave a deadline, January 1, 2017, for nursing programs to have their processes in place to begin fast tracking veterans.
- It gave the Board of Registered Nursing the authority to apply swift and severe sanctions to

nursing programs that fail to comply: Schools that are not in compliance by the deadline will be stripped of their approval to teach nursing.

- It required continuous monitoring of nursing programs’ performance in fast tracking veterans. The Board of Registered Nursing must review schools’ policies and procedures for granting credit to veterans for their military education and training at least once every five years.¹²²

THE STATE WORKFORCE PLAN: MID-SKILLED JOBS AS A PATH TO UPWARD MOBILITY

The Commission recommends piloting bridge education and apprenticeship programs in the state’s own facilities. The state also should look to its own State Workforce Plan and concentrate resources on developing pathways for upward mobility within the areas of expected job needs. Below are the top 12 mid-skilled – defined as needing more than a high school education but less than a four-year degree – occupations with anticipated worker needs:

Occupation	Annual New Workers Needed, 2012-22
Registered Nurses	9,230
Teacher Assistants	4,470
Truck Drivers	4,410
Nursing Assistants	4,180
Medical Assistants	3,450
Licensed Vocational Nurses	3,040
Computer User	
Support Specialists	2,490
Preschool Teachers	1,820
Hairstylists / Cosmetologists	1,750
Dental Assistants	1,640
Actors	1,500
Dental Hygienists	1,060

Source: California Workforce Development Board. State Workforce Plan.

This bridge education model could be applied for other veteran employment categories, as well as for workers from outside California to rapidly complete missing requirements and begin working.

The Apprenticeship Model

Though hundreds of years ago apprenticeships were gateways into the original guilds, which limited who could practice an occupation, today they represent an opportunity for inclusion into, instead of exclusion from, occupations. Instead of placing the burden of educational costs and training onto the job seeker, California's apprenticeship model pays job seekers while they complete their education and training and gain the experience and skills necessary to thrive in their jobs.

California has the largest apprenticeship program in the United States.¹²³ Its programs, overseen by the Division of Apprenticeship Standards (DAS) within the Department of Industrial Relations, are created through partnerships between post-secondary educational institutions and employers. There is a minimum requirement of 144 hours of training in the classroom with one year of on-the-job training. Most programs last 3.5 years.¹²⁴ Employers can, on an individual basis, give credit for past experience, making apprenticeships a potential

option to efficiently integrate veterans and others trained outside of California into the workforce. Additionally, there are apprenticeships designed to integrate former offenders into the workforce – sometimes starting while the offender is still in prison, through the Prison Industry Authority. These often operate as pre-apprenticeship programs focusing on training, with the offender eligible to join an apprenticeship program upon release.¹²⁵

Approximately 70 percent of California's apprenticeships are in the construction industry.¹²⁶ The prevalence of construction apprenticeships likely can be attributed in part to California's requirements that public works projects include apprenticeship programs.¹²⁷ Outside of construction there are not many apprenticeships in licensed industries, Department of Apprenticeship Standards officials reported. In some practice areas, particularly healthcare occupations, scope-of-practice restrictions prevent it, they said.¹²⁸ Learners still gain hands-on experience. For example, nursing students are required to have clinical experience, but in the current nursing school model, they pay for the practical learning experience. Whereas in an apprenticeship, learners would be paid for their time and work.

There is, however, a new pilot program in the California Health Care Facility in Stockton to create a pathway for 50 licensed vocational nurses (LVNs) to become registered

WHATS IN A NAME? MAKING APPRENTICESHIP PROGRAMS ACCESSIBLE

The Little Hoover Commission has long advocated clarity and plain language in state job titles and program descriptions. Most recently, in its 2015 report on customer interactions with government, the Commission wrote, "Government can perhaps most easily improve the customer experience by changing the way it communicates with the public: being succinct, clear, accurate, precise, as well as approachable, and easy to find and understand." In its 2014 report on civil service, the Commission detailed how job-seekers could not find state jobs by searching for commonly-used job titles, such as policy analyst. If they did not know the complicated language the state used for job titles, their state job search yielded zero results.

The Commission's call for clear, easily-understandable communication applies to the state's apprenticeship programs as well. The title of the state's new "Earn and Learn" program is catchy, but it does not immediately convey that it is an apprenticeship program. The term often is used to describe youth job programs. Job-seekers would not be blamed for thinking that it might refer to a college grant or tuition reimbursement program, or a typical work-study program not designed to build skills for an upwardly mobile career path. "Earn and Learn" is an apprenticeship program: The first step in recruiting people to it is to call it what it is.

Sources: Little Hoover Commission. October 2015. *A Customer-Centric Upgrade for California Government*. Page 43. Also, Little Hoover Commission. February 2014. *From Hiring to Retiring: Strategies for Modernizing State Human Resources*. Page 14.

NONPARTISAN AND BIPARTISAN SUPPORT FOR OCCUPATIONAL LICENSING REFORM

Support for occupational licensing reform can be found in nonpartisan think tanks as well as institutions that span the political spectrum. Below is a list of recent studies calling for states to reevaluate their occupational licensing policies:

Dick M. Carpenter II, Lisa Knepper, Angela C. Erickson. May 2012. License to Work: A National Study on the Burdens of Occupational Licensing. Institute for Justice.

Kauffman Foundation. January 2012. A License to Grow: Ending State, Local, and Some Federal Barriers to Innovation and Growth in Key Sectors of the U.S. Economy.

Morris M. Kleiner. January 2005. Reforming Occupational Licensing Policies. The Brookings Institution Hamilton Project.

Michelle Natividad Rodriguez and Beth Avery. April 2016. Unlicensed and Untapped: Removing Occupational Barriers to State Occupational Licenses for People with Records. National Employment Law Project.

Stephen Slivinski. February 2015. Bootstraps Tangled in Red Tape. Goldwater Institute.

The White House. July 2015. Occupational Licensing: A Framework for Policymakers.

nurses. In this apprenticeship program, called “Earn and Learn,” LVNs spend 20 hours a week in the classroom and 20 hours a week in hands-on training, and are paid for both the classroom and the practical portions. The demand to participate in this pilot program was overwhelming: Ninety-seven LVNs expressed interest in being chosen for one of the 50 spots.¹²⁹ This pilot program opens a path for upward mobility from a lower-paying occupation into a higher-paying profession, while also addressing some racial disparities. Statewide, 80 percent of LVNs are minorities, while only 33 percent of registered nurses are minorities.¹³⁰

California’s apprenticeship programs are proving effective at reaching minorities. In 2014, 59 percent of the 53,000 Californians participating in apprenticeship programs were minorities.¹³¹ The gender divide is bleaker: Women represented 5.3 percent of apprenticeship participants in 2014.¹³² The concentration of apprenticeships within the construction sector explains a lot of the gender differentials, Department of Apprenticeship Standards officials said. They are working to counteract the inequity by promoting apprenticeships in other industries – and encouraging women to participate in construction apprenticeships.¹³³

In April 2016, the Commission released a report on excess overtime for state healthcare personnel in state hospitals, correctional facilities, veterans’ homes and

developmental centers. It found that in 2014-15, state health professionals logged 3.75 million hours of overtime – at a cost to taxpayers of nearly \$179 million – often due to staffing shortages.¹³⁴ Instead of spending excessively on overtime, the state could better use the money to create apprenticeship programs within its own institutions. This would train a new generation of healthcare professionals to meet its staffing needs while helping more Californians move into better-paying jobs.

Summary

Certain populations are more vulnerable to occupational licensing regulations than others. People with convictions on their records can face uncertainty in knowing whether they are eligible for the job in the first place, an application process that can seem arbitrary and confusing, and an intimidating appeals process. People who move across state lines face problems of licensing portability and may have to re-complete education or training. This is particularly challenging for military spouses who move more than most and may only have a limited amount of time at a new location. Veterans and foreign-trained workers face similar challenges in that their existing credentials may not be recognized by licensing authorities, or they may have completed most, but not all, of a state’s licensing requirements and there are no programs to help them quickly complete missing requirements and start working. Many laws have been passed to expedite

licensing for veterans and military spouses, but those laws primarily focus on occupations under the Department of Consumer Affairs and no one is tracking outcomes.

Though there should be a comprehensive review of California’s licensing statutes and regulations, there are many ways to help Californians start working quickly and more easily without overhauling California’s licensing system. Make the application process more transparent and straightforward. When conviction histories are needed, rely on background checks instead of applicants’ memories, and make the fee-waiver process more customer-friendly. Give applicants a chance to explain red flags on their application before proceeding with an administrative law hearing. Create bridge education programs to help those who are mostly qualified swiftly complete the gaps in their education. Allow interim licensing so those who come to California with other states’ qualifications can work under supervision while finishing California-specific requirements. Create apprenticeship programs to allow people to develop their skills through hands-on experience. California does not have to sacrifice consumer protection to make it easier for its residents to hold good jobs.

- Follow the Bureau of Security and Investigative Services model and create an informal appeals process between an initial license denial and an administrative law hearing.

Recommendation 6: The Legislature should authorize a research institute, in conjunction with federal partners as needed, to study the implementation of recent legislation that requires the Department of Consumer Affairs to ease or waive licensing requirements for veterans and military spouses. The review should identify gaps between the intent of the laws and outcomes, and issue recommendations for executive or legislative action to bridge those gaps. The review also should assess the effectiveness of licensing authorities’ outreach campaigns to inform veterans of their eligibility for expedited licensing.

Recommendation 7: The Legislature should require California colleges and training academies to create bridge education programs for veterans and workers trained outside of California to help them quickly meet missing educational requirements. Specifically:

Recommendations

Recommendation 5: With the Department of Consumer Affairs serving as a clearinghouse of best practices and providing guidance to other departments as needed, all licensing authorities should take the following steps to make it easier for former offenders to gain employment:

- Post on their website the list of criteria used to evaluate applicants with criminal convictions so that potential applicants can be better informed about their possibilities of gaining licensure before investing time and resources into education, training and application fees.
- When background checks are necessary, follow the Department of Insurance model and require applicants with convictions to provide certified court documents instead of manually listing convictions. This will prevent license denials due to unintentional reporting errors. The State of California also should expedite the fee-waiver process for all low-income applicants requesting background checks.

- California licensing boards and other departments providing licenses and credentials should identify common educational gaps between the qualifications of returning service members and state licensing requirements.
- California colleges should create and offer programs to fill these gaps and expedite enrollment – or risk losing authorization for these programs.

Recommendation 8: The State of California should develop interim work and apprenticeship models to provide opportunities for people missing certain qualifications to work while meeting their requirements, and to promote upward mobility within career paths.

APPENDICES

APPENDIX A

Public Hearing Witnesses

The lists below reflect the titles and positions of witnesses at the time of the hearings in 2016.

February 4, 2016

Sacramento, California

Dick Carpenter II, Ph.D., Director of Strategic Research,
Institute for Justice

Morris Kleiner, Ph.D., Professor, Humphrey School of
Public Affairs, University of Minnesota

Le Ondra Clark Harvey, Ph.D., Chief Consultant,
Assembly Committee on Business and Professions

Sarah Mason, Consultant, Senate Committee on
Business, Professions and Economic Development

Robert Fellmeth, Executive Director, Center for Public
Interest Law, University of San Diego

Jason Wiens,* Policy Director in Research and Policy,
Ewing Marion Kauffman Foundation

March 30, 2016

Culver City, California

Laurie Crehan, Ed.D., Regional State Liaison,
Southwest, Office of the Deputy Assistant Secretary of
Defense, Military Community and Family Policy

Michelle Natividad Rodriguez, Senior Staff Attorney,
National Employment Law Project

Deborah Davis, President & CEO, Deborah Davis
Design

Tracy Rhine, Chief Deputy Director, Department
of Consumer Affairs for Awet Kidane,* Director,
Department of Consumer Affairs

José Ramón Fernández-Peña, MD, MPA, Associate
Professor, Health Education, San Francisco State
University; Policy Chair, IMPRINT; Director, Welcome
Back Initiative

Jane Schroeder, Regulatory Policy Specialist, California
Nurses Association

Myra Irizarry Reddy, Government Affairs Director,
Professional Beauty Association

CT Turney, Senior Staff Attorney, A New Way of Life
Reentry Project

**Submitted written testimony but was unable to attend in person*

APPENDIX B

Public Meeting Witnesses

The lists below reflect the titles and positions of witnesses at the time of the hearings in 2016.

Roundtable on Occupational Licensing
June 30, 2016
Sacramento, California

Shannon Carrion, Manager, Curriculum and Office Review Bureau, Department of Insurance

Adam Quiñonez, Assistant Deputy Director of Legislative and Regulatory Review, Department of Consumer Affairs

Vincent Chee, Consultant, Assembly Committee on Business and Professions

Assemblymember Rudy Salas, Chair, Assembly Committee on Business and Professions

Awet Kidane, Director, Department of Consumer Affairs

Joshua Speaks, Legislative Representative, California Commission on Teacher Credentialing

Keith Kuzmich, Chief, Licensing Services, Department of Insurance

Peter Williams, Deputy Secretary and General Counsel, California Business, Consumer Services and Housing Agency

Sarah Mason, Consultant, Senate Committee on Business, Professions and Economic Development

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- 128 Diane Ravnik, Chief, Division of Apprenticeship Standards, Department of Industrial Relations. July 25, 2016. Sacramento, CA. Meeting with Commission staff.
- 129 Hellan Roth Dowden, Principal, HR Dowden & Associates. July 25, 2016. Sacramento, CA. Meeting with Commission staff.
- 130 See Endnote 129.
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- 132 Division of Apprenticeship Standards. "Overview of DAS." http://www.dir.ca.gov/das/DAS_overview.html. Accessed July 27, 2016.
- 133 Diane Ravnik, Chief, Division of Apprenticeship Standards, Department of Industrial Relations. July 25, 2016. Sacramento, CA. Meeting with Commission staff.
- 134 Little Hoover Commission. April 2016. "Time and Again: Overtime in State Facilities." <http://www.lhc.ca.gov/studies/231/Report231.pdf>.

Little Hoover Commission Members

CHAIRMAN PEDRO NAVA (*D-Santa Barbara*) Appointed to the Commission by former Speaker of the Assembly John Pérez in April 2013. Government relations consultant. Former state Assemblymember from 2004 to 2010. Former civil litigator, deputy district attorney and member of the state Coastal Commission. Elected chair of the Commission in March 2014.

VICE CHAIRMAN JACK FLANIGAN (*R-Granite Bay*) Appointed to the Commission by Governor Edmund G. Brown Jr. in April 2012. A member of the Flanigan Law Firm. Co-founded California Strategies, a public affairs consulting firm, in 1997.

SCOTT BARNETT (*R-San Diego*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in February 2016. Founder of Scott Barnett LLC, a public advocacy company, whose clients include local non-profits, public charter schools, organized labor and local businesses. Former member of Del Mar City Council and San Diego Unified School District Board of Trustees.

DAVID BEIER (*D-San Francisco*) Appointed to the Commission by Governor Edmund G. Brown Jr. in June 2014. Managing director of Bay City Capital. Former senior officer of Genentech and Amgen. Former counsel to the U.S. House of Representatives Committee on the Judiciary. Serves on the board of directors for the Constitution Project.

SENATOR ANTHONY CANNELLA (*R-Ceres*) Appointed to the Commission by the Senate Rules Committee in January 2014. Elected in November 2010 and re-elected in 2014 to represent the 12th Senate District. Represents Merced and San Benito counties and a portion of Fresno, Madera, Monterey and Stanislaus counties.

ASSEMBLYMEMBER CHAD MAYES (*R-Yucca Valley*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in September 2015. Elected in November 2014 to represent the 42nd Assembly District. Represents Beaumont, Hemet, La Quinta, Palm Desert, Palm Springs, San Jacinto, Twentynine Palms, Yucaipa, Yucca Valley and surrounding areas.

DON PERATA (*D-Orinda*) Appointed to the Commission in February 2014 and reappointed in January 2015 by the Senate Rules Committee. Political consultant. Former president pro tempore of the state Senate, from 2004 to 2008. Former Assemblymember, Alameda County supervisor and high school teacher.

ASSEMBLYMEMBER SEBASTIAN RIDLEY-THOMAS (*D-Los Angeles*) Appointed to the Commission by former Speaker of the Assembly Toni Atkins in January 2015. Elected in December 2013 and re-elected in 2014 to represent the 54th Assembly District. Represents Century City, Culver City, Westwood, Mar Vista, Palms, Baldwin Hills, Windsor Hills, Ladera Heights, View Park, Crenshaw, Leimert Park, Mid City, and West Los Angeles.

SENATOR RICHARD ROTH (*D-Riverside*) Appointed to the Commission by the Senate Rules Committee in February 2013. Elected in November 2012 to represent the 31st Senate District. Represents Corona, Coronita, Eastvale, El Cerrito, Highgrove, Home Gardens, Jurupa Valley, March Air Reserve Base, Mead Valley, Moreno Valley, Norco, Perris and Riverside.

JONATHAN SHAPIRO (*D-Beverly Hills*) Appointed to the Commission in April 2010 and reappointed in January 2014 by the Senate Rules Committee. Writer and producer for FX, HBO and Warner Brothers. Of counsel to Kirkland & Ellis. Former chief of staff to Lt. Governor Cruz Bustamante, counsel for the law firm of O'Melveny & Myers, federal prosecutor for the U.S. Department of Justice Criminal Division in Washington, D.C., and the Central District of California.

JANNA SIDLEY (*D-Los Angeles*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. General counsel at the Port of Los Angeles since 2013. Former deputy city attorney at the Los Angeles City Attorney's Office from 2003 to 2013.

HELEN TORRES (*NPP-San Bernardino*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. Executive director of Hispanas Organized for Political Equality (HOPE), a women's leadership and advocacy organization.

SEAN VARNER (*R-Riverside*) Appointed to the Little Hoover Commission by Governor Edmund Brown Jr. in April 2016. Managing partner at Varner & Brandt LLP where he practices as a transactional attorney focusing on mergers and acquisitions, finance, real estate and general counsel work.

“Democracy itself is a process of change, and satisfaction and complacency are enemies of good government.”

*Governor Edmund G. “Pat” Brown,
addressing the inaugural meeting of the Little Hoover Commission,
April 24, 1962, Sacramento, California*

AGENDA

ITEM

19

DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT COMMITTEE

BUDGET REPORT

AS OF 6/30/2016

FM 13

PHYSICIAN ASSISTANT BOARD

DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PCNT REMAIN
PERSONAL SERVICES							
SALARIES AND WAGES							
003 00 CIVIL SERVICE-PERM	208,000	0	138,311	0	138,311	69,689	
033 04 TEMP HELP (907)	30,000	726	31,865	0	31,865	(1,865)	
063 00 STATUTORY-EXEMPT	76,000	0	90,648	0	90,648	(14,648)	
063 01 BD/COMMSN (901.920)	2,000	0	0	0	0	2,000	
063 03 COMM MEMBER (904.9)	0	300	9,600	0	9,600	(9,600)	
TOTAL SALARIES AND WAGES	316,000	1,026	270,424	0	270,424	45,576	14.42%
STAFF BENEFITS							
101 00 STAFF BENEFITS	0	15	15	0	15	(15)	
103 00 OASDI	17,000	0	13,905	0	13,905	3,095	
104 00 DENTAL INSURANCE	2,000	0	1,978	0	1,978	22	
105 00 HEALTH/WELFARE INS	42,000	0	23,793	0	23,793	18,207	
106 01 RETIREMENT	70,000	0	57,633	0	57,633	12,367	
125 00 WORKERS' COMPENSAT	4,000	0	0	0	0	4,000	
125 15 SCIF ALLOCATION CO	0	0	1,525	0	1,525	(1,525)	
134 00 OTHER-STAFF BENEFI	0	0	9,338	0	9,338	(9,338)	
135 00 LIFE INSURANCE	0	0	83	0	83	(83)	
136 00 VISION CARE	0	0	311	0	311	(311)	
137 00 MEDICARE TAXATION	0	0	3,838	0	3,838	(3,838)	
TOTAL STAFF BENEFITS	135,000	15	112,420	0	112,420	22,580	16.73%
TOTAL PERSONAL SERVICES	451,000	1,041	382,844	0	382,844	68,156	15.11%
OPERATING EXPENSES & EQUIPMENT							
FINGERPRINTS							
213 04 FINGERPRINT REPORT	15,000	2,499	18,767	0	18,767	(3,767)	
TOTAL FINGERPRINTS	15,000	2,499	18,767	0	18,767	(3,767)	-25.11%
GENERAL EXPENSE							
201 00 GENERAL EXPENSE	13,000	0	0	0	0	13,000	
206 00 MISC OFFICE SUPPLI	0	0	2,366	0	2,366	(2,366)	
207 00 FREIGHT & DRAYAGE	0	27	1,119	0	1,119	(1,119)	
213 02 ADMIN OVERHEAD-OTH	0	0	1,743	0	1,743	(1,743)	
217 00 MTG/CONF/EXHIBIT/S	0	0	6,397	0	6,397	(6,397)	
223 00 LIBRARY PURCH/SUBS	0	0	73	0	73	(73)	
TOTAL GENERAL EXPENSE	13,000	27	11,698	0	11,698	1,302	10.01%

DEPARTMENT OF CONSUMER AFFAIRS

BUDGET REPORT

AS OF 6/30/2016

RUN DATE 8/11/2016

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PHYSICIAN ASSISTANT BOARD

DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PCNT REMAIN
PRINTING							
241 00 PRINTING	3,000	0	0	0	0	3,000	
242 02 REPRODUCTION SVS	0	0	22	0	22	(22)	
242 03 COPY COSTS ALLO	0	0	256	0	256	(256)	
242 05 METRO PRINT/MAIL	0	389	5,770	0	5,770	(5,770)	
244 00 OFFICE COPIER EXP	0	0	309	21	330	(330)	
TOTAL PRINTING	3,000	389	6,357	21	6,378	(3,378)	-112.62%
COMMUNICATIONS							
251 00 COMMUNICATIONS	6,000	0	0	0	0	6,000	
252 00 CELL PHONES,PDA,PA	0	0	314	0	314	(314)	
257 01 TELEPHONE EXCHANGE	0	30	1,502	0	1,502	(1,502)	
TOTAL COMMUNICATIONS	6,000	30	1,816	0	1,816	4,184	69.74%
POSTAGE							
261 00 POSTAGE	8,000	0	0	0	0	8,000	
262 00 STAMPS, STAMP ENVE	0	0	2,297	0	2,297	(2,297)	
263 05 DCA POSTAGE ALLO	0	414	2,606	0	2,606	(2,606)	
TOTAL POSTAGE	8,000	414	4,903	0	4,903	3,097	38.71%
TRAVEL: IN-STATE							
291 00 TRAVEL: IN-STATE	21,000	0	0	0	0	21,000	
292 00 PER DIEM-I/S	0	1,184	7,941	0	7,941	(7,941)	
294 00 COMMERCIAL AIR-I/S	0	0	11,705	0	11,705	(11,705)	
296 00 PRIVATE CAR-I/S	0	0	3,434	0	3,434	(3,434)	
297 00 RENTAL CAR-I/S	0	0	1,570	0	1,570	(1,570)	
301 00 TAXI & SHUTTLE SER	0	0	190	0	190	(190)	
305 00 MGMT/TRANS FEE-I/S	0	0	348	0	348	(348)	
305 01 CALATERS SERVICE F	0	94	312	0	312	(312)	
TOTAL TRAVEL: IN-STATE	21,000	1,278	25,501	0	25,501	(4,501)	-21.43%
TRAINING							
331 00 TRAINING	1,000	0	0	0	0	1,000	
TOTAL TRAINING	1,000	0	0	0	0	1,000	100.00%
FACILITIES OPERATIONS							
341 00 FACILITIES OPERATI	56,000	0	0	0	0	56,000	
343 00 RENT-BLDG/GRND(NON	0	0	44,291	0	44,291	(44,291)	
347 00 FACILITY PLNG-DGS	0	76	908	0	908	(908)	
TOTAL FACILITIES OPERATIONS	56,000	76	45,199	0	45,199	10,801	19.29%

DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT COMMITTEE

BUDGET REPORT AS OF 6/30/2016

RUN DATE 8/11/2016

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PHYSICIAN ASSISTANT BOARD

DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PCNT REMAIN
C/P SVS - EXTERNAL							
402 00 CONSULT/PROF SERV-	50 000	0	0	0	0	50 000	
404 05 C&P EXT ADMIN CR C	0	0	9,508	1 843	11 351	(11,351)	
408 00 COMPLY INSP/INVST-	0	0	3,600	0	3,600	(3 600)	
409 00 INFO TECHNOLOGY-EX	0	0	1,069	0	1 069	(1,069)	
414 00 LEGAL-EXT SVS	0	0	110	0	110	(110)	
418 02 CONS/PROF SVS-EXTR	0	0	7,307	4 566	11,873	(11 873)	
TOTAL C/P SVS - EXTERNAL	50,000	0	21,594	6,409	28,003	21,997	43.99%
DEPARTMENTAL SERVICES							
424 03 OIS PRO RATA	144,000	(1,497)	142,503	0	142 503	1 497	
427 00 INDIRECT DISTRB CO	55,000	(58)	54 942	0	54,942	58	
427 01 INTERAGENCY SERVS	8,000	0	0	0	0	8 000	
427 02 SHARED SVS-MBC ONL	93,000	0	90,112	0	90,112	2 888	
427 30 DOI - ISU PRO RATA	1 000	(17)	983	0	983	17	
427 34 COMMUNICATIONS PRO	3 000	0	3,000	0	3 000	0	
TOTAL DEPARTMENTAL SERVICES	304,000	(1,572)	291,540	0	291,540	12,460	4.10%
CONSOLIDATED DATA CENTERS							
428 00 CONSOLIDATED DATA	5 000	0	0	0	0	5,000	
TOTAL CONSOLIDATED DATA CENTERS	5,000	0	0	0	0	5,000	100.00%
DATA PROCESSING							
431 00 INFORMATION TECHNO	3 000	0	0	0	0	3,000	
436 00 SUPPLIES-IT (PAPER	0	0	1 156	0	1,156	(1 156)	
448 00 INTERNET SERV PROV	0	0	20	0	20	(20)	
TOTAL DATA PROCESSING	3,000	0	1,176	0	1,176	1,824	60.81%
CENTRAL ADMINISTRATIVE SERVICES							
438 00 PRO RATA	74 000	0	74 006	0	74,006	(6)	
TOTAL CENTRAL ADMINISTRATIVE SERVICES	74,000	0	74,006	0	74,006	(6)	-0.01%
MAJOR EQUIPMENT							
452 00 REPLACEMENT-EQPT	9,000	0	0	0	0	9 000	
TOTAL MAJOR EQUIPMENT	9,000	0	0	0	0	9,000	100.00%
ENFORCEMENT							
396 00 ATTORNEY GENL-INTE	451,000	62,094	537 401	0	537,401	(86,401)	
397 00 OFC ADMIN HEARNG-I	75,000	25,155	112,693	0	112,693	(37,693)	
414 31 EVIDENCE/WITNESS F	0	2,000	65 529	0	65 529	(65,529)	

DEPARTMENT OF CONSUMER AFFAIRS

PHYSICIAN ASSISTANT COMMITTEE

BUDGET REPORT
AS OF 6/30/2016

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PHYSICIAN ASSISTANT BOARD

DESCRIPTION	BUDGET	CURR. MONTH	YR-TO-DATE	ENCUMBRANCE	YTD + ENCUMBRANCE	BALANCE	PCNT REMAIN
414 34 EVIDENCE	0	5,000	5,000	0	5,000	(5,000)	
418 97 COURT REPORTER SER	0	500	4,878	0	4,878	(4,878)	
427 31 DOI - INVESTIGATIO	218,870	0	0	0	0	218,870	
427 32 INVESTIGATIVE SVS-	1,130	0	117,905	0	117,905	(116,775)	
<u>TOTAL ENFORCEMENT</u>	<u>746,000</u>	<u>94,749</u>	<u>843,405</u>	<u>0</u>	<u>843,405</u>	<u>(97,405)</u>	<u>-13.06%</u>
<u>TOTAL OPERATING EXPENSES & EQUIPMEN</u>	<u>1,314,000</u>	<u>97,890</u>	<u>1,345,962</u>	<u>6,430</u>	<u>1,352,392</u>	<u>(38,392)</u>	<u>-2.92%</u>
PHYSICIAN ASSISTANT BOARD	1,765,000	98,930	1,728,806	6,430	1,735,236	29,764	1.69%
	1,765,000	98,930	1,728,806	6,430	1,735,236	29,764	1.69%

0280 - Physician Assistant Board

Analysis of Fund Condition

9/29/2016

(Dollars in Thousands)

2016 Budget Act

	ACTUAL 2015-16	CY 2016-17	BY 2017-18
BEGINNING BALANCE	\$ 1,762	\$ 1,751	\$ 3,257
Prior Year Adjustment	\$ -25	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,737	\$ 1,751	\$ 3,257
REVENUES AND TRANSFERS			
Revenues:			
125600 Other regulatory fees	\$ 9	\$ 5	\$ 5
125700 Other regulatory licenses and permits	\$ 224	\$ 253	\$ 253
125800 Renewal fees	\$ 1,421	\$ 1,410	\$ 1,410
125900 Delinquent fees	\$ 4	\$ 4	\$ 4
141200 Sales of documents	\$ -	\$ -	\$ -
142500 Miscellaneous services to the public	\$ -	\$ -	\$ -
150300 Income from surplus money investments	\$ 9	\$ 6	\$ 10
160400 Sale of fixed assets	\$ -	\$ -	\$ -
161000 Escheat of unclaimed checks and warrants	\$ -	\$ -	\$ -
161400 Miscellaneous revenues	\$ 1	\$ 1	\$ 1
164300 Penalty Assessments	\$ -	\$ -	\$ -
Totals, Revenues	\$ 1,668	\$ 1,679	\$ 1,683
Transfers from Other Funds			
Proposed GF Loan Repay	\$ -	\$ 1,500	\$ -
Totals, Revenues and Transfers	\$ 1,668	\$ 3,179	\$ 1,683
Totals, Resources	\$ 3,405	\$ 4,930	\$ 4,940
EXPENDITURES			
Disbursements:			
0840 State Controllers	\$ -	\$ -	\$ -
1110 Program Expenditures (State Operations)	\$ 1,651	\$ -	\$ -
1111 Program Expenditures (State Operations)	\$ -	\$ 1,672	\$ 1,705
8880 FISCAL (State Operations)	\$ 3	\$ 1	\$ -
Total Disbursements	\$ 1,654	\$ 1,673	\$ 1,705
FUND BALANCE			
Reserve for economic uncertainties	\$ 1,751	\$ 3,257	\$ 3,235
Months in Reserve	12.6	22.9	22.3

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%.

AGENDA

ITEM

21

Bill Number	Author	Status	What Bill would do	Other Notes	Considerations for PA Board
AB 2193	Salas (D)	Approved by the Governor 9/22/2016	This bill would extend the operation of the Physician Assistant Board and the board's authority to employ personnel until January 1, 2021. The bill also would extend the sunset to the Board of Podiatric Medicine.	<p>The PAB currently sunsets January 1, 2017.</p> <p>This is a standard sunset extension bill and should pass with consent. About the PAB, the legislature's analysis states: "Since its last review, 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." The bill has no registered opposition.</p>	If the bill were to fail passage or get vetoed, the PAB would need to address quickly the serious consequences of the board losing its authorization. However, this is a very unlikely scenario; the bill is on track for smooth passage

SB 482	Lara (D)	Approved by the Governor 9/27/2016	<p>This bill requires prescribers to consult the Controlled Substances Utilization Review and Evaluation System (CURES) prior to prescribing a Schedule II or III drug to a patient for the first time and then every four months when the prescription remains part of treatment. The bill includes a number of exceptions such as non-refillable prescriptions related to surgery, prescriptions administered directly by the provider and for patients in hospice care. A recent amendment created another exception if: "It is not reasonably possible for a health care practitioner to access the information in the CURES database in a timely manner" AND "Another health care practitioner or designee authorized to access the CURES database is not reasonably available." Also, recent amendments state that a provider would not be liable in a civil action for failing to consult the CURES database. Instead, licensing boards would be able to create administrative sanctions.</p>	<p>Supported by a long list of law enforcement agencies and others, the bill aims to reduce prescription drug abuse. After a number of amendments, the only remaining opponent on file is the California Medical Association, for the following reasons: 1) The language regarding frequency of checking the CURES database is confusing; 2) The language does not limit a practitioner's liability for negligent failure to diagnose or treat a patient; and for other minor reasons.</p> <p>Amendments to the bill might assuage the PAB's concerns about timeliness of care. Amendments also seem to suggest that a practitioner's designee could check the database -- as desired by the PAB-- but the language is not perfectly clear, so the board should discuss further at its July meeting.</p>	<p>The board took a Watch position at April 2016 meeting and directed staff to send the legislature a letter expressing that the bill could inhibit patient care and needs additional provisions to ensure the timeliness of treatment; for example, it would be helpful if other members of the medical team, such as medical assistants, could check the database. The letter has not yet been sent to the legislature and, at this stage, it is unlikely many additional amendments would be made.</p>
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SB 1155	Morrell (R)	Held in committee and under submission.	This bill would require every board within the Department of Consumer Affairs, including the Physician Assistant Board, to grant a fee waiver for an initial license to an individual who is an honorably discharged veteran. Amendments since the board last discussed in April are minor.	Supported by veterans organizations and modeled after similar legislation in 3 other states, this bill aims to address the high unemployment rate among veterans and capitalize on the professional skills many veterans honed during military service.	The PAB issues approximately 10 new licenses to veterans each year. This bill would result in approximately \$2,500 in lost revenue if fees for those applications were waived. Staff considers these costs minor and absorbable.
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Bills removed from list since April Meeting

AB 1566	Bill died in policy committee
AB 1707	Bill died in Appropriations
AB 2701	Bill died without a hearing
SB 960	Bill died in Appropriations
AB 1140	Bill died in Appropriations
SB 1195	Bill is currently inactive and -- since it missed house of origin deadline -- likely dead for the year.
SB 1217	Bill died in policy committee
SB 1334	Bill died in Appropriations

AB

1566

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

AMENDED IN ASSEMBLY MARCH 1, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1566

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

January 4, 2016

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

AB

1707

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. 4th 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 recourses 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

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1707

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

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.

AB

2193

CONCURRENCE IN SENATE AMENDMENTS

AB 2193 (Salas)

As Amended August 16, 2016

Majority vote

ASSEMBLY: 80-0 (May 31, 2016) SENATE: 36-0 (August 19, 2016)

Original Committee Reference: **B. & P.**

SUMMARY: Extends the operation of the Board of Podiatric Medicine (BPM), the operation of the Physician Assistant Board (PAB), and the PAB's authority to appoint an executive officer until January 1, 2021.

The Senate amendments specify that the funds of the BPM and PAB are subject to appropriation by the Legislature.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) Ongoing costs of \$1.5 million per year for the continuing operation of the Board of Podiatric Medicine (Board of Podiatric Medicine Fund). All costs to operate the Board are paid for with license fee revenues.
- 2) Ongoing costs of \$1.7 million per year for the continuing operation of the Physician Assistant Board (Physician Assistant Fund). All costs to operate the Board are paid for with license fee revenues.

COMMENTS:

Purpose. Unless legislation is carried this year to extend the sunset dates for the BPM and the PAB, they will be repealed on January 1, 2017. The legislative changes reflected in this bill are solutions to issues raised in the Assembly Committee on Business and Professions' staff Background Paper and during the sunset review hearing held on March 9, 2016. In addition, this bill will extend the BPM and PAB's authority to appoint an executive officer.

Background. In March of 2016, the Senate Business and Professions Committee and the Assembly Business and Professions Committee (Committees) conducted several joint oversight hearings to review 11 regulatory entities, including the BPM and the PAB. This bill and the accompanying sunset bills are intended to implement legislative changes as recommended by the committee staff Background Papers prepared for each entity reviewed. The recommendations adopted under this bill were to extend the boards until January 1, 2021.

Appropriation by the Legislature. A budget trailer bill, AB 139 (Budget Committee), Chapter 74, Statutes of 2005, among other things, deleted provisions continuously appropriating the funds of several licensing boards under the Department of Consumer Affairs. At the time, the Senate floor analysis noted that the changes were "Primarily technical in nature, since these boards and commissions have received Budget Act appropriations in recent years."

Analysis Prepared by: Vincent Chee / B. & P. / (916) 319-3301

FN: 0004745

Assembly Bill No. 2193

CHAPTER 459

An act to amend Sections 2460, 2499, 3504, 3512, and 3520 of the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 22, 2016. Filed with
Secretary of State September 22, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2193, Salas. California Board of Podiatric 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, and make nonsubstantive changes.

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. Existing law establishes the Physician Assistant Fund and authorizes all money in the fund to be used to carry out the provisions of the Physician Assistant Practice Act.

This bill would extend the operation of the Physician Assistant Board and the board's authority to employ personnel until January 1, 2021. The bill would instead authorize all money in the Physician Assistant Fund to be available, upon appropriation of the Legislature, to carry out the provisions of the act.

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

SECTION 1. Section 2460 of the Business and Professions Code is amended to read:

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

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed. Notwithstanding any other law, the repeal of this

section renders the California Board of Podiatric Medicine subject to review by the appropriate policy committees of the Legislature.

SEC. 2. Section 2499 of the Business and Professions Code is amended to read:

2499. There is in the State Treasury the Board of Podiatric Medicine Fund. Notwithstanding Section 2445, the division shall report to the Controller at the beginning of each calendar month for the month preceding the amount and source of all revenue received by it on behalf of the board, pursuant to this chapter, and shall pay the entire amount thereof to the Treasurer for deposit into the fund. All revenue received by the board and the division from fees authorized to be charged relating to the practice of podiatric medicine shall be deposited in the fund as provided in this section, and shall be available, upon appropriation of the Legislature, to carry out the provisions of this chapter relating to the regulation of the practice of podiatric medicine.

SEC. 3. Section 3504 of the Business and Professions Code is amended to read:

3504. There is established a Physician Assistant Board within the jurisdiction of the Medical Board of California. The board consists of nine members. This section shall remain in effect only until January 1, 2021, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 4. Section 3512 of the Business and Professions Code is amended to read:

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

(b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed.

SEC. 5. Section 3520 of the Business and Professions Code is amended to read:

3520. Within 10 days after the beginning of each calendar month the Medical Board of California shall report to the Controller the amount and source of all collections made under this chapter and at the same time pay all those sums into the State Treasury, where they shall be credited to the Physician Assistant Fund, which fund is hereby created. All money in the fund shall be available, upon appropriation of the Legislature, to carry out the purpose of this chapter.

AB

2701

ASSEMBLY BILL

No. 2701

Introduced by Assembly Member Jones

February 19, 2016

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.

O

SB

482

UNFINISHED BUSINESS

Bill No: SB 482
Author: Lara (D)
Amended: 8/19/16
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 7-1, 4/27/15
AYES: Hill, Block, Galgiani, Hernandez, Jackson, Mendoza, Wieckowski
NOES: Bates
NO VOTE RECORDED: Berryhill

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/18/15
AYES: Lara, Beall, Hill, Leyva, Mendoza
NOES: Bates, Nielsen

SENATE FLOOR: 28-11, 5/28/15
AYES: Allen, Beall, Block, Cannella, De León, Galgiani, Glazer, Hall, Hancock,
Hernandez, Hertzberg, Hill, Hueso, Jackson, Lara, Leno, Leyva, Liu, McGuire,
Mendoza, Mitchell, Monning, Pavley, Roth, Runner, Vidak, Wieckowski, Wolk
NOES: Anderson, Bates, Berryhill, Fuller, Gaines, Huff, Moorlach, Morrell,
Nguyen, Nielsen, Stone
NO VOTE RECORDED: Pan

ASSEMBLY FLOOR: 80-0, 8/24/16 - See last page for vote

SUBJECT: Controlled substances: CURES database

SOURCE: California Narcotic Officers' Association
Consumer Attorneys of California

DIGEST: This bill requires a health care provider authorized to prescribe, order, administer, or furnish a controlled substance to consult the Controlled Substances Utilization Review and Evaluation System (CURES) prior to prescribing a Schedule II, III or IV drug to a patient for the first and at least once every four months thereafter if the substance remains part of the treatment of the patient.

Assembly Amendments add exemptions from the responsibility proposed in the bill to consult the CURES system, including while a patient is admitted to a certain type of facility, if a patient receives a non-refillable five-day supply or less prescription in conjunction with a surgery, and in the event of a technological failure or inability to access the CURES system. Amendments also clarify that regulatory boards under the Department of Consumer Affairs (DCA) that oversee practitioners who do not prescribe, order, administer, furnish, or dispense controlled substances shall not have access to CURES and also clarify that health care providers may share CURES data with the patient the provider receives information from the system about.

ANALYSIS:

Existing law:

- 1) Specifies certain requirements regarding the dispensing and furnishing of dangerous drugs and devices, and prohibits a person from furnishing any dangerous drug or device except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian or naturopathic doctor. (Business and Professions Code (BPC) § 4059)
- 2) Defines “opiate” as any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. (Health and Safety Code (HSC) § 11020)
- 3) Classifies controlled substances in five schedules according to their danger and potential for abuse. (HSC § 11054-11058)
- 4) Prohibits any person other than a physician, dentist, podiatrist, veterinarian, naturopathic doctor (according to specific requirements outlined in their practice act), pharmacist (under certain circumstances), certified nurse-midwife (according to specific requirements outlined in their practice act), nurse practitioner (according to specific requirements outlined in their practice act), licensed optometrist, out-of-state prescriber acting in an emergency situation or certain health professionals (a pharmacist, registered nurse or physician assistant) acting within the scope of an experimental health workforce project authorized by the Office of Statewide Health Planning and Development (HSC

§ 128125 et seq) from writing or issuing a prescription for a controlled substance. (HSC § 11150)

- 5) Specifies that a prescription for a controlled substance shall only be issued for a legitimate medical purpose and establishes responsibility for proper prescribing on the prescribing practitioner. States that a violation shall result in imprisonment for up to one year or a fine of up to \$20,000, or both. (HSC § 11153)
- 6) Establishes CURES for electronic monitoring of Schedule II, III and IV controlled substance prescriptions. CURES provides for the electronic transmission of Schedule II, III and IV controlled substance prescription information to the Department of Justice (DOJ) at the time prescriptions are dispensed. (HSC § 11165)
- 7) Provides that pharmacies or clinics, in filling a prescription for a federally Scheduled II, III or IV drug, shall provide weekly information to DOJ including the patient's name, date of birth, the name, form, strength and quantity of the drug, and the pharmacy name, pharmacy number and the prescribing physician information. (HSC § 11165 (d))
- 8) Provides that a licensed health care practitioner eligible to prescribe Schedule II, III or IV controlled substances, or a pharmacist, shall apply to participate in the CURES Prescription Drug Monitoring Program (PDMP) by January 1, 2016. Authorizes DOJ to deny an application or suspend a subscriber for certain violations and falsifying information. Provides that the history of controlled substances dispensed to a patient based on CURES data that is received by a practitioner or pharmacist shall be considered medical information, subject to provisions of the Confidentiality of Medical Information Act. (HSC § 11165.1)

This bill:

- 1) Requires prescribers (authorized to write prescriptions according to HSC Section 11150 outlined above) to access and consult CURES prior to prescribing a Schedule II, Schedule III or Schedule IV controlled substance for the first time to a patient and at least once every four months when that prescribed controlled substance remains part of the treatment. Provides that if the patient has an existing prescription for a Schedule II or Schedule III controlled substance, the health care practitioner shall not prescribe any

additional controlled substances until the health care practitioner determines there is a legitimate need.

- 2) Provides that failure by a prescriber to consult CURES as specified above is cause for disciplinary action by the prescriber's appropriate licensing board. Requires the licensing boards of all prescribers authorized to write or issue prescriptions for controlled substances to notify all authorized prescribers of the requirement for consulting CURES.
- 3) Provides that failure by a prescriber to consult CURES as specified above is cause for disciplinary action by the prescriber's appropriate licensing board. Requires the licensing boards of all prescribers authorized to write or issue prescriptions for controlled substances to notify all authorized prescribers of the requirement for consulting CURES.
- 4) Provides that notwithstanding any other provision, a prescriber shall not be in violation of the requirements in this bill during any time period in which the CURES system is suspended or not accessible or the Internet is not operational. Delays implementation of the above provisions until the DOJ certifies that the CURES database is ready for statewide use.
- 5) Exempts the following from the requirement in 1) above:
 - a) A veterinarian
 - b) A pharmacist
 - c) A health care practitioner who prescribes, orders, administers, or furnishes a controlled substance in the emergency department of a general acute care hospital and the quantity of the controlled substance does not exceed a nonrefillable seven-day supply of the controlled substance to be used in accordance with the directions for use
 - d) A health care practitioner who prescribes, orders, or furnishes a controlled substance to be administered to a patient while the patient is admitted to a licensed clinic, an outpatient setting as defined, a health facility as defined, and a county medical facility as defined
 - e) A health care practitioner who prescribes, orders, administers, or furnishes a controlled substance to a patient as part of the patient's treatment for a

surgical procedure and the quantity of the controlled substance does not exceed a nonrefillable five-day supply of the controlled substance to be used in accordance with the directions for use, in any of the facilities in d) above as well as a place of practice as defined

- f) A health care practitioner who prescribes, orders, administers, or furnishes a controlled substance to a patient currently receiving hospice care
 - g) A health practitioner or their designee when it is not reasonably possible for a health care practitioner to access the information in CURES in a timely manner.
 - h) A health practitioner when the quantity of controlled substance prescribed, ordered, administered, or furnished does not exceed a nonrefillable five-day supply of the controlled substance to be used in accordance with the directions for use and no refill of the controlled substance is allowed.
 - i) A health practitioner who is not able to access CURES because it is not operational, as determined by DOJ, or when CURES cannot be accessed by a health care practitioner because of a temporary technological or electrical failure.
 - j) A health care practitioner if CURES cannot be accessed because of technological limitations that are not reasonably within his or her control.
 - k) A health care practitioner who determines that consulting CURES would result in a patient's inability to obtain a prescription in a timely manner and thereby adversely impact the patient's medical condition, provided that the quantity of the controlled substance does not exceed a nonrefillable five-day supply if the controlled substance were used in accordance with the directions for use
- 6) Provides that notwithstanding any other provision, a prescriber shall not be in violation of the requirements in this bill during any time period in which the CURES system is suspended or not accessible or the Internet is not operational. Delays implementation of the above provisions until the DOJ certifies that the CURES database is ready for statewide use.

Background

For the past number of years, abuse of prescription drugs (taking a prescription medication that is not prescribed for you, or taking it for reasons or in dosages other than as prescribed) to get high has become increasingly prevalent. Federal data for 2014 shows that in the past year, abuse of prescription pain killers now ranks second, just behind marijuana, as the nation's most widespread illegal drug problem. Abuse can stem from the fact that prescription drugs are legal and potentially more easily accessible, as they can be found at home in a medicine cabinet. Data shows that individuals who misuse prescription drugs, particularly teens, believe these substances are safer than illicit drugs because they are prescribed by a health care professional and thus are safe to take under any circumstances. A 2013 Centers for Disease Control and Prevention (CDC) analysis found that drug overdose deaths increased for the 11th consecutive year in 2010 and prescription drugs, particularly opioid analgesics, are the top drugs leading the list of those responsible for fatalities. According to CDC, 38,329 people died from a drug overdose in 2010, up from 37,004 deaths in 2009, and 16,849 deaths in 1999. CDC found that nearly 60% of the overdose deaths in 2010, involved pharmaceutical drugs, with opioids associated with approximately 75% of these deaths. Nearly three out of four prescription drug overdoses are caused by opioid pain relievers.

With rising levels of abuse, PDMPs are a critical tool in assisting law enforcement and regulatory bodies with their efforts to reduce drug diversion. There are 49 states that currently have monitoring programs (Missouri is the only state currently without a PDMP). California has the oldest prescription drug monitoring program in the nation, CURES which is an electronic tracking program that reports all pharmacy (and specified types of prescriber) dispensing of controlled drugs by drug name, quantity, prescriber, patient, and pharmacy. Data from CURES is managed by DOJ to assist state law enforcement and regulatory agencies in their efforts to reduce prescription drug diversion. CURES provides information that offers the ability to identify if a person is "doctor shopping" (when a prescription-drug addict visits multiple doctors to obtain multiple prescriptions for drugs, or uses multiple pharmacies to obtain prescription drugs). Information tracked in the system contains the patient name, prescriber name, pharmacy name, drug name, amount and dosage, and is available to law enforcement agencies, regulatory bodies and qualified researchers. The system can also report on the top drugs prescribed for a specific time period, drugs prescribed in a particular county, doctor prescribing data, pharmacy dispensing data, and is a critical tool for assessing whether multiple prescriptions for the same patient may exist. In addition to the Board of Pharmacy, CURES data can be obtained by the Medical

Board of California, Dental Board of California, Board of Registered Nursing, Osteopathic Medical Board of California and Veterinary Medical Board.

The upgraded system, CURES 2.0, became operational in late 2015. The new interface has significantly improved timeframes for accessing information, navigating through the system and general usability. Licensees can apply directly within the web based system, a significant shortfall of the prior CURES which required applicants to submit notarized paper applications to DOJ. Prescribers and dispensers are able to easily generate patient activity reports and can securely send communications to one another about a mutual patient through the system. Through CURES 2.0, prescribers can receive daily informational alerts about patients who reach various prescribing thresholds, based on patterns indicative of at-risk patient behavior, which can be used to determine if action by the prescriber is necessary.

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

According to the Assembly Appropriations Committee, boards within DCA that license health professionals will incur likely minor and absorbable costs to notify licensees and enforce this bill's requirements, as well as make any necessary information technology changes. The 2016-17 Budget provides \$500,000 from the CURES Fund for additional user outreach and staffing support. There are no anticipated costs to DOJ.

SUPPORT: (Verified 8/24/16)

California Narcotic Officers' Association (co-source)
Consumer Attorneys of California (co-source)
Acclamation Insurance Management Services
American Insurance Association
Blue Shield of California
California Chamber of Commerce
California Dental Association
California Pharmacists Association
California Teamsters
Center for Public Interest Law Children's Advocacy Institute
Consumer Watchdog
National Alliance on Mental Illness
Pacific Business Group on Health
Peace Officers Research Association of California
PRIUM

Small Business California
Teamsters

OPPOSITION: (Verified 8/24/16)

Association of Northern California Oncologists
Doctor's Company
The US Oncology Network

ASSEMBLY FLOOR: 80-0, 8/24/16

AYES: Achadjian, Alejo, Travis Allen, Arambula, Atkins, Baker, Bigelow, Bloom, Bonilla, Bonta, Brough, Brown, Burke, Calderon, Campos, Chang, Chau, Chávez, Chiu, Chu, Cooley, Cooper, Dababneh, Dahle, Daly, Dodd, Eggman, Frazier, Beth Gaines, Gallagher, Cristina Garcia, Eduardo Garcia, Gatto, Gipson, Gomez, Gonzalez, Gordon, Gray, Grove, Hadley, Harper, Roger Hernández, Holden, Irwin, Jones, Jones-Sawyer, Kim, Lackey, Levine, Linder, Lopez, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Nazarian, Obernolte, O'Donnell, Olsen, Patterson, Quirk, Ridley-Thomas, Rodriguez, Salas, Santiago, Steinorth, Mark Stone, Thurmond, Ting, Wagner, Waldron, Weber, Wilk, Williams, Wood, Rendon

Prepared by: Sarah Mason / B., P. & E.D. / (916) 651-4104
8/30/16 14:38:11

**** END ****



Senate Bill No. 482

CHAPTER 708

An act to amend Sections 11165 and 11165.1 of, and to add Section 11165.4 to, the Health and Safety Code, relating to controlled substances.

[Approved by Governor September 27, 2016. Filed with
Secretary of State September 27, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 482, Lara. Controlled substances: CURES database.

Existing law classifies certain controlled substances into designated schedules. Existing law requires the Department of Justice to maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, administer, furnish, or dispense these controlled substances. Existing law requires dispensing pharmacies and clinics to report specified information for each prescription of a Schedule II, Schedule III, or Schedule IV controlled substance to the department.

This bill would require a health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance to consult the CURES database to review a patient's controlled substance history no earlier than 24 hours, or the previous business day, before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least once every 4 months thereafter if the substance remains part of the treatment of the patient. The bill would exempt a veterinarian and a pharmacist from this requirement. The bill would also exempt a health care practitioner from this requirement under specified circumstances, including, among others, if prescribing, ordering, administering, or furnishing a controlled substance to a patient receiving hospice care, to a patient admitted to a specified facility for use while on facility premises, or to a patient as part of a treatment for a surgical procedure in a specified facility if the quantity of the controlled substance does not exceed a nonrefillable 5-day supply of the controlled substance that is to be used in accordance with the directions for use. The bill would require, if a health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance is not required to consult the CURES database the first time he or she prescribes, orders, administers, or furnishes a controlled substance to a patient pursuant to one of those exemptions, the health care practitioner to consult the CURES database before subsequently prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient and at least once every 4 months thereafter if the substance remains part of the treatment of the patient.

This bill would provide that a health care practitioner who fails to consult the CURES database is required to be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board. The bill would make the above-mentioned provisions operative 6 months after the Department of Justice certifies that the CURES database is ready for statewide use and that the department has adequate staff, user support, and education, as specified.

This bill would also exempt a health care practitioner, pharmacist, and any person acting on behalf of a health care practitioner or pharmacist, when acting with reasonable care and in good faith, from civil or administrative liability arising from any false, incomplete, inaccurate, or misattributed information submitted to, reported by, or relied upon in the CURES database or for any resulting failure of the CURES database to accurately or timely report that information.

Existing law requires the operation of the CURES database to comply with all applicable federal and state privacy and security laws and regulations. Existing law authorizes the disclosure of data obtained from the CURES database to agencies and entities only for specified purposes and requires the Department of Justice to establish policies, procedures, and regulations regarding the use, access, disclosure, and security of the information within the CURES database.

This bill would authorize a health care practitioner to provide a patient with a copy of the patient's CURES patient activity report if no additional CURES data is provided. The bill would also prohibit a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances from obtaining data from the CURES database.

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

SECTION 1. Section 11165 of the Health and Safety Code is amended to read:

11165. (a) To assist health care practitioners in their efforts to ensure appropriate prescribing, ordering, administering, furnishing, and dispensing of controlled substances, law enforcement and regulatory agencies in their efforts to control the diversion and resultant abuse of Schedule II, Schedule III, and Schedule IV controlled substances, and for statistical analysis, education, and research, the Department of Justice shall, contingent upon the availability of adequate funds in the CURES Fund, maintain the Controlled Substance Utilization Review and Evaluation System (CURES) for the electronic monitoring of, and Internet access to information regarding, the prescribing and dispensing of Schedule II, Schedule III, and Schedule IV controlled substances by all practitioners authorized to prescribe, order, administer, furnish, or dispense these controlled substances.

(b) The Department of Justice may seek and use grant funds to pay the costs incurred by the operation and maintenance of CURES. The department

shall annually report to the Legislature and make available to the public the amount and source of funds it receives for support of CURES.

(c) (1) The operation of CURES shall comply with all applicable federal and state privacy and security laws and regulations.

(2) (A) CURES shall operate under existing provisions of law to safeguard the privacy and confidentiality of patients. Data obtained from CURES shall only be provided to appropriate state, local, and federal public agencies for disciplinary, civil, or criminal purposes and to other agencies or entities, as determined by the Department of Justice, for the purpose of educating practitioners and others in lieu of disciplinary, civil, or criminal actions. Data may be provided to public or private entities, as approved by the Department of Justice, for educational, peer review, statistical, or research purposes, provided that patient information, including any information that may identify the patient, is not compromised. Further, data disclosed to any individual or agency as described in this subdivision shall not be disclosed, sold, or transferred to any third party, unless authorized by, or pursuant to, state and federal privacy and security laws and regulations. The Department of Justice shall establish policies, procedures, and regulations regarding the use, access, evaluation, management, implementation, operation, storage, disclosure, and security of the information within CURES, consistent with this subdivision.

(B) Notwithstanding subparagraph (A), a regulatory board whose licensees do not prescribe, order, administer, furnish, or dispense controlled substances shall not be provided data obtained from CURES.

(3) In accordance with federal and state privacy laws and regulations, a health care practitioner may provide a patient with a copy of the patient's CURES patient activity report as long as no additional CURES data is provided and keep a copy of the report in the patient's medical record in compliance with subdivision (d) of Section 11165.1.

(d) For each prescription for a Schedule II, Schedule III, or Schedule IV controlled substance, as defined in the controlled substances schedules in federal law and regulations, specifically Sections 1308.12, 1308.13, and 1308.14, respectively, of Title 21 of the Code of Federal Regulations, the dispensing pharmacy, clinic, or other dispenser shall report the following information to the Department of Justice as soon as reasonably possible, but not more than seven days after the date a controlled substance is dispensed, in a format specified by the Department of Justice:

(1) Full name, address, and, if available, telephone number of the ultimate user or research subject, or contact information as determined by the Secretary of the United States Department of Health and Human Services, and the gender, and date of birth of the ultimate user.

(2) The prescriber's category of licensure, license number, national provider identifier (NPI) number, if applicable, the federal controlled substance registration number, and the state medical license number of any prescriber using the federal controlled substance registration number of a government-exempt facility.

(3) Pharmacy prescription number, license number, NPI number, and federal controlled substance registration number.

(4) National Drug Code (NDC) number of the controlled substance dispensed.

(5) Quantity of the controlled substance dispensed.

(6) International Statistical Classification of Diseases, 9th revision (ICD-9) or 10th revision (ICD-10) Code, if available.

(7) Number of refills ordered.

(8) Whether the drug was dispensed as a refill of a prescription or as a first-time request.

(9) Date of origin of the prescription.

(10) Date of dispensing of the prescription.

(e) The Department of Justice may invite stakeholders to assist, advise, and make recommendations on the establishment of rules and regulations necessary to ensure the proper administration and enforcement of the CURES database. All prescriber and dispenser invitees shall be licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, in active practice in California, and a regular user of CURES.

(f) The Department of Justice shall, prior to upgrading CURES, consult with prescribers licensed by one of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, one or more of the boards or committees identified in subdivision (d) of Section 208 of the Business and Professions Code, and any other stakeholder identified by the department, for the purpose of identifying desirable capabilities and upgrades to the CURES Prescription Drug Monitoring Program (PDMP).

(g) The Department of Justice may establish a process to educate authorized subscribers of the CURES PDMP on how to access and use the CURES PDMP.

SEC. 2. Section 11165.1 of the Health and Safety Code is amended to read:

11165.1. (a) (1) (A) (i) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 shall, before July 1, 2016, or upon receipt of a federal Drug Enforcement Administration (DEA) registration, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that practitioner the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES Prescription Drug Monitoring Program (PDMP).

(ii) A pharmacist shall, before July 1, 2016, or upon licensure, whichever occurs later, submit an application developed by the Department of Justice to obtain approval to access information online regarding the controlled

substance history of a patient that is stored on the Internet and maintained within the Department of Justice, and, upon approval, the department shall release to that pharmacist the electronic history of controlled substances dispensed to an individual under his or her care based on data contained in the CURES PDMP.

(B) An application may be denied, or a subscriber may be suspended, for reasons which include, but are not limited to, the following:

- (i) Materially falsifying an application for a subscriber.
- (ii) Failure to maintain effective controls for access to the patient activity report.
- (iii) Suspended or revoked federal DEA registration.
- (iv) Any subscriber who is arrested for a violation of law governing controlled substances or any other law for which the possession or use of a controlled substance is an element of the crime.
- (v) Any subscriber accessing information for any other reason than caring for his or her patients.

(C) Any authorized subscriber shall notify the Department of Justice within 30 days of any changes to the subscriber account.

(2) A health care practitioner authorized to prescribe, order, administer, furnish, or dispense Schedule II, Schedule III, or Schedule IV controlled substances pursuant to Section 11150 or a pharmacist shall be deemed to have complied with paragraph (1) if the licensed health care practitioner or pharmacist has been approved to access the CURES database through the process developed pursuant to subdivision (a) of Section 209 of the Business and Professions Code.

(b) Any request for, or release of, a controlled substance history pursuant to this section shall be made in accordance with guidelines developed by the Department of Justice.

(c) In order to prevent the inappropriate, improper, or illegal use of Schedule II, Schedule III, or Schedule IV controlled substances, the Department of Justice may initiate the referral of the history of controlled substances dispensed to an individual based on data contained in CURES to licensed health care practitioners, pharmacists, or both, providing care or services to the individual.

(d) The history of controlled substances dispensed to an individual based on data contained in CURES that is received by a practitioner or pharmacist from the Department of Justice pursuant to this section is medical information subject to the provisions of the Confidentiality of Medical Information Act contained in Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(e) Information concerning a patient's controlled substance history provided to a prescriber or pharmacist pursuant to this section shall include prescriptions for controlled substances listed in Sections 1308.12, 1308.13, and 1308.14 of Title 21 of the Code of Federal Regulations.

(f) A health care practitioner, pharmacist, and any person acting on behalf of a health care practitioner or pharmacist, when acting with reasonable care and in good faith, is not subject to civil or administrative liability arising

from any false, incomplete, inaccurate, or misattributed information submitted to, reported by, or relied upon in the CURES database or for any resulting failure of the CURES database to accurately or timely report that information.

SEC. 3. Section 11165.4 is added to the Health and Safety Code, to read:

11165.4. (a) (1) (A) (i) A health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance shall consult the CURES database to review a patient's controlled substance history before prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient for the first time and at least once every four months thereafter if the substance remains part of the treatment of the patient.

(ii) If a health care practitioner authorized to prescribe, order, administer, or furnish a controlled substance is not required, pursuant to an exemption described in subdivision (c), to consult the CURES database the first time he or she prescribes, orders, administers, or furnishes a controlled substance to a patient, he or she shall consult the CURES database to review the patient's controlled substance history before subsequently prescribing a Schedule II, Schedule III, or Schedule IV controlled substance to the patient and at least once every four months thereafter if the substance remains part of the treatment of the patient.

(B) For purposes of this paragraph, "first time" means the initial occurrence in which a health care practitioner, in his or her role as a health care practitioner, intends to prescribe, order, administer, or furnish a Schedule II, Schedule III, or Schedule IV controlled substance to a patient and has not previously prescribed a controlled substance to the patient.

(2) A health care practitioner shall obtain a patient's controlled substance history from the CURES database no earlier than 24 hours, or the previous business day, before he or she prescribes, orders, administers, or furnishes a Schedule II, Schedule III, or Schedule IV controlled substance to the patient.

(b) The duty to consult the CURES database, as described in subdivision (a), does not apply to veterinarians or pharmacists.

(c) The duty to consult the CURES database, as described in subdivision (a), does not apply to a health care practitioner in any of the following circumstances:

(1) If a health care practitioner prescribes, orders, or furnishes a controlled substance to be administered to a patient while the patient is admitted to any of the following facilities or during an emergency transfer between any of the following facilities for use while on facility premises:

(A) A licensed clinic, as described in Chapter 1 (commencing with Section 1200) of Division 2.

(B) An outpatient setting, as described in Chapter 1.3 (commencing with Section 1248) of Division 2.

(C) A health facility, as described in Chapter 2 (commencing with Section 1250) of Division 2.

(D) A county medical facility, as described in Chapter 2.5 (commencing with Section 1440) of Division 2.

(2) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance in the emergency department of a general acute care hospital and the quantity of the controlled substance does not exceed a nonrefillable seven-day supply of the controlled substance to be used in accordance with the directions for use.

(3) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance to a patient as part of the patient's treatment for a surgical procedure and the quantity of the controlled substance does not exceed a nonrefillable five-day supply of the controlled substance to be used in accordance with the directions for use, in any of the following facilities:

(A) A licensed clinic, as described in Chapter 1 (commencing with Section 1200) of Division 2.

(B) An outpatient setting, as described in Chapter 1.3 (commencing with Section 1248) of Division 2.

(C) A health facility, as described in Chapter 2 (commencing with Section 1250) of Division 2.

(D) A county medical facility, as described in Chapter 2.5 (commencing with Section 1440) of Division 2.

(E) A place of practice, as defined in Section 1658 of the Business and Professions Code.

(4) If a health care practitioner prescribes, orders, administers, or furnishes a controlled substance to a patient currently receiving hospice care, as defined in Section 1339.40.

(5) (A) If all of the following circumstances are satisfied:

(i) It is not reasonably possible for a health care practitioner to access the information in the CURES database in a timely manner.

(ii) Another health care practitioner or designee authorized to access the CURES database is not reasonably available.

(iii) The quantity of controlled substance prescribed, ordered, administered, or furnished does not exceed a nonrefillable five-day supply of the controlled substance to be used in accordance with the directions for use and no refill of the controlled substance is allowed.

(B) A health care practitioner who does not consult the CURES database under subparagraph (A) shall document the reason he or she did not consult the database in the patient's medical record.

(6) If the CURES database is not operational, as determined by the department, or when it cannot be accessed by a health care practitioner because of a temporary technological or electrical failure. A health care practitioner shall, without undue delay, seek to correct any cause of the temporary technological or electrical failure that is reasonably within his or her control.

(7) If the CURES database cannot be accessed because of technological limitations that are not reasonably within the control of a health care practitioner.

(8) If consultation of the CURES database would, as determined by the health care practitioner, result in a patient's inability to obtain a prescription

in a timely manner and thereby adversely impact the patient's medical condition, provided that the quantity of the controlled substance does not exceed a nonrefillable five-day supply if the controlled substance were used in accordance with the directions for use.

(d) (1) A health care practitioner who fails to consult the CURES database, as described in subdivision (a), shall be referred to the appropriate state professional licensing board solely for administrative sanctions, as deemed appropriate by that board.

(2) This section does not create a private cause of action against a health care practitioner. This section does not limit a health care practitioner's liability for the negligent failure to diagnose or treat a patient.

(e) This section is not operative until six months after the Department of Justice certifies that the CURES database is ready for statewide use and that the department has adequate staff, which, at a minimum, shall be consistent with the appropriation authorized in Schedule (6) of Item 0820-001-0001 of the Budget Act of 2016 (Chapter 23 of the Statutes of 2016), user support, and education. The department shall notify the Secretary of State and the office of the Legislative Counsel of the date of that certification.

(f) All applicable state and federal privacy laws govern the duties required by this section.

(g) The provisions of this section are severable. If any provision of this section 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.

SB

960

SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair
2015 - 2016 Regular Session

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.

AMENDED IN SENATE APRIL 26, 2016

SENATE BILL

No. 960

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

February 8, 2016

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.

O

SB

1140

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

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

Introduced by Senator Moorlach

February 18, 2016

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.

SB

1155

Date of Hearing: August 3, 2016

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

SB 1155 (Morrell) – As Amended June 23, 2016

Policy Committee:	Business and Professions	Vote:	15 - 0
	Veterans Affairs		7 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

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

- 1) Requires every board within DCA 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) Requires that a veteran be granted only one fee waiver, except as specified
- 4) 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.
- 5) 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.

FISCAL EFFECT:

- 1) Annual revenue loss to DCA of \$1.1 million (various special funds) to waive applicable fees for honorably discharged veterans. Minor costs to each board and bureau to establish the fee waiver in regulations prior to implementation. Staff notes that although 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) Minor and absorbable costs to DCA for additional workload to make necessary changes to the DCA's online licensing and enforcement system, BreZE, and for updating websites related to applications.

COMMENTS:

- 1) **Purpose.** According to the author, "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."
- 2) **Background.** The DCA boards have implemented several policies to ease the burdens on military applicants, spouses, and licensees. For example, current law exempts licensees from penalties for reinstating a retired license if called to active duty. Current law also 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, current law 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.

- 3) **Current Legislation.** SB 1348 (Canella), pending on the Assembly Floor, 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 the application process.
- 4) **Prior 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.

Analysis Prepared by: Jennifer Swenson / APPR. / (916) 319-2081

AMENDED IN ASSEMBLY JUNE 23, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1155

Introduced by Senator Morrell

February 18, 2016

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 (+)
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.

SB

1195

THIRD READING

Bill No: SB 1195
Author: Hill (D)
Amended: 6/1/16
Vote: 21

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

SUBJECT: Professions and vocations: board actions

SOURCE: Author

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."

Prepared by: Nicole Billington / B., P. & E.D. / (916) 651-4104, Bill Gage / B., P. & E.D. / (916) 651-4104
6/1/16 19:23:19

**** END ****

AMENDED IN SENATE JUNE 1, 2016

AMENDED IN SENATE APRIL 6, 2016

SENATE BILL

No. 1195

Introduced by Senator Hill

February 18, 2016

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. The bill would authorize the California State Board of Pharmacy and the board to ensure compliance with these requirements. 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 furthers 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 (e) 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 (c) 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 cats, 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 (c) 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.

SB

1217

**SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT**

Senator Jerry Hill, Chair
2015 - 2016 Regular

Bill No:	SB 1217	Hearing Date:	April 18, 2016
Author:	Stone		
Version:	April 12, 2016		
Urgency:	No	Fiscal:	Yes
Consultant:	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 --

Introduced by Senator Stone

February 18, 2016

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 licensee 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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SB

1334

SENATE COMMITTEE ON APPROPRIATIONS

Senator Ricardo Lara, Chair
2015 - 2016 Regular Session

SB 1334 (Stone) - Crime reporting: health practitioners: mandated reporting

Version: April 19, 2016

Policy Vote: PUB. S. 7 - 0

Urgency: No

Mandate: Yes

Hearing Date: April 25, 2016

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.

-- END --

AMENDED IN SENATE APRIL 19, 2016
AMENDED IN SENATE MARCH 28, 2016

SENATE BILL

No. 1334

Introduced by Senator Stone

February 19, 2016

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 (c) 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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