



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda**

Agenda

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, California 95815  
Phone 916.263.1978 Fax 916.263.2688 | [www.dhcc.ca.gov](http://www.dhcc.ca.gov)



Notice is hereby given that a public meeting of the Dental Hygiene Committee of California will be held as follows:

**Friday, April 29, 2011**

**8:00 A.M.**

**Doubletree Hotel LAX  
1985 East Grand Avenue  
El Segundo, CA 90245**

**Webcast address:**

**[http://www.dca.ca.gov/publications/multimedia/webcast\\_current.shtml](http://www.dca.ca.gov/publications/multimedia/webcast_current.shtml)**

**AGENDA**

**The DHCC welcomes and encourages public participation in its meetings.**

The public may take appropriate opportunities to comment on any issue before the Committee at the time the item is heard.

**Dental Hygiene Committee of California – Full Committee**

**8:00 a.m.**

1. Roll Call/Establishment of Quorum
2. Ethical Decision Making – presentation by Norine Marks
3. Open Session – Administrative Hearing  
  
Petition for reinstatement of license – Patricia McCartney
4. Closed Session, upon conclusion of Administrative Hearing

*The Committee will meet in closed session to deliberate on the above matter and any other disciplinary matters pursuant to Government Code §11126 (c) (3).*

Return to Open Session

**SUBCOMMITTEE MEETINGS BEGIN**

**SUBCOMMITTEE AGENDAS FOLLOW THE FULL AGENDA**

- Legislation and Regulation Subcommittee (Page 4)
- Education and Outreach Subcommittee (Page 6)
- Licensing and Examination Subcommittee (Page 7)
- Enforcement Subcommittee (Page 8)

## **RETURN TO FULL COMMITTEE**

5. Public Comment for items not on the agenda
6. President's Report
7. Executive Officer's Report
8. Approval of the December 6, 2010 Meeting Minutes
9. Presentation on OSHPD Health Care Workforce Clearinghouse  
- Senita Robinson, Chief; Research, Policy and Planning Section
10. Department of Consumer Affairs (DCA) Director's Report (DCA Representative)
11. Adoption of §1139-1144 of Title 16 of the California Code of Regulations – Cite and Fine
12. Adoption of Amendments to §1138 of Title 16 of the California Code of Regulations – Disciplinary Guidelines
13. Budget Report
14. Strategic Business Plan
15. Update on Dental Board of California's Infection Control Regulations [Title 16, California Code of Regulations, Section 1005 (d)]
16. Legislation and Regulation Subcommittee Report  
The Committee may take action on any items listed on the attached Legislation and Regulation Subcommittee agenda
17. Education and Outreach Subcommittee Report  
The Committee may take action on any items listed on the attached Education and Outreach Subcommittee agenda.
18. Licensing and Examination Subcommittee Report  
The Committee may take action on any items listed on the attached Licensing and Examination Subcommittee agenda.
19. Enforcement Subcommittee Report  
The Committee may take action on any items listed on the attached Enforcement Subcommittee agenda.
20. Future Agenda Items
21. Adjournment

Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at **[www.dhcc.ca.gov](http://www.dhcc.ca.gov)**.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



Notice is hereby given that a public meeting of the Legislative and Regulatory Subcommittee of the Dental Hygiene Committee of California will be held as follows:

**LEGISLATIVE AND REGULATORY SUBCOMMITTEE MEETING**

**FOLLOWING QUORUM ESTABLISHMENT IN FULL COMMITTEE**

**Friday, April 29, 2011  
Doubletree Hotel LAX  
1985 East Grand Avenue  
El Segundo, CA 90245**

**AGENDA**

**LEG 1 – Roll Call**

**LEG 2 – Public Comment**

**LEG 3 – Approval of December 5, 2010 minutes**

**LEG 4 – Chairperson's Report**

**LEG 5 – Discussion and Possible Action on the Following Legislation:**

AB 28 .... (Huber) – State Agencies: repeals  
AB 127 .. (Logue) - Regulations: effective date  
AB 536 ... (Ma) – Physicians and Surgeons  
AB 675 ... (Hagman) – Continuing Education  
AB 958 ... (Berryhill) – Regulatory Boards: limitations periods  
AB 1207 . (Furutani) – Small Business  
AB 1328 . (Pan) – Professions and Vocations  
SB 100 .. (Price) – Healing Arts  
SB 103 .. (Liu) - State Government: meetings: teleconferencing  
SB 227 ... (Wayland) – Business and professions: licensure  
SB 231 ... (Emmerson) – Regulatory Boards: healing arts  
SB 399 ... (Huff) – Healing Arts: advertising  
SB 540 ... (Price) - Dentistry  
SB 544 ... (Price) – Healing Arts  
SB 943 ... (Price, Corbett, Correa, Emmerson, Hernandez, Negrete McLeod,  
Walters, and Wyland) – Healing Arts

Any other bills of interest to the Committee

**LEG 6 – Update on Retroactive Fingerprinting (California Code of Regulations, Title 16, §1105 & 1106)**

**LEG 7 – Update on clean-up legislation**

**Legislative and Regulatory  
Subcommittee**

Chair – Alex Calero,  
Public Member  
Rita Fujisawa,  
Public Member  
Michelle Hurlbutt, RDH

**LEG 8** – Proposed regulatory language to implement Business and Professions Code 901 regarding authorization for Out of State licensed practitioners to provide healthcare services at sponsored free health care clinics.

**LEG 9** – Future Agenda Items

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at **[www.dhcc.ca.gov](http://www.dhcc.ca.gov)**.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



Notice is hereby given that a public meeting of the Education and Outreach Subcommittee of the Dental Hygiene Committee of California will be held as follows:

**EDUCATION/OUTREACH SUBCOMMITTEE MEETING**

**Friday, April 29, 2011**  
**Doubletree Hotel LAX**  
**1985 East Grand Avenue**  
**El Segundo, CA 90245**

**Upon conclusion of Legislation and Regulatory Subcommittee**

**AGENDA**

**EDU 1 – Roll Call**

**EDU 2 – Public Comment**

**EDU 3 – Chairperson's Report**

**EDU 4 – Approval of December 5, 2010 Minutes**

**EDU 5 – Outreach Events**  
a. Upcoming  
b. Attended

**EDU 6 – Report on Governor Brown's February 18, 2011 directive prohibiting purchases of free giveaways.**

**EDU 7 – Information on Website**

**EDU 8 – Future Agenda Items**

**EDU 9 – Adjournment**

**Education/Outreach Subcommittee**

Chair – Rita Chen Fujisawa,  
Public Member  
William Langstaff, DDS  
Andrew Wong, Public Member

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at [www.dhcc.ca.gov](http://www.dhcc.ca.gov).

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, California 95815  
P 916.263.1978 F 916.263.2688 | [www.dhcc.ca.gov](http://www.dhcc.ca.gov)



Notice is hereby given that a public meeting of the Licensing and Examination Subcommittee of the Dental Hygiene Committee of California will be held as follows:

**LICENSING AND EXAMINATION SUBCOMMITTEE MEETING**

**Friday, April 29, 2011  
Doubletree Hotel LAX  
1985 East Grand Avenue  
El Segundo, CA 90245**

**Upon conclusion of Outreach and Education Subcommittee**

**Agenda**

**LIC 1** – Roll Call

**LIC 2** – Public Comment

**LIC 3** – Approval of December 5, 2010 Minutes

**LIC 4** – Chairperson's Report

- a. Report on CDHEA Meeting January, 28-29, 2011
- b. Report on American Dental Education Association House of Delegates Meeting March 12-16, 2011
- c. Continued Competency – Michelle Hurlbutt, RDH, will present a report.

**LIC 5** – Clinical and Written Examination Statistics

**LIC 6** – Licensure Statistics

- a. Registered Dental Hygienist
- b. Registered Dental Hygienist in Alternative Practice
- c. Registered Dental Hygienist in Extended Functions
- d. Fictitious Name permits

**LIC 7** – Update on regulations relating to courses in the administration of nitrous oxide and oxygen, administration of local anesthetic agents and periodontal soft tissue curettage (Title 16, California Code of Regulations, Section 1072.2)

**LIC 8** – Future Agenda Items

**Licensing and Examination  
Subcommittee**

Chair – Michelle Hurlbutt, RDH  
Cathy DiFrancesco, RDH  
Rhona Lee, RDHEF

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at [www.dhcc.ca.gov](http://www.dhcc.ca.gov).

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



Notice is hereby given that a public meeting of the Enforcement Subcommittee of the Dental Hygiene Committee of California will be held as follows:

**ENFORCEMENT SUBCOMMITTEE MEETING**

**Friday, April 29, 2011**  
**Doubletree Hotel LAX**  
**1985 East Grand Avenue**  
**El Segundo, CA 90245**

**Upon conclusion of Licensing and Examination Subcommittee**

Agenda

- ENF 1** – Roll Call
- ENF 2** – Public Comment
- ENF 3** – Approval of December 5, 2010 Minutes
- ENF 4** – Chairperson's Report
- ENF 5** – Enforcement Statistics
- ENF 6** – Complaint Form Update
- ENF 7** – Department of Consumer Affairs Performance Measures
- ENF 8** – Future Agenda Items

**Enforcement Subcommittee**

Chair – Alex Calero, Public Member  
Miriam DeLaRoi, RDHAP  
Cathy DiFrancesco, RDH

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at [www.dhcc.ca.gov](http://www.dhcc.ca.gov).

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 2**

Ethical Decision Making



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Norine Marks, DHCC Legal Counsel
<b>SUBJECT</b>	<b>Agenda Item 2: Ethical Decision Making</b>

A verbal report will be provided.

## **DIVERSION EVALUATION COMMITTEES**

### **BAGLEY-KEENE OPEN MEETING ACT TOP TEN RULES (October 2010)**

**[NOTE: GC § = Government Code Section; AG = Opinions of the California Attorney General.]**

- 1. All meetings are public. (GC §11123.)**
- 2. Meetings must be noticed 10 calendar days in advance—including posting on the Internet. (GC §11125(a).)**
- 3. Agenda required—must include a description of specific items to be discussed (GC §§ 11125 & 11125.1). Licensee names should not be listed on the agenda. No item may be added to the agenda unless it meets criteria for an emergency. (GC §11125(b).)**
- 4. Meeting is “gathering” of a majority of the committee where committee business will be discussed. Includes telephone & e-mail communications. (GC § 11122.5).**
- 5. Public comment must be allowed on open session agenda items before or during discussion of each item and before a vote. (GC §11125.7.)**
- 6. Closed session is authorized only to consider a report pertaining to a specific licensee when necessary to protect the privacy of such a licensee. (B&P Code Sections 1696, 2770.10, 4869, GC Section 11126(c)(2)—advisory body that does not include quorum of full body where matter would constitute unwarranted invasion of privacy if discussed in open session)**
- 7. At least one board staff member must be present to record topics discussed and decisions made because staff is required by law to maintain a minute book with that information. (GC § 11126.1).**
- 8. No secret ballots or votes except mail votes on enforcement matters. (68 AG 65; GC §11526.)**
- 9. No proxy votes. (68 AG 65.)**



**10. Meetings by teleconferencing (GC §11123.)**

- a. Suitable audio or video must be audible to those present at designated location(s). (subd. (b)(1)(B).)
- b. Notice and agenda required. (subd. (b)(1)(A).)
- c. Every location must be open to the public and at least one board member must be physically present at the specified location. All members must attend at a public location. (subds. (b)(1) (C), and (F).)
- e. Rollcall vote required. (subd. (b)(1)(D).)
- f. Emergency meeting closed sessions not allowed. (subd. (b)(1)(E).)

**Reference: January 2010 “Public Meetings” Memorandum & Attached Guide to the Bagley-Keene Open Meeting Act**

[http://www.dca.ca.gov/publications/bagleykeene\\_meetingact.pdf](http://www.dca.ca.gov/publications/bagleykeene_meetingact.pdf)



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 3**

**Open Session – Administrative Hearing**



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 4**

Closed Session –  
upon conclusion of administrative hearing



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda**

Agenda



Notice is hereby given that a public meeting of the Legislative and Regulatory Subcommittee of the Dental Hygiene Committee of California will be held as follows:

**LEGISLATIVE AND REGULATORY SUBCOMMITTEE MEETING**

**FOLLOWING QUORUM ESTABLISHMENT IN FULL COMMITTEE**

**Friday, April 29, 2011**

**Doubletree Hotel LAX**

**1985 East Grand Avenue**

**El Segundo, CA 90245**

**AGENDA**

**LEG 1 – Roll Call**

**LEG 2 – Public Comment**

**LEG 3 – Approval of December 5, 2010 minutes**

**LEG 4 – Chairperson's Report**

**LEG 5 – Discussion and Possible Action on the Following Legislation:**

AB 28 .....(Huber) – State Agencies: repeals

AB 127 ...(Logue) - Regulations: effective date

AB 536....(Ma) – Physicians and Surgeons

AB 675....(Hagman) – Continuing Education

AB 958....(Berryhill) – Regulatory Boards: limitations periods

AB 1207..(Furutani) – Small Business

AB 1328..(Pan) – Professions and Vocations

SB 100 ...(Price) – Healing Arts

SB 103 ...(Liu) - State Government: meetings: teleconferencing

SB 227 ....(Wayland) – Business and professions: licensure

SB 231....(Emmerson) – Regulatory Boards: healing arts

SB 399....(Huff) – Healing Arts: advertising

SB 540....(Price) - Dentistry

SB 544....(Price) – Healing Arts

SB 943....(Price, Corbett, Correa, Emmerson, Hernandez, Negrete McLeod, Walters, and Wyland) – Healing Arts

Any other bills of interest to the Committee

**LEG 6 – Update on Retroactive Fingerprinting (California Code of Regulations, Title 16, §1105 & 1106)**

**LEG 7 – Update on clean-up legislation**

**Legislative and Regulatory Subcommittee**

Chair – Alex Calero,  
Public Member  
Rita Fujisawa,  
Public Member  
Michelle Hurlbutt, RDH

**LEG 8** – Proposed regulatory language to implement Business and Professions Code 901 regarding authorization for Out of State licensed practitioners to provide healthcare services at sponsored free health care clinics.

**LEG 9** – Future Agenda Items

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at **[www.dhcc.ca.gov](http://www.dhcc.ca.gov)**.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 3**

Approval of December 5, 2010 Minutes



**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, California 95815  
Phone 916.263.1978 Fax 916.263.2688 | www.dhcc.ca.gov

***Dental Hygiene Committee of California  
Legislation and Regulatory Subcommittee Meeting***

*Department of Consumer Affairs  
2005 Evergreen Street  
Sacramento, CA 95815*

**Sunday, December 5, 2010**

**DRAFT MINUTES**

**Members Present**

Alexr Calero, Public Member, Acting Chair  
Michelle Hurlbutt, RDH, Acting Member  
Miriam DeLeRoi, RDHAP

**Members Not Present**

Andrew Wong, Public Member, Chair

**Staff Present**

Lori Hubble, Executive Officer  
Traci Napper, Associate Government Program  
Analyst (AGPA)  
Tom Jurach, Administrative Analyst

**Legal Counsel**

Norine Marks

**1. *Roll Call/Establishment of Quorum***

The subcommittee was called to order at 2:38 p.m. Roll was called and a quorum established.

**2. *Public Comment***

There was no public comment.

**3. *Approval of September 27, 2010 Minutes***

It was m/s/c (DeLaRoi/Hurlbutt) to approve the September 27, 2010, Legislation and Regulatory Subcommittee minutes with the following amendments:

- A. Page one under subtitle "Legislative Update" second sentence third line correction "stay" should be "staff".
- B. Page two under the same subtitle second paragraph third line "stay" should be "staff".
- C. Subtitle "Proposed Legislation Regarding Cleanup of Senate Bill 853, second sentence should read, "She recommended...deletions, et al."



- D. Subtitle “ Proposed Fingerprints Regulations” second sentence change Ms Hurlbutt to Ms DeLaRoi.
- E. Subtitle “Proposed Dental Hygiene Regulations Implementing Senate Bill SB 853” insert on page 3 at the end of the paragraph “He recommended that an ad hoc committee be created to follow up the revisions, deletions, et al.”

There was no public comment regarding the minutes.

#### **4. *Chairperson’s Report***

Mr. Calero reported that he had the pleasure of chairing the subcommittee once again in Mr. Andrew Wong’s absence. He added that Ms.Hurlbutt was also sitting on the subcommittee.

#### **5. *Legislative Calendar***

Ms. Napper stated that the “Legislative Calendar” was for informational purposes only and that it was a tentative calendar for the 2011/12 fiscal year that provided an outline of:

- when bills would go into effect
- when new bills would be introduced
- the deadlines that staff must adhere to for bill promulgation

There was no discussion or public comment.

#### **6. *California Regulatory Notice Register Schedule***

The provided schedule was for information only.

Ms. Napper stated that the “Regulatory Notice Register Schedule” is the guideline that staff follows once the committee approves the regulatory language. The calendar provided deadlines on when the regulatory language needs to be sent to the Office of Administrative Law (OAL) for publishing and when the committee can schedule a regulatory hearing.

There was no public comment.

#### **7. *Report on End of 2 Year Legislative Sessions Summary***

Ms Napper reported that the summary provided was for information only and it was an overview of bills relating to dental hygiene, dentistry and healing arts boards and committees within the DCA. She mentioned that during the full committee meeting a representative from DCA’s legislative office would provide an update on SB 2699.

Ms. Hubble thanked Ms. Napper for putting the legislative summary package together.

There was no further discussion or public comment.

## **8. Consideration and Approval of Proposed Statutory “Clean Up” Language or Business and Professions Code Sections 1900-1966.6**

Mr. Calreo provided background on the subcommittee’s charge for reviewing the clean-up language. Mr. Calrero reported that the committee’s President, Rhona Lee, had appointed an ad hoc committee composed of Ms. Hurlbutt and himself. The ad hoc committee worked closely with staff and legal counsel to update and revise the clean-up language presented in the committee package.

It was m/s/c (Hulbutt/DeLaRoi) to adopt the proposed changes to Business and Professions Code for sections 1900-1966.6 as submitted.

Mr. Calero opened the discussion and reminded the subcommittee that in the interests of time they could give non- substantive changes to staff.

Mr. Calero asked if DHCC should be concerned about meeting the January 21<sup>st</sup>, 2011 deadline to submit a bill to the Office of Legislative Counsel and to find an author.

Ms Hurlbutt responded in the affirmative that she believed we did need to be concerned, but that it should not be a problem finding an author.

Mr. Calero questioned if the committee had an interest in changing “committee” to “board”.

Ms Hurlbutt said, she would support the change, but that the timing and the political climate of proposing the change could be questionable. She stated that although DHCC is a committee, it currently operates as a board. Historically when the bill to create the DHCC was first introduced, the word “board” would not have passed the legislature nor would the Governor have signed it.

Kate Dawson, CDHA legislative representative, commented on the word “board”. She reiterated Ms. Hurlbutt’s statements. She explained that the present Governor vetoed two bills, creating the DHCC before finally signing it. In January 2011 a new governor will be inaugurated into office with a history of being a lot friendlier with the dental hygiene profession. It was possible that the political climate would change and there may be an acceptably justifiable reason to change “committee” to “board”.

JoAnn Galliano, educator and CDHA representative, encouraged the DHCC to change “committee “ to “board “ and “reach for the moon” unless it became apparent that it held back the process.

Mr. Calero asked for any other comments from the members and public.

Ms. Hurlbutt asked if he was proposing an amendment?

Mr. Calero responded that he was not proposing an amendment.

Mr. Calero returned to discussion for the provided packet.

The following reflect the changes made by DHCC per page:

- red strikeout
- underline
- double strikeout
- double underline

## Page 1

Mr. Calero questioned Section 1902.2, regarding the reporting of certain information for data collection purposes, if existing statute already mandated this.

Ms Hubble responded that currently, the language that exists is in the Dental Board's statute and the statute does identify the committee. Since we are requiring the information, then it should be in our statute.

## Page 2

Mr. Caero recommended adding a correction to the motion already before the committee: Section 1902.2(c)3 Aggregated information under this subdivision shall be compiled annually, and ~~report~~ reported on ....

Ms. DeLaRoi recommended adding a correction to the motion already before the committee 1902.2 (d) It is the intent of the Legislature to utilize ~~moneys~~ monies in the...

## Page 3

There were no comments.

Mr. Calero announced that if the public had any comments for each or any of the pages being discussed to please come up to the microphone and their comments would be heard at that time.

## Page 4

Mr. Calero noted there were several legislative areas where reference was made regarding the committee making recommendation(s) to the Dental Board, including pages 4 to 6, Section 1905(a)(8) making recommendations to the Dental Board for scope of practice issues. Statutory language, as it currently exists, contains a provision that mandates that if the committee makes a recommendation of some sort to the Dental Board and if the Dental Board modifies or rejects the recommendation the committee can ask for written reasons why the modifications or rejection took place and the Dental Board has 90 days to give the committee the reason.

Mr. Calero stated, the ad hoc committee decided to delete the Section 1905.2 language that enabled the committee to require written reasons from the Dental Board as to why the Dental Board modified or rejected the committee's general recommendations. Instead the ad hoc committee included language for recommendation to the Dental Board from the committee with respect to legislation effecting course curriculum for direct supervision procedure(s) only. In this particular case a statutory mandate would provide for dialogue. While there is no provision for a statutory requirement for dialogue with respect to making recommendations regarding scope of practice, the rationale for this, as determined by the ad hoc committee, is that proposed change(s) in scope of practice would take place via statute by the Dental Board, and all stakeholders would have the ability through the legislative process to engage in dialogue.

Mr. Calero questioned the rationale of including "a sub a" in the language.

Ms. Hurlbutt responded that historically, it was part of the bill negotiation process due to concerns that if a new hygiene committee were formed, given time the committee would change the scope of practice, even though it was in statute and part of the negotiation process. Ms. Hurlbutt continued that the DHCC could make numerous recommendations and there would be no harm in leaving the “a sub a” and other portions in statute.

Ms. Dawson, CDHA legislative representative, thought it caused more confusion than clarity in regards to the committee’s autonomy as perceived by other states and national organizations. The perception is that the committee still has to recommend legislation to the Dental Board, seek their “approval” and then proceed through the legislative process. Stakeholders will read the statutes and regulations and will question if DHCC really is autonomous. Ms. Dawson expressed that deletion of that section would add clarity and she recommended doing so.

It was m/s (Hurlbutt, DeLaRoi ) to delete this section.

Ms Hubble expressed a concern that deletion of this section could pose an obstacle in the legislative process. She added, though, that the bill’s author would have an opportunity to express his/her/its preference one way or the other. She expressed her rationale for deletion except where it concerned scope of practice and direct supervision.

Mr. Calero stated that a motion was on the floor and that it had been seconded. He wished to speak against the motion because he did not want to post any red flags to obstruct the process.

Instead he recommended keeping both subsection 8 and Section 1905.2. His argument was that the current language states that the committee has to make recommendations regarding scope of practice to the Dental Board that the Dental Board has to respond if they reject or modify the committee’s recommendation. This mandate creates a dialogue and a record of recommendations and thought processes.

Mr. Calero asked if there were further comments.

Ms Hubble stated that this particular section was addressed by the author of the bill (in the Perata letter), who stated it was inadvertently left in the bill and Section 1905.2.should be deleted.

Ms Hurlbutt stated that Section 1905.2 was old COMDA language and, Section 1905.2 was inadvertently left in. She stated that she had the letter from former Senator Perata that stated that it was not his intent to include the language. She encouraged her fellow subcommittee members to vote with her to remove Subsection 8 and Section 1905.2

Mr. Calero asked if there was any further discussion. Seeing none, he reiterated the motion on the floor to strike Section 8 from the proposed language 1905(a)( 8). The motion passed with Hurlbutt & DeLaRoi in favor/Calero opposed. . (2/1)

~~(8) Make recommendations to the dental board regarding scope of practice issues.~~

## Page 5

Ms. Hurlbutt suggested the following addition to the top of Section 1905(b) the committee may employ employees, and examiners **and consultants** that deem necessary to carry out its functions and responsibilities under this article.

(c) The committee may establish an advisory board for the purpose of clinical examination review and updates .

## Page 6

Section 1909.1 The committee may introduce legislation for new direct supervisions ~~duties~~ **procedures**. Recommendations by the committee for new direct supervision ~~duties~~ **procedures** pursuant to this article shall be approved...

~~1909.5 Courses of instruction for direct supervision duties added to the scope of practice of dental hygiene on or after July 1, 2009, shall be submitted by the committee for approval by the dental board.~~

## Page 7

JoAnn Galliano suggested adding the following: Section 1915. No person other than a registered dental hygienist, registered dental hygienist In alternative functions practice, or registered dental hygienist in extended functions or a licensed dentist may engage in the practice of dental hygiene or perform dental hygiene procedures on patients, including by not limited to, supragingival and subgingival scaling, dental hygiene assessment periodontal record evaluation, administration of local anesthesia, nitrous oxide-oxygen analgesia, **gingival soft tissue curettage** and treatment planning, except for the following persons:...

It is m/s (Hurlbutt/DeLaRoi) to insert gingival and analgesia to read as: ... approved instruction in ~~periodontal~~ **gingival** soft tissue curettage, administration of nitrous oxide-oxygen **used as an analgesic analgesia** and administration of local anesthetic...

## Page 8

Section 1916 (a) An applicant for licensure under this article shall furnish **electronic** fingerprint images for submission...

It was m/s (Hurlbutt/DeLaRoi) to insert "electronic" before fingerprint.

Motion passes unanimously.

## Page 9

Ms. Hurlbutt suggested revising Section 1917.(f) Satisfactory completion of committee-approved instruction in ~~periodontal~~ **gingival** soft tissue curettage, administration of nitrous oxide-oxygen **used as an analgesic analgesia** and administration of local anesthetic agents.

It was m/s to insert current terminology to read as: It is m/s (Hurlbutt/DeLaRoi) to insert gingival and analgesia to read as: ... approved instruction in ~~periodontal~~ gingival soft tissue curettage, administration of nitrous oxide-oxygen ~~used as an analgesic~~ analgesia and administration of local anesthetic...

Motion passes unanimously.

Ms. Hubble suggested an addition to Section 1917.1(a) (3) Proof that the applicant has been in clinical practice as a registered dental hygienist or has been a full-time faculty member in an accredited dental hygiene education program for a minimum of 750 hours per year for at least five years immediately preceding the date of his or her application under this section.

It was m/s (Hurlbutt/DeLaRoi) insert in Section 1917.1(a)(3) "immediately" in front of "preceding".

Motion passes unanimously.

## **Page 10**

Section 1917(a) (8) Proof that the applicant has not failed the state clinical examination, the WREB clinical examination or an approved clinical examination...

## **Pages 11 and 12**

No comments were made.

## **Page 13**

The subcommittee directed staff to make the following changes:  
Section 1926.1 ~~of this article~~ Notwithstanding any other provision of this ~~chapter article~~, a licensed hygienist in alternative practice may operate a mobile dental unit...

The subcommittee delegated staff to work on language for :  
Section 1926.3(a) which is missing a few words in the last sentence .

## **Pages 14-17**

There were no comments.

## **Page 18**

Ms. Hurlbutt recommended the following be changed to be consistent with the DHCC's decision made earlier in 2010 to increase the original license fee cap: Section 1944(a) (1) ~~The application fee for an original license shall not exceed twenty dollars(\$20). On and after January 1, 2010, the application fee for an original license shall not exceed fifty dollars (\$50) two hundred fifty dollars (\$250).~~

It is m/s (Hurlbutt/DeLaRoi) to strike The application fee for an original license shall not exceed two hundred fifty dollars (\$250). twenty dollars(\$20). On and after January 1, 2010, the application fee for an original license shall not exceed fifty dollars (\$50)

Motion passes unanimously.

## **Page 19**

### **Cont. from 18**

Section 1944.(a)(13)(h) The fees for registration of an additional office permit shall not exceed two hundred fifty dollars (\$250.00).

It was m/s (Hurlbutt/DeLaRoi) to add the fees for the additional office permit to read as:  
(h) The fees for registration of an additional office permit shall not exceed two hundred fifty dollars (\$250.00).

## **Pages 20-21**

There were no comments.

## **Page 22**

Section 1950.5(z) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of ~~bloodborne~~ infectious diseases from dental assistant, registered dental assistant, registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions to patient, from patient to patient, and from patient to dental assistant, registered

## **Page 23**

Cont. Section 1950.5(z)

dental assistant, registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other ~~blood-borne~~ pathogens in health care settings. The committee shall review infection control guidelines, if necessary, on an annual basis and proposed changes shall be reviewed by the dental board to establish a consensus. The dental board shall submit any recommended changes to the infection control guidelines for review to establish a consensus. As necessary, the committee shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

## **Page 24**

Section 1955(a) (1) A licensee who fails or refuses to comply with a request for a patient's ~~dental or~~ dental hygiene records that is accompanied by that patient's written authorization for release of the records to the committee, within 15 days of receiving the request and authorization, shall pay to the committee a civil or administrative penalty or

fine up to a maximum of two hundred fifty dollars (\$250) per day for each day that the documents have not been produced after the 15th day, up to a maximum of five thousand dollars

It was m/s (Hurbutt/DeLaRoi) to insert dental or. Motion pass unanimously.

(2) A health care facility shall comply with a request for the dental hygiene records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's dental hygiene records to the committee within 30 days of receiving this request, authorization, and notice shall subject the health care facility to a civil or administrative penalty or fine, payable to the committee, of up to a maximum of two hundred fifty dollars (\$250) per day for each day that the documents have not been produced after the 30th day, up to a maximum of five thousand dollars (\$5,000), unless the health care facility is unable to provide the documents within this time period for good cause.

It was m/s (Hurlbult/DeLaRoi) to add "or fine" in Section 1955.(a)(1) on line 4 to read: request and authorization, shall pay to the committee a civil or administrative penalty or fine up to a maximum of two hundred fifty dollars (\$250) per day for each day that the

## Page 25

It was m/s Hurlbutt/DeLaRoi) to add "or fine" on Section 1955. (a)(2) on line 7 to read: and notice shall subject the health care facility to a civil or administrative penalty or fine

Motion passes unanimously.

## Page 26

Section 1955(e) Imposition of the civil or administrative penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

It was m/s (Calero/Hurlbutt) Section 1955(e) to add or administrative. Motion passes unanimously.

## Page 27

There were no comments.

## Page 28

Section 1958.1(a)(2) If the individual is licensed under this article, the committee shall promptly revoke the license of the individual. The committee shall not stay the revocation and nor place the license on probation.

Me. Calero reported that the Enforcement Subcommittee reviewed the language in Section 1958.1 and that similar language is proposed in regulations. The Subcommittee decided to defer the language to the Legislative/Regulation Sub-committee for recommendation to the full committee.



Ms. Hurlbutt makes a comment that she prefers that the language be in regulations she believes the committee has more control in the regulatory process.

It was m/ (Hurlbutt) to strike section 1958.1 from the Business and Professions proposed regulation because it's in the proposed regulations.

Legal Counsel asked where did the language come from?

Lori Hubble, responded that the language came from the Dental Practice Act and that it should be left in Statute.

Ms. Hurlbutt, withdrew her motion.

It was m/s (Calero/DeLaRoi) in Section 1958.1(a)(2) to insert the word promptly before the word revoke.

Legal Counsel suggested a friendly amendment delete "and" and replace it with "nor" . Ms. DeLaRoi accepted the friendly amendment.

The motion passes unanimously.

## **Page 29**

Section 1960. For the first offense, a person is guilty of a misdemeanor and shall be punishable by a fine of not less than two hundred dollars (\$200) nor more than three thousand dollars (\$3,000), or by imprisonment in a county jail for not to exceed six months, or by both that fine and imprisonment, and for the second or a subsequent offense is guilty of a felony and upon conviction thereof shall be punished by a fine of not less than two thousand dollars (\$2,000) nor more than six thousand dollars (\$6,000), or by imprisonment in the state prison ~~for not to exceed [INSERT TERM]~~, or by both that fine and imprisonment, who does any of the following:

## **Page 30**

There were no comments.

## **Page 31**

Section 1966. (a) It is the intent of the Legislature that the committee seek ways and means to identify and rehabilitate licensees whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licensees so afflicted may be treated and returned to the practice of dental hygiene in a manner that will not endanger the public health and safety. ~~It is also the intent of the Legislature that the committee establish a diversion program as a voluntary alternative approach to traditional disciplinary actions.~~ (b) One or more diversion evaluation committees shall may be established by the committee. The committee shall may establish criteria for the selection of each diversion evaluation committee. Each member of a diversion evaluation committee shall receive per diem and expenses as provided in Section 103.

~~(c) In lieu of establishing a separate diversion program, the committee may contract with the dental board's diversion program.~~

Ms. Hurlbutt suggested revising Section 1966.1. (a) The committee ~~shall~~ **may** establish criteria for the acceptance, denial, or termination of licensees in a diversion program. Unless ordered by the committee as a condition of a licensee's disciplinary probation, only those licensees who have voluntarily requested diversion treatment and supervision by a diversion evaluation committee shall participate in a diversion program.

It was m/s (DeLaRoi/Calero) to delete the last sentence of Section 1966(a), "It is also the intent of the Legislature that the committee establish a diversion program as a voluntary alternative approach to traditional disciplinary actions." Section 1966(b) change "shall" to "may" in the first sentence and the second sentence.  
Strike out Section 1966 (c).

Motion fails 1/2/0

It was m/s (hurlbutt/DeLaRoi) to strike Section 1966.(c).

Motion passes (Calero abstain)

## **Page 32**

There were no comments.

## **Page 33**

Section 1966.5. (a) After a diversion evaluation committee, in its discretion, has determined that a licensee has been rehabilitated and the diversion program is completed, the diversion evaluation committee **shall** ~~may~~ purge and destroy all records pertaining to the licensee's participation in the diversion program.

It was m/s (Hurlbutt/DeLaRoi) to remove the may and return it to shall.

Motion passes unanimously.

The final motion for the Sections 1900-1966.6

It was m/s/c (Hurlbutt/DeLaRoi) to recommend that the full committee proceed with the clean up language proposal as amended. The motion passed unanimously. (3/0)

## **9. Consideration and Approval or Proposed Dental Hygiene Regulations Implementing Provisions of Business and Professions Code 1900-1966.6**

Mr. Calero deferred this section to Ms Hurlbutt, who then presided.

Ms. Hurlbutt reported that she would like to review the regulatory package in the same manner as the proposed business and professions language. She recommended making a motion to forward this regulatory package for consideration as a recommendation to approve the regulatory package by the full committee.

It was m/s/c (Calero/DeLaRoi) that the subcommittee recommend to the full committee adoption of the regulatory package and at the end of the process to vote on the complete package. The motion passed unanimously. (3/0)

Ms. Hurlbutt opened the floor for discussion. She added that whatever was amended or omitted be reflected in the table of contents and requested that staff check the semantics of those recommendations approved by the subcommittee.

§ 1107. Approval of a Course in Local Anesthetic, Periodontal Soft Tissue Curettage and Nitrous Oxide-Oxygen Analgesia.

§ 1108. Requirements for a Course in Local Anesthetic, Periodontal Soft Tissue Curettage and Nitrous Oxygen-Oxygen Analgesia.

Article 4. Duties

§ 1116. RDH Procedures

### **Page 3**

There were no comments.

### **Page 4**

(s)Periodontal "Gingival soft tissue curettage" means the closed removal of tissue lining the periodontal pocket, not involving the reflection of a flap removal of the inflamed soft tissue lateral to the pocket wall, which is not subgingival curettage referring to the procedure that is performed apical to the epithelial attachment, severing the connective tissue attachment down to the osseous crest.

It is motion (Hurlbutt)to strike Periodontal and insert gingival in front of soft tissue and change the definitions. add soft tissue .

Legal counsel suggested asking for consensus and make motion at the end of the meeting.

### **Page 5**

(a) It shall be the duty of the Committee's Executive Officer to plan, direct and organize the work of the staff; attend Committee meetings and hearings; consult with and make recommendations to the Committee; dictate correspondence; attend committee meetings of various organizations and associations; assist in compiling examination material; attend examinations and assist in conducting the examinations; notify applicants of their success or failure on examinations; and prepare reports and direct and supervise the field investigators concerning enforcement of the Code relating to the practice of dental hygiene and; issue an order for medical or mental examinations under Section 820 of the Code.

(b) Except for those powers reserved exclusively to the "agency itself" under the Administrative Procedure Act, (Section 11500 et seq. of the Government Code), the Committee delegates and confers upon the Executive Officer, or the designee of the Executive Officer, all functions necessary to the dispatch of business of the Committee in connection with investigative and administrative proceedings under the jurisdiction of the Committee, including but limited to include the ability to accept default decisions and to approve settlement agreements for the revocation, surrender or interim suspension of a license

(c) The power and discretion conferred by law upon the Committee to initiate, review and prosecute accusations and statements of issues pursuant to Sections 11500

## Page 6

There were no comments.

## Page 7

§\_1104(c) A new educational program for registered dental hygienists must submit a feasibility study ~~demonstrating a need~~ for a new educational program and apply for approval from this Committee. ~~prior to seeking approval for Initial Accreditation from the Commission on Dental Accreditation.~~ The Committee may approve, provisionally approve, or deny approval to any such new educational program.

Subcommittee directed staff to make sure all authority is cited at the end of each section (Note: Authority cited)

## Page 8

There were no comments.

## Page 9

There were no comments.

## Page 10

Direct staff to make the following changes.

### ***Dental Sciences***

Tooth Morphology

Head, Neck and Oral Anatomy

Oral Pathology

Oral Embryology and Histology

Radiography

Cariology

Periodontology

Pain management

Dental Materials

### ***Dental Hygiene Sciences and Practice***

Health Promotion

Patient Management

Clinical Dental Hygiene

Provision of Services for and Management of Patients with Special Needs

Provision of Oral Health Care Services to Patients with ~~Blood-Borne~~ Infectious Diseases

Legal and Ethical Aspects of Dental Hygiene

Oral Health Education and Preventive Counseling

Community Dental/Oral Health

Medical and Dental Emergencies

Infection and Hazard Control Management

(4) Content of the curriculum for approved dental hygiene educational programs shall specifically include instruction in:

(A) Local anesthesia

(B) Nitrous oxide -oxygen analgesia utilizing fail-safe type machines containing no other general anesthetic agents

(C) Gingival soft tissue curettage; provided, however, that a graduate of a nonresident program which meets all the requirements of Section 1105 of this article and except those contained in Section 1105 (g)(4) of this article, shall be deemed to have completed an approved program if such person has successfully completed a Committee-approved course of instruction in each of the functions described in Section 1105 (g)(4) of this article which were not taught to clinical

## Page 11

Staff was directed to correct the title.

### **§1107. Approval of RDH Course(s) in Local Anesthetic Anesthesia, Nitrous Oxide-Oxygen Analgesia and Periodontal Gingival Soft Tissue Curettage**

The recommendation is to strike this language from the regulatory package because the language is not ready yet. Hold as place holder.

## Page 12

Staff was directed to correct the title.

### **§ 1108. Requirements for Approval of RDH Course(s) in Local Anesthesia Anesthesia Nitrous Oxide-Oxygen Analgesia and Periodontal Gingival Soft Tissue Curettage**

The recommendation is to strike this language from the regulatory package because the language is not ready yet. Hold as place holder.

## Page 13

There were no comments.

## Page 14

Note to direct staff to make sure authority is cited through out the language.

## Page 15

Remove the following:

~~(e) A new educational program for registered dental hygienists in extended functions must submit a feasibility study demonstrating a need for a new RDHEF educational program as part of the application. The Committee may approve, provisionally approve, or deny approval to any such new educational program.~~

## Page 16

Remove the following

~~(d) A new educational program for registered dental hygienists in extended functions must submit a feasibility study demonstrating a need for a new RDHEF educational program as part of the application. The Committee may approve, provisionally approve, or deny approval to any such new educational program.~~

## Page 17

Have staff make the following changes.

### ARTICLE 4. ~~DUTIES~~ PROCEDURES

§1116. RDH ~~Duties~~ Procedures.

- (d) ~~Periodontal~~ Gingival soft tissue curettage;
- (e) Administration of local ~~anesthetic~~ anesthesia;

## Page 18

No comments

## Page 19

Directed staff to make the changes

§ 1118. (a) In addition to the requirements set forth in Section 1117 of this article, an application for licensure as a registered dental hygienist shall be accompanied by satisfactory evidence that the applicant has been granted a diploma or certificate in dental hygiene from an approved dental hygiene educational program and satisfactory evidence that the applicant completed a Committee approved course(s) in local anesthesia administration, nitrous oxide-oxygen analgesia and soft tissue gingival curettage (proof of completion of these courses not required for California graduates).  
(1) Evidence of successful completion of education in local anesthesia administration, nitrous oxide-oxygen analgesia and soft tissue gingival curettage must be provided on a form that is provided by the Committee and submitted as requested by the Committee.  
(2) The form must be signed and sealed by the Director of the dental hygiene educational program or the Director of an approved course providing the education in local anesthesia administration, nitrous oxide-oxygen analgesia and soft tissue gingival curettage.

## Page 20 -23

No comments

## Page 24

Recommendation from the examiners

§1125. (d) If an examinee is unable to find a patient with one quadrant which meets the requirements of subsection (c)(2) of this section, the examinee may submit up to four (4) additional teeth if necessary to fulfill the submission criteria for subgingival calculus. An applicant who presents such a patient shall be required to scale all teeth submitted in the same time allotted for scaling one quadrant.

Directed staff to make the following changes in Section 1125 (e), keep shall and replace shall with may as shown;

(e) The examinee at a minimum shall provide a full ~~mount~~ mouth panoramic radiograph, periapical radiographs and two (2) bite wing radiographs of the quadrant(s) submitted. The examinee may provide full mouth radiographs of the patient, which shall consist of

eighteen (18) radiographs at least four (4) of which must be bite-wing radiographs. All radiographs shall have been taken not more than one year prior to the examination at which they are presented and must be of diagnostic quality.

(g) The examinee shall offer to the patient the option of the administration of local anesthetic in the area(s) to be scaled. ~~except that anesthesia shall not be administered to both mandibular quadrants of a patient during the same day.~~

## **Page 25**

There were no comments.

## **Page 26**

§1129. An applicant for an RDH license, who fails to pass either or any combination of the DHCC clinical examination or the WREB clinical dental hygiene examination or any other clinical dental hygiene examination approved by the Committee after three (3) total attempts shall not be eligible for further re-examination until the applicant has successfully completed the required additional education. An examinee who fails to pass the DHCC clinical examination or the WREB clinical dental hygiene examination due to gross trauma shall not be eligible for further re-examination and/or initial licensure until the examinee has successfully completed the required additional education.

(a) The course work shall be taken at a dental hygiene program approved by the Commission on Dental Accreditation or a comparable organization approved by the Committee, and shall be completed within a period of one year from the date of notification of the applicant's third failure or notification of failure due to gross trauma.  
(1) The course of study must include didactic, laboratory and clinical instruction. Use of patients is mandatory.

## **Page 27**

There were no comments.

## **Page 28**

Legal Counsel suggested that Dental Board be removed from the Continuing Education regulations.

§1134. Purposes. The ~~Dental Board or~~ Committee has determined that the public health and safety will be served by requiring all holders of licenses granted by the ~~Dental Board or~~ Committee under the Code to continue their education after receiving such licenses.

Note: Authority cited: Sections ~~1614 1645, and~~ 1905, Business and Professions Code. Reference: Section ~~1645 and~~ 1905, Business and Professions Code.

## **Pages 29-37**

There were no changes.

**Page 38 -40**

§1138 is currently under another regulatory package. There are no changes because it is currently in the regulatory process.

**Page 41**

The Cite and Fine regulatory language will be presented at the full committee for review and adoption.

Staff is waiting for Legal Counsel suggested new language.

**Page 42- 45**

No comments

Ms. Hurlbutt directed staff that the forms match the regulatory language.

Ms. Hurlbutt directed that staff make sure all the candidate and exam forms corresponded to the regulatory language, including references to title and authority. Also, she requested the inclusion of email addresses on applications. She stated that at this time the course provider application would be pulled.

It was m/s/c (Calero/DeLaRoi) to approve the regulations and the referenced forms as amended to the full committee for approval.

The motion passed unanimously.

**Future Agenda Items**

It was suggested the Legislation and Regulations Subcommittee be scheduled in the morning for the next meeting.

The meeting adjourned at 6:44 p.m.





**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

Discussion and Possible Action  
on the Following Legislation

**DENTAL HYGIENE COMMITTEE OF CALIFORNIA**

**STATUS OF ASSEMBLY BILLS 2011/2012**

**APRIL 2011**

<b>BILL</b>	<b>AUTHOR</b>	<b>SUBJECT</b>	<b>COMM. POSITION</b>	<b>BILL STATUS</b>
AB 28	Huber	State Agencies		
AB 127	Logue	Regulations: effective date		
AB 536	Ma	Physicians and Surgeons		
AB 675	Hagman	Continuing Education		
AB 958	Berryhill	Regulatory Boards: limitations periods		
AB 1207	Furutani	Small Business		
AB 1328	Pan	Professionals and Vocations		

**DENTAL HYGIENE COMMITTEE OF CALIFORNIA**

**STATUS OF SENATE BILLS 2011/2012**

**APRIL 2011**

<b>BILL</b>	<b>AUTHOR</b>	<b>SUBJECT</b>	<b>COMM. POSITION</b>	<b>BILL STATUS</b>
SB 100	Price	Healing Arts		
SB 103	Liu	State Government: meetings: teleconferencing		
SB 227	Wayland	Business and professions: licensure		
SB 231	Emmerson	Regulatory Boards: healing arts		
SB 399	Huff	Healing Arts: adverstising		
SB 540	Price	Dentistry		
SB 541	Price	Contractors' State License Board		
SB 544	Price	Healing Arts		
SB 943	Price, Corbett, Correa, Emmerson, Hernandez, Negrete McLeod, Walters and Wayland	Healing Arts		



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**AB 28 – (Huber) – State Agencies: repeals**



<b>Bill Number: AB 28</b>	<b>AUTHOR: Assembly Member HUBER</b>
<b>SPONSOR:</b>	<b>VERSION: 3/31/11</b>
<b>INTRODUCED: 12/6/10</b>	<b>BILL STATUS:</b> 12/7/10 from printer may be heard in committee January 6. 3/31/11 Referred to Com. on TRANS. From committee chair, with author's amendments: Amend, and re-refer to Com. on TRANS. Read second time and amended. 4/4/11 4Re-referred to Com. on TRANS.
<b>BILL LOCATION: Assembly print</b>	<b>HISTORY:</b> Introduced 12/6/10. 12/7/11 from printer.
<b>AGENDA ITEM: 5.1</b>	
<b>SUBJECT: State agencies: repeal</b>	

## SUMMARY

Existing law establishes the Joint Sunset Review Committee for the purposes of identifying and eliminating waste, duplication, and inefficiency in government agencies and conducting a comprehensive analysis of every "eligible agency," as defined, to determine if the agency is still necessary and cost effective. Existing law defines an "eligible agency: as an entity of state government for which a date for repeal has been established by statute on or after January 1, 2011. Existing law requires the committee to take public testimony and evaluate the eligible agency prior to the agency's repeal date. This will require an eligible agency to be eliminated, unless the Legislature enacts a law to extend, consolidate, or reorganize the agency.

This bill would declare the intent of the Legislature to enact legislation that would establish repeal dates for various agencies for the purpose of increasing the number of agencies that meet the definition of an "eligible agency" that is eligible for review by the Joint Sunset Review Committee.

Analysis: The bill is currently a spot bill. Staff anticipates that repeal dates for various state agencies will be added to this bill.

## TYPE OF BILL

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Non-Fiscal  
 Non-Tax Levy

## ATTACHED:

- 1) Language

## COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

**WATCH:**

BILL NUMBER: AB 28        AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    MARCH 31, 2011

INTRODUCED BY    Assembly Member Huber

DECEMBER 6, 2010

An act to amend Sections 4004, 8051, and 8052 of, to repeal Section 495 of, to repeal Chapter 3 (commencing with Section 2600) of Division 2 of, and to repeal Article 3 (commencing with Section 8000) of Chapter 4 of Division 3 of, the Vehicle Code, relating to state agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 28, as amended, Huber. ~~State agencies: repeal.~~  
Commercial vehicles: Reciprocity Commission.

Existing law establishes the Reciprocity Commission composed of the Lieutenant Governor, the Director of Motor Vehicles, the Director of Transportation, the Controller, and the Commissioner of the California Highway Patrol for the purpose of, among other things, entering into agreements with foreign jurisdictions that provide for the exemption of fees for commercial vehicles if the foreign jurisdictions provide equivalent exemptions to vehicles registered in California.

Existing law authorizes the Reciprocity Commission to enter into agreements on behalf of the State of California with the duly authorized representatives of any foreign jurisdiction providing for the registration of vehicles on an apportionment or allocation basis and to enter into, and become, a member of the International Registration Plan Agreement developed by the American Association of Motor Vehicle Administrators.

Existing law authorizes the state, in administering the International Registration Plan, to collect all appropriate registration and license fees due other jurisdictions. Existing law provides that foreign jurisdictions that are members of the agreement are authorized to collect all appropriate registration and license fees due to the State of California, and remit those fees to this state pursuant to the terms of the agreement.

Existing law requires the Director of Motor Vehicles to provide such assistance to the commission as it may require.

This bill would delete all references to the "Reciprocity Commission" and instead substitute the Director of Motor Vehicles, who would administer the terms and conditions of the International Registration Plan and collect all appropriate registration and license fees due other jurisdictions.

~~Existing law establishes the Joint Sunset Review Committee for the purpose of identifying and eliminating waste, duplication, and inefficiency in government agencies and conducting a comprehensive analysis of every "eligible agency," as defined, to determine if the agency is still necessary and cost effective. Existing law defines an "eligible agency" as an entity of state government, however~~

~~denominated, for which a date for repeal has been established by statute on or after January 1, 2011. Existing law requires the committee to take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed, and requires that an eligible agency be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the agency.~~

~~— This bill would declare the intent of the Legislature to enact legislation that would establish repeal dates for various agencies for the purpose of increasing the number of agencies that meet the definition of an "eligible agency" that is eligible for review by the Joint Sunset Review Committee.~~

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

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

*SECTION 1. Section 495 of the Vehicle Code is repealed.*

~~495. The "reciprocity commission" is the commission empowered to enter into reciprocity agreements.~~

*SEC. 2. Chapter 3 (commencing with Section 2600) of Division 2 of the Vehicle Code is repealed.*

*SEC. 3. Section 4004 of the Vehicle Code is amended to read:*

4004. (a) (1) Commercial motor vehicles meeting the registration requirements of a foreign jurisdiction, and subject to registration but not entitled to exemption from registration or licensing under any of the provisions of this code or any agreements, arrangements, or declarations made under Article 3 (commencing with Section 8000) of Chapter 4, may, as an alternate to registration, secure a temporary registration to operate in this state for a period of not to exceed 90 days, or a trip permit to operate in this state for a period of four consecutive days.

(2) Each trip permit shall authorize the operation of a single commercial motor vehicle for a period of not more than four consecutive days, commencing with the day of first use and three consecutive days thereafter. Every permit shall identify, as the department may require, the commercial motor vehicle for which it is issued. Each trip permit shall be completed prior to operation of the commercial motor vehicle on any highway in this state and shall be carried in the commercial motor vehicle to which it applies and shall be readily available for inspection by a peace officer. Each permit shall be valid at the time of inspection by a peace officer only if it has been completed as required by the department and has been placed in the appropriate receptacle as required by this section. It is unlawful for any person to fail to comply with the provisions of this section.

(b) The privilege of securing and using a trip permit or a temporary registration not to exceed 90 days shall not extend to the following:

(1) Any vehicle which is based within this state and which is operated by a person having an established place of business within this state. For purposes of this paragraph, a commercial motor vehicle shall be considered to be based in this state if it is

primarily operated or dispatched from or principally garaged or serviced or maintained at a site with an address within this state.

(2) Vehicles registered in any jurisdiction with which the State of California does not have vehicle licensing reciprocity, unless the ~~Reciprocity Commission~~ director extends the privilege, by rule, after hearing.

(c) Any trailer or semitrailer identified in paragraph (1) of subdivision (a) of Section 5014.1 that enters the state without a currently valid license plate issued by California or another jurisdiction shall be immediately subject to full identification fees as specified in subdivision (e) of Section 5014.1.

SEC. 4. Article 3 (commencing with Section 8000) of Chapter 4 of Division 3 of the Vehicle Code is repealed.

SEC. 5. Section 8051 of the Vehicle Code is amended to read:

8051. The ~~Reciprocity Commission~~ director may enter into ~~agreement~~ agreements on behalf of this state with the duly authorized representatives of any foreign jurisdiction providing for the registration of vehicles on an apportionment or allocation basis.

SEC. 6. Section 8052 of the Vehicle Code is amended to read:

8052. (a) The ~~Reciprocity Commission~~ director may, on behalf of the state, enter into, and become, a member of the International Registration Plan Agreement developed by the American Association of Motor Vehicle Administrators. The ~~commission~~ director may adopt rules and regulations necessary to carry out the provisions of the International Registration Plan or other apportioned registration agreements entered into under the authority of this article.

(b) In administering the International Registration Plan, the state may collect all appropriate registration and license fees due other jurisdictions. Foreign jurisdictions ~~which~~ that are members of the agreement shall be authorized to collect all appropriate registration and license fees due to the State of California, and remit the fees to this state pursuant to the terms of the agreement.

~~SECTION 1. It is the intent of the Legislature to enact legislation that would establish repeal dates for various agencies for the purpose of increasing the number of agencies that are an "eligible agency" subject to review by the Joint Sunset Review Committee as that term is defined in subdivision (a) of Section 9147.7 of the Government Code.~~



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

AB 127 – (Logue) – regulations: effective date



**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, CA 95815  
 P 916-263.1978 F 916.263.2688 | www.dhcc.ca.gov



<b>Bill Number: AB 127</b>	<b>AUTHOR: Assembly Member LOGUE</b>
<b>SPONSOR:</b>	<b>VERSION: 4/11/11</b>
<b>INTRODUCED: 1/11/11</b>	<b>BILL STATUS: 1/12/11 from printer. May be heard in committee February 12.</b>
<b>BILL LOCATION: Assembly print</b>	<b>HISTORY: Read first time 1/11/11. 1/12/11 from printer. 3/31/11 Referred to Coms. on A. &amp; A.R. and APPR. 4/11/11 Re-referred to Coms. on B., P. &amp; C.P. and A. &amp; A.R. pursuant to Assembly Rule 96.</b>
<b>AGENDA ITEM: 5.2</b>	
<b>SUBJECT: Regulations: effective date</b>	

**SUMMARY**

Existing law, 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. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30<sup>th</sup> day after it is filed with the Secretary of State, except as provided.

This bill would require that a regulation or and order of repeal of a regulation become effective, instead, of January 1 next following a 90-day period after the date it is filed with the Secretary or State, except as provided.

Analysis: Currently the rulemaking process takes approximately 12 to 18 months to complete. The Dental Hygiene Committee's (DHCC) priority is the protection of the public when exercising the licensing, regulatory and disciplinary functions. The primary methods the Committee uses to achieve this goal are: issuing licenses to eligible applicant; investigating complaints against licensees and disciplining licensees for violating of the probation. The Committee is authorized to adopt reasonably necessary rules to implement, interpret, or make specific the statutes that govern the Business and Professions Codes Sections 1900-1966.6. Extending the time before a regulation may become effective could possibly endanger the public.

**TYPE OF BILL**

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Non-Fiscal  
 Non-Tax Levy

**ATTACHED:**

- 1) Language

**COMMITTEE POSITION:**

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: AB 127      INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member Logue

JANUARY 11, 2011

An act to amend Section 11343.4 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL'S DIGEST

AB 127, as introduced, Logue. Regulations: effective date.

Existing law, 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. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, except as provided.

This bill would require that a regulation or an order of repeal of a regulation become effective, instead, on January 1 next following a 90-day period after the date it is filed with the Secretary of State, except as provided.

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

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

SECTION 1. Section 11343.4 of the Government Code is amended to read:

11343.4. A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on ~~the 30th day~~ *January 1 next following a 90-day period* after the date of filing unless:

(a) Otherwise specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by the statute.

(b) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(c) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**AB 536 – (Ma) – Physicians and Surgeons**



<b>Bill Number: AB 536</b>	<b>AUTHOR: Assembly Member MA</b>
<b>SPONSOR:</b>	<b>VERSION: 4/12/11</b>
<b>INTRODUCED: 2/16/11</b>	<b>BILL STATUS : Re-referred to Com on Business and Professions</b>
<b>BILL LOCATION: Assembly</b>	<b>HISTORY:</b> 2/16/11 from printer. 2/17/11 from printer. May be heard in committee March 19. 3/7/11 referred to Com. on B. P. and C.P. form committee chair, author's amendments: amended, and re-refer to Com. on B.P and C.P. Read Second time and amended. 3/8/11 Re-referred to Com on B.P & C.P. 4/11/11From committee chair, with author's amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended. 4/12/11Re-referred to Com. on B., P. & C.P.
<b>AGENDA ITEM: 5.3</b>	
<b>SUBJECT: Physicians and Surgeons</b>	

### SUMMARY

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to post certain information on the internet regarding licensed physicians and surgeons, including, but not limited to, felony convictions, certain misdemeanor convictions, and whether or not a licensee is in good standing. Existing law requires that specified information remain posted for 10 years and prohibits the removal of certain other information.

This bill would require the board to remove expunged misdemeanor or felony convictions posted pursuant to those provisions within 90 days of receiving a copy of the expunged order from the licensee.

Analysis: Currently DHCC post certain information regarding the accusation, decision and the terms of a licensee that has disciplinary actions taken against them. This bill would require that the expunged misdemeanor or felony convictions be removed from the website.

### TYPE OF BILL

Active

Non-Urgency

Non-Appropriations

Majority Vote Required

Non-State-Mandated Local Program

Fiscal

Non-Tax Levy

### ATTACHED:

- 1) Language

### COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: AB 536      AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY   APRIL 11, 2011  
AMENDED IN ASSEMBLY   MARCH 7, 2011

INTRODUCED BY      Assembly Member Ma

FEBRUARY 16, 2011

An act to add Section 2027.1 to the Business and Professions Code,  
relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

AB 536, as amended, Ma. Physicians and surgeons.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to post certain information on the Internet regarding licensed physicians and surgeons, including, but not limited to, felony convictions, certain misdemeanor convictions, and whether or not a licensee is in good standing. Existing law requires that specified information remain posted for 10 years and prohibits the removal of certain other information.

This bill would require the board to remove expunged misdemeanor or felony convictions posted pursuant to those provisions within 90 days of receiving a *certified* copy of the expungement order from the licensee.

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

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

SECTION 1. Section 2027.1 is added to the Business and Professions Code, to read:

2027.1. Notwithstanding subdivision (b) of Section 2027, the board shall remove an expunged misdemeanor or felony conviction posted pursuant to Section 2027 within 90 days of receiving a *certified* copy of the expungement order from the licensee.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**AB 675 – (Hagman) – Continuing Education**

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, CA 95815  
 P 916-263.1978 F 916.263.2688 | www.dhcc.ca.gov



<b>Bill Number: AB 675</b>	<b>AUTHOR: Assembly Member HAGMAN</b>
<b>SPONSOR:</b>	<b>VERSION: 04/05/11</b>
<b>INTRODUCED: 2/17/11</b>	<b>BILL STATUS : Re-referred to Com on Business and Professions</b>
<b>BILL LOCATION: Assembly</b>	<b>HISTORY:</b> 2/17 Read first time. To print 2/18 From printer. May be heard in committee March 20. 3/3 Referred to Coms. On Higher ED. and B.P. & C.P. 3/14 Re-referred to Comm on B.P & C.P. pursuant to Assemble Rule 96. Mar. 29 In committee: Hearing postponed by committee. Apr. 5 From committee chair, with author's amendments: Amend, and re-refer to Com. on B., P. & C.P. Read second time and amended. Apr. 6 Re-referred to Com. on B., P. & C.P.
<b>AGENDA ITEM: 5.4</b>	
<b>SUBJECT: Continuing Education</b>	

**SUMMARY**

Existing law providers for the licensure and regulation of professions and vocations by boards within the Department of Consumer Affairs and these boards may require licensees to satisfy continuing education course requirements.

This bill would provide, if applicable, the continuing education courses, as specified, and that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. This bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a provider that violates that requirement for no less than 5 years as specified.

Analysis: Currently DHCC requires the licensees to obtain continuing education for the renewal of their license(s), this bill clarifies any course(s) that will advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the committee will not be acceptable for the renewal of a license.

**TYPE OF BILL**

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Fiscal  
 Non-Tax Levy

**ATTACHED:**

1) Language

**COMMITTEE POSITION:**

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: AB 675      AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY   APRIL 5, 2011

INTRODUCED BY   Assembly Member Hagman  
    (   Coauthors:   Assembly Members  
        Garrick,   Gorell,   Jeffries,   and  
        Silva   )  
    ( ~~Coauthor:   Senator~~  
~~Huff~~   Coauthors:   Senators   Harman  
        and Huff   )

FEBRUARY 17, 2011

An act to add Section 110.6 to the Business and Professions Code,  
relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

AB 675, as amended, Hagman. Continuing education.

Existing law provides for the licensure and regulation of professions and vocations by boards within the Department of Consumer Affairs and these boards may require licensees to satisfy continuing education course requirements.

This bill would provide, if applicable, that continuing education *or competency* courses, as specified, that advance or promote labor organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting requirements for licensure renewal. The bill would also prohibit, to the extent applicable, an approved provider from representing that such a continuing education *or competency* course is acceptable for meeting requirements for licensure renewal and would require a board, subject to specified procedural requirements, to withdraw its approval of a provider that violates that requirement for no less than 5 years, 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:

SECTION 1. Section 110.6 is added to the Business and Professions Code, to read:

110.6. Notwithstanding any other provision of law, if a board described in Section 101 requires its licensees to satisfy continuing education *or competency* requirements by pursuing a course of continuing education *or competency* , the following shall apply:

(a) Continuing education *or competency* courses shall contain only content relevant to the particular practice regulated by the board pursuant to its laws and regulations. Continuing education *or competency* courses that advance or promote labor



organizing on behalf of a union, or that advance or promote statutory or regulatory changes, political candidates, political advocacy, or political strategy shall not be considered content relevant to the practice regulated by the board and shall not be acceptable for meeting continuing education or *competency* requirements. For the purposes of this section, "courses" includes institutes, seminars, lectures, conferences, workshops, and any other public events.

(b) (1) To the extent applicable, if an approved provider offers a course described in subdivision (a), the provider shall not represent that the course is acceptable for meeting the continuing education or *competency* requirements. If a provider violates this requirement, the board shall withdraw its approval of the provider, subject to paragraph (2).

(2) If, after the board provides the provider notice and an opportunity to be heard, the board finds that the provider violated the requirement in paragraph (1), the board shall withdraw approval of the provider for no less than five years.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

AB 958 – (Berryhill) – Regulatory Boards:  
limitations periods



<b>Bill Number: AB 958</b>	<b>AUTHOR: Assembly Member BERRYHILL</b>
<b>SPONSOR:</b>	<b>VERSION: 2/18/11</b>
<b>INTRODUCED: 2/18/11</b>	<b>BILL STATUS : Re-referred to Com on Business and Professions and C.P.</b>
<b>BILL LOCATION: Assembly</b>	<b>HISTORY:</b> 3/10 Referred to Com. on B.,P. & C.P.2/20 From printer. May be heard in Committee March 22. 2/18 Read first time. To print.
<b>AGENDA ITEM: 5.5</b>	
<b>SUBJECT: Regulatory boards: limitations periods</b>	

### SUMMARY

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

Analysis: This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.

### TYPE OF BILL

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Fiscal  
 Non-Tax Levy

### ATTACHED:

- 1) Language

### COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: AB 958      INTRODUCED  
BILL TEXT

INTRODUCED BY    Assembly Member Bill Berryhill

FEBRUARY 18, 2011

An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, Bill Berryhill. Regulatory boards: limitations periods.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.

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

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

SECTION 1. Section 110.5 is added to the Business and Professions Code, to read:

110.5. (a) Notwithstanding any other provision of law and except as provided in subdivisions (b) and (c), any accusation filed against a licensee of a board described in Section 101, pursuant to Section 11503 of the Government Code, shall be filed within one year after the board discovers the act or omission alleged as the ground for disciplinary action, or within four years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) If an alleged act or omission involves a minor, the four-year limitations period provided for by subdivision (a) shall be tolled until the minor reaches the age of majority.

(c) If a licensee intentionally conceals evidence of wrongdoing, the four-year limitations period provided for by subdivision (a) shall be tolled during that period of concealment.

SEC. 2. Section 1670.2 of the Business and Professions Code is repealed.

~~1670.2. (a) Except as otherwise provided in this section, any proceeding initiated by the board against a licensee for the violation of any provision of this chapter shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the~~

~~act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.~~

~~—(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging fraud or willful misrepresentation is not subject to the limitation in subdivision (a).~~

~~—(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation in subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.~~

~~—(d) If an alleged act or omission involves any conduct described in subdivision (c) of Section 1680 committed on a minor, the seven-year limitations period in subdivision (a) and the 10-year limitations period in subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~—(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging conduct described in subdivision (c) of Section 1680 not committed on a minor shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2005.~~

~~—(f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 3. Section 2230.5 of the Business and Professions Code is repealed.

~~—2230.5. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.~~

~~—(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitation provided for by subdivision (a).~~

~~—(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation provided for by subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.~~

~~—(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~—(e) An accusation filed against a licensee pursuant to Section~~

~~11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board, or a division thereof, discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.~~

~~— (f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 4. Section 2960.05 of the Business and Professions Code is repealed.

~~— 2960.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.~~

~~— (b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).~~

~~— (c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.~~

~~— (d) If an alleged act or omission involves a minor, the seven year limitations period provided for by subdivision (a) and the 10 year limitations period provided for by subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~— (e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.~~

~~— (f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 5. Section 3137 of the Business and Professions Code is repealed.

~~— 3137. (a) Except as otherwise provided in this section, any accusation filed against a licensee pursuant to Section 11503 of the Government Code for the violation of any provision of this chapter shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.~~

~~— (b) An accusation filed against a licensee pursuant to Section~~

~~11503 of the Government Code alleging fraud or willful misrepresentation is not subject to the limitation in subdivision (a).~~

~~— (c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation in subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.~~

~~— (d) If an alleged act or omission involves any conduct described in Section 726 committed on a minor, the 10-year limitations period in subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~— (e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging conduct described in Section 726 shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2006.~~

~~— (f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 6. Section 3750.51 of the Business and Professions Code is repealed.

~~— 3750.51. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.~~

~~— (b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).~~

~~— (c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.~~

~~— (d) If an alleged act or omission involves a minor, the seven year limitations period provided for by subdivision (a) and the 10 year limitations period provided for by subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~— (e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.~~

~~— (f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for~~

~~prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

SEC. 7. Section 4982.05 of the Business and Professions Code is repealed.

~~4982.05. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.~~

~~(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).~~

~~(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.~~

~~(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10 year limitations period provided for by subdivision (c) shall be tolled until the minor reaches the age of majority.~~

~~(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action, or within 10 years after the act or omission alleged as the grounds for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.~~

~~(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

~~(g) For purposes of this section, "discovers" means the later of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:~~

~~(1) The date the board received a complaint or report describing the act or omission.~~

~~(2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.~~

~~(3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.~~

SEC. 8. Section 4990.32 of the Business and Professions Code is repealed.

~~4990.32. (a) Except as otherwise provided in this section, an accusation filed pursuant to Section 11503 of the Government Code against a licensee or registrant under the chapters the board administers and enforces shall be filed within three years from the date the board discovers the alleged act or omission that is the~~



~~basis for disciplinary action or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.~~

~~— (b) An accusation filed against a licensee alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).~~

~~— (c) The limitations period provided by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.~~

~~— (d) An accusation alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the grounds for disciplinary action or within 10 years after the act or omission alleged as the grounds for disciplinary action occurred, whichever occurs first. This subdivision shall apply to a complaint alleging sexual misconduct received by the board on and after January 1, 2002.~~

~~— (e) If an alleged act or omission involves a minor, the seven year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (d) shall be tolled until the minor reaches the age of majority. However, if the board discovers an alleged act of sexual contact with a minor under Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after the limitations periods described in this subdivision have otherwise expired, and there is independent evidence that corroborates the allegation, an accusation shall be filed within three years from the date the board discovers that alleged act.~~

~~— (f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.~~

~~— (g) For purposes of this section, "discovers" means the latest of the occurrence of any of the following with respect to each act or omission alleged as the basis for disciplinary action:~~

~~— (1) The date the board received a complaint or report describing the act or omission.~~

~~— (2) The date, subsequent to the original complaint or report, on which the board became aware of any additional acts or omissions alleged as the basis for disciplinary action against the same individual.~~

~~— (3) The date the board receives from the complainant a written release of information pertaining to the complainant's diagnosis and treatment.~~

SEC. 9. Section 5561 of the Business and Professions Code is repealed.

~~— 5561. All accusations against licensees charging the holder of a license issued under this chapter with the commission of any act constituting a cause for disciplinary action shall be filed with the board within five years after the board discovers, or through the use of reasonable diligence should have discovered, the act or omission alleged as the ground for disciplinary action, whichever occurs first, but not more than 10 years after the act or omission alleged as the ground for disciplinary action. However, with respect to an accusation alleging a violation of Section 5579, the accusation may be filed within three years after the discovery by the board of the~~

~~alleged facts constituting the fraud or misrepresentation prohibited by Section 5579.~~

SEC. 10. Section 5661 of the Business and Professions Code is repealed.

~~5661. All accusations against a licensee shall be filed within three years after the board discovers, or through the use of reasonable diligence should have discovered, the act or omission alleged as the ground for disciplinary action or within six years after the act or omission alleged as the ground for disciplinary action, whichever occurs first. However, with respect to an accusation alleging a violation of Section 5667, the accusation may be filed within three years after the discovery by the board of the alleged facts constituting the fraud or misrepresentation prohibited by Section 5667.~~

~~If any accusation is not filed within the time provided in this section, no action against a licensee shall be commenced under this article.~~

SEC. 11. Section 7686.5 of the Business and Professions Code is repealed.

~~7686.5. All accusations against licensees shall be filed with the bureau within two years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the bureau, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within three years after such discovery.~~

SEC. 12. Section 9884.20 of the Business and Professions Code is repealed.

~~9884.20. All accusations against automotive repair dealers shall be filed within three years after the performance of the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging fraud or misrepresentation as a ground for disciplinary action, the accusation may be filed within two years after the discovery, by the bureau, of the alleged facts constituting the fraud or misrepresentation.~~

SEC. 13. Section 9889.8 of the Business and Professions Code is repealed.

~~9889.8. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (d) of Section 9889.3, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by that section.~~



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**AB 1207 – (Furutani) – Small Business**

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, CA 95815  
 P 916-263.1978 F 916.263.2688 | www.dhcc.ca.gov



<b>Bill Number: AB 1207</b>	<b>AUTHOR: Assembly Member FURUTANI</b>
<b>SPONSOR:</b>	<b>VERSION: 3/15/11</b>
<b>INTRODUCED: 2/18/11</b>	<b>BILL STATUS : Referred to Coms. On J. E.D. and B&amp;F</b>
<b>BILL LOCATION: Assembly</b>	<b>HISTORY:</b> 3/16 Re-referred to Com. J. E.D. & E. 3/15 From committee chair, with author's amendments: Amend, and re-refer to Com. on J., E.D. & E. Read second time and amend. 3/14 Referred to Coms. On J., E.D. & E and B. & F. 2/20 From printer. May be heard in committee March 22. 2/18 Read first time. To print.
<b>AGENDA ITEM: 5.6</b>	
<b>SUBJECT: Small business</b>	

**SUMMARY**

Existing law, the California Small Business Financial Development Corporation Law, provides for a program to provide loans and loan guarantees to small businesses, as specified, and defines certain terms for its purposes.

Analysis: This bill added the definition of "microenterprise" as an entity that has 5 or fewer employees and lacks sufficient access to conventional loans, equity, or banking services.

**TYPE OF BILL**

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Non-Fiscal  
 Non-Tax Levy

**ATTACHED:**

1) Language

**COMMITTEE POSITION:**

**SUPPORT:**\_\_\_\_\_

**OPPOSE:**\_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: AB 1207    AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    MARCH 15, 2011

INTRODUCED BY    Assembly Member Furutani

FEBRUARY 18, 2011

~~An act to amend Section 305 of the Business and Professions Code, relating to the Department of Consumer Affairs.~~  
*An act to amend Section 14010 of the Corporations Code, relating to small businesses.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1207, as amended, Furutani. ~~Department of Consumer Affairs.~~ *Small business.*

*Existing law, the California Small Business Financial Development Corporation Law, provides for a program to provide loans and loan guarantees to small businesses, as specified, and defines certain terms for its purposes.*

*This bill would define "microenterprise" as an entity that has 5 or fewer employees and lacks sufficient access to conventional loans, equity, or other banking services.*

~~Existing law authorizes the Director of Consumer Affairs to administer and enforce those provisions relating to consumer affairs and a designee of the director to exercise a power or duty of the director.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

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

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

*SECTION 1.    Section 14010 of the Corporations Code    is amended to read:*

*14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.*

*(a) "Corporation" or "the corporation" means any nonprofit California small business financial development corporation created pursuant to this part.*

*(b) "Financial institution" means banking organizations including national banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, and savings and loan associations.*

*(c) "Financial company" means banking organizations including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.*

*(d) "Expansion Fund" means the California Small Business Expansion Fund.*

*(e) Unless otherwise defined by the director by regulation, "small*

business loan" means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan. From time to time, the director shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(f) "Employment incentive loan" means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(g) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on a loan application pursuant to Section 14060.

(h) "Board of directors" means the board of directors of the corporation.

(i) "Board" means the California Small Business Board.

(j) "Agency" means the Business, Transportation and Housing Agency.

(k) "Director" means the person designated to this title by the secretary.

(l) "Secretary" means the Secretary of Business, Transportation and Housing Agency.

(m) "Trust fund" means the money from the expansion fund that is held in trust by a financial institution or a financial company. A trust fund is not a deposit of state funds and is not subject to the requirements of Section 16506 of the Government Code.

(n) "Trust fund account" means an account within the trust fund that is allocated to a particular small business financial development corporation for the purpose of paying loan defaults and claims on bond guarantees for a specific small business financial development corporation.

(o) "Trustee" is the lending institution or financial company selected by the office to hold and invest the trust fund. The agreement between the agency and the trustee shall not be construed to be a deposit of state funds.

(p) "Microenterprise" means a sole proprietorship, partnership, limited liability company, or corporation that meets all of the following requirements:

(1) Has five or fewer employees, including the owner.

(2) Generally lacks sufficient access to conventional loans, equity, or other banking services.

~~SECTION 1. Section 305 of the Business and Professions Code is amended to read:~~

~~305. The director shall administer and enforce the provisions of this chapter. Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or the chief of the department's Division of Consumer Services, subject to those conditions and limitations as the director may prescribe.~~



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**AB 1328 – (Pan) – Professions and Vocations**



<b>Bill Number: AB 1328</b>	<b>AUTHOR: Assembly Member PAN</b>
<b>SPONSOR:</b>	<b>VERSION: 3/31/11</b>
<b>INTRODUCED: 2/18/11</b>	<b>BILL STATUS : Apr. 4 Re-referred to Com. on B., P. &amp; C.P.</b>
<b>BILL LOCATION: Assembly print</b>	<b>HISTORY:</b> 2/18 Read first time. To print. 2/20 From printer. May be heard in committee March 22. 3/31/11 Referred to Com. on B., P. & C.P. From committee chair, with author's amendments: Amend, and refer to Com. on B., P. & C.P. Read second time and amended. 4/4/11 Re-referred to Com. on B., P. & C.P.
<b>AGENDA ITEM: 5.7</b>	
<b>SUBJECT: Professions and Vocations</b>	

### SUMMARY

Existing law provides for the licensure and regulation of various professions and vocations by boards and bureaus within the Department of Consumer Affairs and places the department under the control of the Director of Consumer Affairs. Existing law authorizes the directory to request specified reports from these boards.

Analysis: This bill would make non-substantive, technical changes to that provision.

### TYPE OF BILL

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Non-Fiscal  
 Non-Tax Levy

### ATTACHED:

1) Language

### COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_



BILL NUMBER: AB 1328    AMENDED  
BILL TEXT

AMENDED IN ASSEMBLY    MARCH 31, 2011

INTRODUCED BY    Assembly Member Pan

FEBRUARY 18, 2011

~~An act to amend Section 127 of the Business and Professions Code, relating to professions and vocations.~~  
*An act to add Section 1261.3 to the Business and Professions Code, relating to clinical laboratories.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1328, as amended, Pan. ~~Professions and vocations.~~  
*Clinical laboratories.*

Existing law provides for the licensure and regulation of ~~various professions and vocations by boards and bureaus within the Department of Consumer Affairs and places the department under the control of the Director of Consumer Affairs. Existing law authorizes the director to request specified reports from these boards~~ *clinical laboratory personnel by the State Department of Public Health. Existing law authorizes the department to issue a clinical laboratory scientist's license to an applicant who is the lawful holder of a baccalaureate or an equivalent or higher degree and who meets specified training and experience requirements, subject to the payment of a licensing fee .*

This bill would ~~make nonsubstantive, technical changes to that provision~~ , notwithstanding those provisions, authorize the department to issue a clinical laboratory scientist's license to an applicant who completes at least 2 years of full-time employment as a clinical laboratory scientist at a CLIA certified laboratory, who possesses a baccalaureate or an equivalent or higher degree from an accredited institution, and who passes a national examination approved by the department, subject to the payment of the requisite licensing fee .

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

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

SECTION 1.    Section 1261.3 is added to the Business and Professions Code , to read:

1261.3. Notwithstanding Section 1261, the department may issue a clinical laboratory scientist's license to a person who meets all of the following requirements:

- (a) Completes at least two years of full-time employment as a clinical laboratory scientist at a CLIA certified laboratory.
- (b) Possesses a baccalaureate or an equivalent or higher degree from an accredited institution.
- (c) Passes a national examination approved by the department.
- (d) Applies for the license on forms provided by the department.

(e) Pays the fee for licensure specified in Section 1300.

~~SECTION 1. Section 127 of the Business and Professions Code is amended to read:~~

~~127. Notwithstanding any other provision of this code, the director may require reports from any board, commission, examining committee, or other similarly constituted agency within the department as he or she deems reasonably necessary on any phase of their operations.~~



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**SB 100 – (Price) – Healing Arts**

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, CA 95815  
 P 916-263.1978 F 916.263.2688 | www.dhcc.ca.gov



<b>Bill Number: SB 100</b>	<b>AUTHOR: Senate Member PRICE</b>
<b>SPONSOR:</b>	<b>VERSION: 1/11/11</b>
<b>INTRODUCED: 1/11/11</b>	<b>BILL STATUS : 4/12/11 set for hearing May 2, 2011</b>
<b>BILL LOCATION: Senate</b>	<b>HISTORY:</b> 2/18 Read first time. To print. 2/20 From printer. May be heard in committee March 22.
<b>AGENDA ITEM: 5.8</b>	
<b>SUBJECT: Healing Arts</b>	

**SUMMARY**

This bill requires licensed chiropractors, dentist, physicians, podiatric doctors, osteopaths, nurses, vocational nurses, psychologist, optometrists, physician assistants, and naturopaths to indicate the appropriate degree or certification after their names in all advertising. This bill requires the Medical Board of California to adopt regulations by January 1, 2013 that specify the level of physician availability need in clinics that use lasers for elective cosmetic procedures. The bill also requires the Medical Board to post an "easy to understand" fact sheet on cosmetic procedures to educate the public on the risks.

**Analysis:** This bill adds language that would allow surgical clinics owned in whole or in part by a physician to be eligible for licensure by the Department of Public Health, which has not been allowed since the 2007 court decision of Capen v. Shrewry. This bill deems any Medical Board accredited outpatient setting as licensed by the Department of Public Health, subjecting the outpatient setting to license fee requirements of the Department of Public Health. The bill requires the Department of Public Health to notify the Medical Board of any action taken against an outpatient setting. If the Department of Public Health's action is a revocation or suspension, that action shall immediately void the accreditation of the outpatient setting with the Medical Board. The Medical Board will be required to provide the Department of Public Health an updated list of accredited outpatient settings every three months. This bill includes facilities that offer in vitro fertilization within the definition of "outpatient setting" and authorizes the Medical Board to adopt regulations it deems necessary for standards of in vitro fertilization clinics. This bill requires the Medical Board to notify the public of all accredited outpatient settings. This bill makes several changes to the outpatient setting accreditation procedure requirements. This bill states that the Legislature intends for the Department of Public Health to include an inspection of a hospital's peer review process as a part of its normal hospital inspections conducted under existing regulations.

**TYPE OF BILL**

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Fiscal  
 Non-Tax Levy

**ATTACHED:**

1) Language

**COMMITTEE POSITION:**

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: SB 100      INTRODUCED  
BILL TEXT

INTRODUCED BY    Senator Price

JANUARY 11, 2011

An act to amend Sections 651 and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1204, 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, 1248.55, and 1279 of, and to add Sections 1204.6, 1204.7, and 1204.8 to, the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 100, as introduced, Price. Healing arts.

(1) Existing law provides for the licensure and regulation of various healing arts practitioners and requires certain of those practitioners to use particular designations following their names in specified instances. Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement, claim, or image to induce the rendering of services or the furnishing of products relating to a professional practice or business for which they are licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would require certain healing arts licensees to include in advertisements, as defined, certain words or designations following their names indicating the particular educational degree they hold or healing art they practice, as specified. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

This bill would require the board to adopt regulations by January 1, 2013, regarding the appropriate level of physician availability needed within clinics or other settings using certain laser or intense pulse light devices for elective cosmetic procedures.

(3) Existing law requires the Medical Board of California to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(4) Under existing law, the State Department of Public Health licenses and regulates clinics, including surgical clinics, as defined.

This bill would expand the definition of surgical clinics to include a surgical clinic owned in whole or in part by a physician and would require, until the department promulgates regulations for the licensing of surgical clinics, the department to use specified federal conditions of coverage.

(5) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform this accreditation, to ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations. Existing law makes a willful violation of these and other provisions relating to outpatient settings a crime.

This bill would include, among those specified aspects, the submission for approval by an accreditation agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery. The bill would also modify the definition of "outpatient setting" to include facilities that offer in vitro fertilization, as defined. By changing the definition of a crime, this bill would impose a state-mandated local program.

Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board, absent inquiry, to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency. The bill would also require the board to give the department notice of all accredited, certified, and licensed outpatient settings and to notify the department of accreditation standards, changes in the accreditation of an outpatient setting, or any disciplinary actions and corrective actions.

Existing law requires accreditation of an outpatient setting to be denied if the setting does not meet specified standards. Existing law authorizes an outpatient setting to reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accreditation agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied. Because a willful violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would also apply the denial of accreditation, or the revocation or suspension of accreditation by one accrediting agency to all other accrediting agencies.

Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California, or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements. The bill would require that every outpatient setting that is accredited be inspected by the accreditation agency, as specified,

and would specify that it may also be inspected by the board and the department, as specified. The bill would require the board to ensure that accreditation agencies inspect outpatient settings.

Existing law authorizes the Medical Board of California to terminate approval of an accreditation agency if the agency is not meeting the criteria set by the board.

This bill would also authorize the board to issue a citation to the agency, including an administrative fine, in accordance with a specified system established by the board.

Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(5) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health and requires the department to periodically inspect those facilities, as specified.

This bill would state the intent of the Legislature that the department, as part of its periodic inspections of acute care hospitals, inspect the peer review process utilized by those hospitals.

(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: no. Fiscal committee: yes.  
State-mandated local program: yes.

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

SECTION 1. (a) It is the intent of the Legislature to clarify Capen v. Shewry (2007) 147 Cal.App.4th 680 and give surgical clinics that are owned in whole or in part by physicians the option to be licensed by the State Department of Public Health. It is further the intent of the Legislature that this clarification shall not be construed to permit the practice of medicine in prohibition of the corporate practice of medicine pursuant to Section 2400 of the Business and Professions Code.

(b) It is the further intent of the Legislature to continue to give physicians and surgeons the option to obtain licensure from the State Department of Public Health if they are operating surgical clinics, or an accreditation through an accrediting agency approved by the Medical Board of California pursuant to Chapter 1.3 (commencing with Section 1248) of Division 2 of the Health and Safety Code.

(c) It is the further intent of the Legislature, in order to ensure patient protection, to provide appropriate oversight by the State Department of Public Health, and to allow corrective action to be taken against an outpatient setting if there is reason to believe that there may be risk to patient safety, health, or welfare, that an outpatient setting shall be deemed licensed by the State Department

of Public Health.

SEC. 2. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

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

(1) Contains a misrepresentation of fact.

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

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

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

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

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

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

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

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

(8) Includes any statement, endorsement, or testimonial that is



likely to mislead or deceive because of a failure to disclose material facts.

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

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

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

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

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

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

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

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

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

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

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

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section

1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

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

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the

full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

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

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

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

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

For purposes of this subparagraph, a "multidisciplinary board or association" means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant's education, training, and experience. For purposes of the term "board certified," as used in this subparagraph, the terms "board" and "association" mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements

approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

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

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

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

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) (1) Advertising by the following licensees shall include the designations as follows:

(A) Advertising by a chiropractor licensed under Chapter 2 (commencing with Section 1000) shall include the designation "DC" or the word "chiropractor" immediately following the chiropractor's name.

(B) Advertising by a dentist licensed under Chapter 4 (commencing with Section 1600) shall include the designation "DDS" or "DMD" immediately following the dentist's name.

(C) Advertising by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) shall include the designation "MD" immediately following the physician and surgeon's name.

(D) Advertising by an osteopathic physician and surgeon certified under Article 21 (commencing with Section 2450) shall include the designation "DO" immediately following the osteopathic physician and surgeon's name.

(E) Advertising by a podiatrist certified under Article 22 (commencing with Section 2460) of Chapter 5 shall include the designation "DPM" immediately following the podiatrist's name.

(F) Advertising by a registered nurse licensed under Chapter 6

(commencing with Section 2700) shall include the designation "RN" immediately following the registered nurse's name.

(G) Advertising by a licensed vocational nurse under Chapter 6.5 (commencing with Section 2840) shall include the designation "LVN" immediately following the licensed vocational nurse's name.

(H) Advertising by a psychologist licensed under Chapter 6.6 (commencing with Section 2900) shall include the designation "Ph.D." immediately following the psychologist's name.

(I) Advertising by an optometrist licensed under Chapter 7 (commencing with Section 3000) shall include the applicable designation or word described in Section 3098 immediately following the optometrist's name.

(J) Advertising by a physician assistant licensed under Chapter 7.7 (commencing with Section 3500) shall include the designation "PA" immediately following the physician assistant's name.

(K) Advertising by a naturopathic doctor licensed under Chapter 8.2 (commencing with Section 3610) shall include the designation "ND" immediately following the naturopathic doctor's name. However, if the naturopathic doctor uses the term or designation "Dr." in an advertisement, he or she shall further identify himself by any of the terms listed in Section 3661.

(2) For purposes of this subdivision, "advertisement" includes communication by means of mail, television, radio, motion picture, newspaper, book, directory, Internet, or other electronic communication.

(3) Advertisements do not include any of the following:

(A) A medical directory released by a health care service plan or a health insurer.

(B) A billing statement from a health care practitioner to a patient.

(C) An appointment reminder from a health care practitioner to a patient.

(4) This subdivision shall not apply until January 1, 2013, to any advertisement that is published annually and prior to July 1, 2012.

(5) This subdivision shall not apply to any advertisement or business card disseminated by a health care service plan that is subject to the requirements of Section 1367.26 of the Health and Safety Code.

~~—(i)—~~

(j) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify

regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

~~—(j)—~~

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

~~—(k)—~~

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

SEC. 3. Section 2023.5 of the Business and Professions Code is amended to read:

2023.5. (a) The board, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, shall review issues and problems surrounding the use of laser or intense light pulse devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants. The review shall include, but need not be limited to, all of the following:

(1) The appropriate level of physician supervision needed.  
(2) The appropriate level of training to ensure competency.  
(3) Guidelines for standardized procedures and protocols that address, at a minimum, all of the following:

(A) Patient selection.  
(B) Patient education, instruction, and informed consent.  
(C) Use of topical agents.  
(D) Procedures to be followed in the event of complications or side effects from the treatment.

(E) Procedures governing emergency and urgent care situations.

(b) On or before January 1, 2009, the board and the Board of Registered Nursing shall promulgate regulations to implement changes determined to be necessary with regard to the use of laser or intense pulse light devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

(c) *On or before January 1, 2013, the board shall adopt regulations regarding the appropriate level of physician availability*

*needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures. However, these regulations shall not apply to laser or intense pulse light devices approved by the federal Food and Drug Administration for over-the-counter use by a health care practitioner or by an unlicensed person on himself or herself.*

*(d) Nothing in this section shall be construed to modify the prohibition against the unlicensed practice of medicine.*

SEC. 4. Section 2027.5 is added to the Business and Professions Code, to read:

2027.5. The board shall post on its Internet Web site an easy-to-understand factsheet to educate the public about cosmetic surgery and procedures, including their risks. Included with the factsheet shall be a comprehensive list of questions for patients to ask their physician and surgeon regarding cosmetic surgery.

SEC. 5. Section 1204 of the Health and Safety Code is amended to read:

1204. Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a) (1) Only the following defined classes of primary care clinics shall be eligible for licensure:

(A) A "community clinic" means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(B) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(2) Nothing in this subdivision shall prohibit a community clinic or a free clinic from providing services to patients whose services are reimbursed by third-party payers, or from entering into managed care contracts for services provided to private or public health plan subscribers, as long as the clinic meets the requirements identified

in subparagraphs (A) and (B). For purposes of this subdivision, any payments made to a community clinic by a third-party payer, including, but not limited to, a health care service plan, shall not constitute a charge to the patient. This paragraph is a clarification of existing law.

(b) The following types of specialty clinics shall be eligible for licensure as specialty clinics pursuant to this chapter:

(1) A "surgical clinic" means a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours , *including a surgical clinic that is owned in whole or in part by a physician* . A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.

(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care to pregnant women who remain less than 24 hours at the facility.

SEC. 6. Section 1204.6 is added to the Health and Safety Code, to read:

1204.6. Until the department promulgates regulations for the licensing of surgical clinics, the department shall use the federal conditions of coverage, as set forth in Subpart C of Part 416 of Title 42 of the Code of Federal Regulations, as those conditions existed on May 18, 2009, as the basis for licensure for facilities licensed pursuant to paragraph (1) of subdivision (b) of Section 1204.

SEC. 7. Section 1204.7 is added to the Health and Safety Code, to read:

1204.7. (a) An outpatient setting, as defined in subdivision (a) of Section 1248, that is accredited by an accrediting agency approved by the Medical Board of California, shall be deemed licensed by the department and shall be required to pay an annual licensing fee as established pursuant to Section 1266.

(b) The department shall have only that authority over outpatient settings specified in Chapter 3.1 (commencing with Section 1248).

(c) The department shall notify the Medical Board of California of any action taken against an outpatient setting and, if licensure of an outpatient setting is revoked or suspended by the department for any reason, then accreditation shall be void by operation of law. Notwithstanding Sections 1241 and 131071, proceedings shall not be required to void the accreditation of an outpatient setting under these circumstances.

SEC. 8. Section 1204.8 is added to the Health and Safety Code, to



read:

1204.8. A clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204 or an outpatient setting, as defined in Section 1248, shall be subject to the reporting requirements in Section 1279.1 and the penalties for failure to report specified in Section 1280.4.

SEC. 9. Section 1248 of the Health and Safety Code is amended to read:

1248. For purposes of this chapter, the following definitions shall apply:

(a) "Division" means the *Medical Board of California*. All references in this chapter to the division, the Division of Licensing of the Medical Board of ~~California~~

*California*, or the Division of Medical Quality shall be deemed to refer to the Medical Board of California pursuant to Section 2002 of the Business and Professions Code.

~~(b) "Division of Medical Quality" means the Division of Medical Quality of the Medical Board of California.~~

~~(c)~~

(b) (1) "Outpatient setting" means any facility, clinic, unlicensed clinic, center, office, or other setting that is not part of a general acute care facility, as defined in Section 1250, and where anesthesia, except local anesthesia or peripheral nerve blocks, or both, is used in compliance with the community standard of practice, in doses that, when administered have the probability of placing a patient at risk for loss of the patient's life-preserving protective reflexes.

(2) "Outpatient setting" also means facilities that offer in vitro fertilization, as defined in subdivision (b) of Section 1374.55.

(3) "Outpatient setting" does not include, among other settings, any setting where anxiolytics and analgesics are administered, when done so in compliance with the community standard of practice, in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes.

~~(d)~~

(c) "Accreditation agency" means a public or private organization that is approved to issue certificates of accreditation to outpatient settings by the ~~division~~ board pursuant to Sections 1248.15 and 1248.4.

SEC. 10. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The ~~division~~ board shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

(i) Have a written transfer agreement with a local accredited or licensed acute care hospital, approved by the facility's medical staff.

(ii) Permit surgery only by a licensee who has admitting privileges at a local accredited or licensed acute care hospital, with the exception that licensees who may be precluded from having admitting privileges by their professional classification or other administrative limitations, shall have a written transfer agreement with licensees who have admitting privileges at local accredited or licensed acute care hospitals.

~~—(iii) Submit~~

(D) *The outpatient setting shall submit for approval by an accrediting agency a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.*

*(E) The outpatient setting shall submit for approval by an accreditation agency at the time accreditation of a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations.*

~~—(D)~~

(F) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body, the Health Care Financing Administration, the State Department of ~~Health Services,~~ *Public Health,* and the appropriate licensing authority.

(3) The outpatient setting shall permit surgery by a dentist acting within his or her scope of practice under Chapter 4 (commencing with Section 1600) of *Division 2 of the Business and Professions Code* or physician and surgeon, osteopathic physician and surgeon, or podiatrist acting within his or her scope of practice under Chapter 5 (commencing with Section 2000) of *Division 2 of the Business and Professions Code* or the Osteopathic Initiative Act. The outpatient setting may, in its discretion, permit anesthesia service by a certified registered nurse anesthetist acting within his or her scope of practice under Article 7 (commencing with Section 2825) of Chapter 6 of *Division 2 of the Business and Professions Code.*

(4) Outpatient settings shall have a system for maintaining clinical records.

(5) Outpatient settings shall have a system for patient care and monitoring procedures.

(6) (A) Outpatient settings shall have a system for quality assessment and improvement.

(B) Members of the medical staff and other practitioners who are

granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

(C) Clinical privileges shall be periodically reappraised by the outpatient setting. The scope of procedures performed in the outpatient setting shall be periodically reviewed and amended as appropriate.

(7) Outpatient settings regulated by this chapter that have multiple service locations governed by the same standards may elect to have all service sites surveyed on any accreditation survey. Organizations that do not elect to have all sites surveyed shall have a sample, not to exceed 20 percent of all service sites, surveyed. The actual sample size shall be determined by the ~~division~~

board. The accreditation agency shall determine the location of the sites to be surveyed. Outpatient settings that have five or fewer sites shall have at least one site surveyed. When an organization that elects to have a sample of sites surveyed is approved for accreditation, all of the organizations' sites shall be automatically accredited.

(8) Outpatient settings shall post the certificate of accreditation in a location readily visible to patients and staff.

(9) Outpatient settings shall post the name and telephone number of the accrediting agency with instructions on the submission of complaints in a location readily visible to patients and staff.

(10) Outpatient settings shall have a written discharge criteria.

(b) Outpatient settings shall have a minimum of two staff persons on the premises, one of whom shall either be a licensed physician and surgeon or a licensed health care professional with current certification in advanced cardiac life support (ACLS), as long as a patient is present who has not been discharged from supervised care. Transfer to an unlicensed setting of a patient who does not meet the discharge criteria adopted pursuant to paragraph (10) of subdivision (a) shall constitute unprofessional conduct.

(c) An accreditation agency may include additional standards in its determination to accredit outpatient settings if these are approved by the ~~division~~ board to protect the public health and safety.

(d) No accreditation standard adopted or approved by the ~~division~~ board, and no standard included in any certification program of any accreditation agency approved by the ~~division~~ board, shall serve to limit the ability of any allied health care practitioner to provide services within his or her full scope of practice. Notwithstanding this or any other provision of law, each outpatient setting may limit the privileges, or determine the privileges, within the appropriate scope of practice, that will be afforded to physicians and allied health care practitioners who practice at the facility, in accordance with credentialing standards established by the outpatient setting in compliance with this chapter. Privileges may not be arbitrarily restricted based on category of licensure.

(e) *The board shall adopt standards that it deems necessary for outpatient settings that offer in vitro fertilization.*

SEC. 11. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation

agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the ~~division~~ board under this chapter.

(b) The board shall submit to the State Department of Public Health the information required pursuant to paragraph (3) of subdivision (d) within 10 days of the accreditation of an outpatient setting.

~~—(b)—~~

(c) The ~~division~~ board shall obtain and maintain a list of all accredited, certified, and licensed outpatient settings from the information provided by the accreditation, certification, and licensing agencies approved by the ~~division~~ board, and shall notify the ~~public, upon inquiry,~~ public whether a setting is accredited, certified, or licensed, or ~~whether~~ the setting's accreditation, certification, or license has been ~~revoked.~~ revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency. The board shall provide notice to the department within 10 days when an outpatient setting's accreditation has been revoked, suspended, or placed on probation. The department shall notify the board within 10 days if the license of a surgical clinic, as defined in paragraph (1) of subdivision (b) of Section 1204, has been revoked.

(d) (1) The board shall, on or before February 1, 2012, provide the department with a list of all outpatient settings that are accredited as of January 1, 2012.

(2) Beginning April 1, 2012, the board shall provide the department with an updated list of outpatient settings every three months.

(3) The list of outpatient settings shall include all of the following:

- (A) Name, address, and telephone number of the owner.
- (B) Name and address of the facility.
- (C) The name and telephone number of the accreditation agency.
- (D) The effective and expiration dates of the accreditation.

(e) The board shall provide the department with all accreditation standards approved by the board, free of charge. Accreditation standards provided to the department by the board shall not be subject to public disclosure provisions of the California Public Records Act (Chapter 3.5 commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

SEC. 12. Section 1248.25 of the Health and Safety Code is amended to read:

1248.25. If an outpatient setting does not meet the standards approved by the ~~division~~ board, accreditation shall be denied by the accreditation agency, which shall provide the outpatient setting notification of the reasons for the denial. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial. The accreditation agency shall immediately report to the board if the outpatient setting's certificate for accreditation has been denied.

SEC. 13. Section 1248.35 of the Health and Safety Code is amended

to read:

1248.35. (a) Every outpatient setting which is accredited shall be inspected by the accreditation agency and may also be inspected by the Medical Board of California. The Medical Board of California shall ensure that accreditation agencies inspect outpatient settings.

(b) Unless otherwise specified, the following requirements apply to inspections described in subdivision (a).

(1) The frequency of inspection shall depend upon the type and complexity of the outpatient setting to be inspected.

(2) Inspections shall be conducted no less often than once every three years by the accreditation agency and as often as necessary by the Medical Board of California to ensure the quality of care provided.

~~—(a)—~~

(3) The ~~Division of~~ Medical Quality Board of California or ~~an~~ the accreditation agency ~~may, upon~~ reasonable prior notice and presentation of proper identification, may enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of this chapter.

~~—(b)—~~

(c) If an accreditation agency determines, as a result of its inspection, that an outpatient setting is not in compliance with the standards under which it was approved, the accreditation agency may do any of the following:

(1) Issue a reprimand.

(2) Place the outpatient setting on probation, during which time the setting shall successfully institute and complete a plan of correction, approved by the ~~division~~ board or the accreditation agency, to correct the deficiencies.

(3) Suspend or revoke the outpatient setting's certification of accreditation.

~~—(c)—~~

(d) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting reasonable time to supply information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient center. During that allotted time, a list of deficiencies and the plan of correction shall be conspicuously posted in a clinic location accessible to public view. Within 10 days after the adoption of the plan of correction, the accrediting agency shall send a list of deficiencies and the corrective action to be taken to both the board and the department.

The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and

an opportunity to be heard.

~~—(d) If the division determines that deficiencies found during an inspection suggests that the accreditation agency does not comply with the standards approved by the division, the division may conduct inspections, as described in this section, of other settings accredited by the accreditation agency to determine if the agency is accrediting settings in accordance with Section 1248.15.~~

(e) The department may enter and inspect an outpatient setting upon receipt of a notice of corrective action or if it has reason to believe that there may be risk to patient safety, health, or welfare.

(f) An outpatient setting that does not comply with a corrective action may be required by the department to pay similar penalties assessed against a surgical clinic licensed pursuant to paragraph (1) of subdivision (b) of Section 1204, and may have its license suspended or revoked pursuant to Article 5 (commencing with Section 1240) of Chapter 1.

(g) If the licensee disputes a determination by the department regarding the alleged deficiency, the alleged failure to correct a deficiency, the reasonableness of the proposed deadline for correction, or the amount of the penalty, the licensee may, within 10 days, request a hearing pursuant to Section 130171. Penalties shall be paid when appeals have been exhausted and the department's position has been upheld.

(h) Moneys collected by the department as a result of administrative penalties imposed under this section shall be deposited into the Internal Departmental Quality Improvement Account established pursuant to Section 1280.15. These moneys shall be tracked and available for expenditure, upon appropriation by the Legislature, to support internal departmental quality improvement activities.

(i) If, after an inspection authorized pursuant to this section, the department finds a violation of a standard of the facility's accrediting agency or any provision of this chapter or the regulations promulgated thereunder, or if the facility fails to pay a licensing fee or an administrative penalty assessed under this chapter, the department may take any action pursuant to Article 5 (commencing with Section 1240) of Chapter 1 and shall report the violation to the board and may recommend that accreditation be revoked, canceled, or not renewed.

(j) Reports on the results of any inspection conducted pursuant to subdivision (a) shall be kept on file with the board or the accreditation agency along with the plan of correction and the outpatient setting comments. The inspection report may include a recommendation for reinspection. All inspection reports, lists of deficiencies, and plans of correction shall be public records open to public inspection.

(k) The accreditation agency shall, within 24 hours, report to the board if the outpatient setting has been issued a reprimand or if the outpatient setting's certification of accreditation has been suspended or revoked or if the outpatient setting has been placed on probation.

(l) If one accrediting agency denies accreditation, or revokes or suspends the accreditation of an outpatient setting, this action shall apply to all other accrediting agencies.

SEC. 14. Section 1248.5 of the Health and Safety Code is amended

to read:

1248.5. The ~~division may~~ board shall evaluate the performance of an approved accreditation agency no less than every three years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the ~~division~~ board.

SEC. 15. Section 1248.55 of the Health and Safety Code is amended to read:

1248.55. (a) If the accreditation agency is not meeting the criteria set by the ~~division,~~ board, the ~~division~~ board may terminate approval of the ~~agency.~~ agency or may issue a citation to the agency in accordance with the system established under subdivision (b).

(b) The board may establish, by regulation, a system for the issuance of a citation to an accreditation agency that is not meeting the criteria set by the board. This system shall meet the requirements of Section 125.9 of the Business and Professions Code, as applicable, except that both of the following shall apply:

(1) Failure of an agency to pay an administrative fine assessed pursuant to a citation within 30 days of the date of the assessment, unless the citation is being appealed, may result in the board's termination of approval of the agency. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the renewal fee established under Section 1248.6. Approval of an agency shall not be renewed without payment of the renewal fee and fine.

(2) Administrative fines collected pursuant to the system shall be deposited in the Outpatient Setting Fund of the Medical Board of California established under Section 1248.6.

~~—(b)—~~

(c) Before terminating approval of an accreditation agency, the ~~division~~ board shall provide the accreditation agency with notice of any deficiencies and reasonable time to supply information demonstrating compliance with the requirements of this chapter, as well as the opportunity for a hearing on the matter in compliance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

~~—(c)—~~

(d) (1) If approval of the accreditation agency is terminated by the ~~division,~~ board, outpatient settings accredited by that agency shall be notified by the ~~division~~ board and, except as provided in paragraph (2), shall be authorized to continue to operate for a period of 12 months in order to seek accreditation through an approved accreditation agency, unless the time is extended by the ~~division~~ board for good cause.

(2) The ~~division~~ board may require that an outpatient setting, that has been accredited by an accreditation agency whose approval has been terminated by the ~~division,~~ board, cease operations immediately ~~in~~ if the ~~event~~

~~that the division~~ board is in possession of information indicating that continued operation poses an imminent risk of harm to the health of an individual. In such cases, the ~~division~~ board shall provide the outpatient setting with notice of its action, the reason underlying it, and a subsequent opportunity for a hearing on the matter. An outpatient setting that is ordered to cease operations under this paragraph may reapply for a certificate of accreditation after six months and shall notify the ~~division~~ board promptly of its reapplication. *The board shall notify the department of any action taken pursuant to this section for an outpatient setting. Upon cancellation, revocation, nonrenewal, or any other loss of accreditation, an outpatient setting's license shall be void by operation of law. Notwithstanding Sections 1241 and 131071, no proceedings shall be required to void the license of an outpatient setting.*

SEC. 16. Section 1279 of the Health and Safety Code is amended to read:

1279. (a) Every health facility for which a license or special permit has been issued shall be periodically inspected by the department, or by another governmental entity under contract with the department. The frequency of inspections shall vary, depending upon the type and complexity of the health facility or special service to be inspected, unless otherwise specified by state or federal law or regulation. The inspection shall include participation by the California Medical Association consistent with the manner in which it participated in inspections, as provided in Section 1282 prior to September 15, 1992.

(b) Except as provided in subdivision (c), inspections shall be conducted no less than once every two years and as often as necessary to ensure the quality of care being provided.

(c) For a health facility specified in subdivision (a), (b), or (f) of Section 1250, inspections shall be conducted no less than once every three years, and as often as necessary to ensure the quality of care being provided.

(d) During the inspection, the representative or representatives shall offer such advice and assistance to the health facility as they deem appropriate.

(e) For acute care hospitals of 100 beds or more, the inspection team shall include at least a physician, registered nurse, and persons experienced in hospital administration and sanitary inspections. During the inspection, the team shall offer advice and assistance to the hospital as it deems appropriate.

(f) The department shall ensure that a periodic inspection conducted pursuant to this section is not announced in advance of the date of inspection. An inspection may be conducted jointly with inspections by entities specified in Section 1282. However, if the department conducts an inspection jointly with an entity specified in Section 1282 that provides notice in advance of the periodic inspection, the department shall conduct an additional periodic inspection that is not announced or noticed to the health facility.

(g) Notwithstanding any other ~~provision~~ of law, the department shall inspect for compliance with provisions of state law and regulations during a state periodic inspection or at the same time as a federal periodic inspection, including, but not limited to, an inspection required under this section. If the department inspects for compliance with state law and regulations at



the same time as a federal periodic inspection, the inspection shall be done consistent with the guidance of the federal Centers for Medicare and Medicaid Services for the federal portion of the inspection.

(h) The department shall emphasize consistency across the state and *in* its district offices when conducting licensing and certification surveys and complaint investigations, including the selection of state or federal enforcement remedies in accordance with Section 1423. The department may issue federal deficiencies and recommend federal enforcement actions in those circumstances where they provide more rigorous enforcement action.

*(i) It is the intent of the Legislature that the department, pursuant to its existing regulations, inspect the peer review process utilized by acute care hospitals as part of its periodic inspection of those hospitals pursuant to this section.*

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

SB 103 – (Liu) – State Government:  
meetings: teleconferencing

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, CA 95815  
 P 916-263.1978 F 916.263.2688 | www.dhcc.ca.gov



<b>Bill Number: SB 103</b>	<b>AUTHOR: Senate Member LIU</b>
<b>SPONSOR:</b>	<b>VERSION: 3/01/11</b>
<b>INTRODUCED: 1/12/11</b>	<b>BILL STATUS : 3/15/11 Set for hearing April 12.</b>
<b>BILL LOCATION: Senate</b>	<b>HISTORY:</b> 3/15 Set for hearing April 12.3/10 Re-referred to Com on G.O.3/1 From committee with author's amendments. Read second time and amended. Re-referred to Com on RLS. 1/13 From printer. May be acted upon on or after February 12. 1/12 Introduced. Read first time. To Com. on RLS for assignment. To print.
<b>AGENDA ITEM: 5.9</b>	
<b>SUBJECT: State government: meetings</b>	

**SUMMARY**

Existing law authorizes a state body to conduct teleconference meetings. This bill would authorize a state body, to the extent practicable, to conduct teleconference meetings. This bill would require, upon the request of a member of a state body, a state body to hold an open or closed meeting by teleconference, unless the chair of the state body determines that it would be more costly to hold the meeting by teleconference than it would be to hold it in person. This bill would require a state body that would specify that a technical failure to provide a live broadcast would not be prohibit the board from meeting and taking actions.

Analysis: This bill authorizes the choice of having a teleconference meeting versus an in person meeting. However the teleconference must adhere to all the requirements or laws.

**TYPE OF BILL**

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Fiscal  
 Non-Tax Levy

**ATTACHED:**

1) Language

**COMMITTEE POSITION:**

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: SB 103      AMENDED  
BILL TEXT

AMENDED IN SENATE    MARCH 1, 2011

INTRODUCED BY    Senator Liu

JANUARY 12, 2011

An act to amend Section 11123 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 103, as amended, Liu. State government: ~~meetings-~~  
~~teleconferencing.~~    meetings.

Existing law authorizes a state body to conduct teleconference meetings.

This bill would ~~urge~~ authorize a state body, to the extent ~~legally or financially possible, practicable,~~ to conduct teleconference meetings.

*This bill would require, upon the request of a member of a state body, a state body to hold an open or closed meeting by teleconference, unless the chair of that state body determines that it would be more costly to hold the meeting by teleconference than it would be to hold it in person.*

*This bill would require a state body that operates an Internet Web Site to provide a supplemental live audio or video broadcast on the Internet Web site of its board meetings that are open to the public, and would specify that a technical failure to provide a live broadcast would not prohibit the board from meeting and taking actions.*

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

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

SECTION 1. The Legislature finds and declares the following:

(a) That teleconferencing is a green technology, allowing organizations to mitigate energy use by dramatically reducing the need to travel.

(b) By communicating over video or telephone, organizations can also substantially reduce their carbon footprint by reducing the need to travel via high-emission methods, such as flying or driving.

(c) Teleconferencing saves money by reducing the number of trips taken annually, and this monetary savings is multiplied by the cost of transportation to and from the airport, the flight, per diem expenses, salary of time lost in traveling, and other incidental expenses of travel.

(d) The amount saved by teleconferencing greatly exceeds the minimal cost of investing and implementing teleconferencing solutions, such as the cost for new equipment, services, and training.

(e) Therefore , it is the intent of the Legislature that state bodies, to the extent possible, conduct teleconference meetings in order to save the environment and save the state money.

SEC. 2. Section 11123 of the Government Code is amended to read:

11123. (a) All meetings of a state body shall be open and public and all persons shall be permitted to attend any meeting of a state body except as otherwise provided in this article.

~~—(b) (1) This article does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and state body. The meeting or proceeding held by teleconference shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including the following:~~

*(b) (1) A state body may, to the extent practicable, hold an open or closed meeting by teleconference for the benefit of the public and the state body.*

*(2) Upon the request of a member of a state body, the state body shall hold an open or closed meeting by teleconference, unless the chair of the state body determines that it would be more costly to hold the meeting by teleconference than it would be to hold it in person.*

*(3) The meeting or proceeding held by teleconference pursuant to this subdivision shall otherwise comply with all applicable requirements or laws relating to a specific type of meeting or proceeding, including all of the following:*

*(A) The teleconferencing meeting shall comply with all requirements of this article applicable to other meetings.*

*(B) The portion of the teleconferenced meeting that is required to be open to the public shall be audible to the public at the location specified in the notice of the meeting.*

*(C) If the state body elects to conduct a meeting or proceeding by teleconference, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the rights of any party or member of the public appearing before the state body. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. The agenda shall provide an opportunity for members of the public to address the state body directly pursuant to Section 11125.7 at each teleconference location.*

*(D) All votes taken during a teleconferenced meeting shall be by rollcall.*

*(E) The portion of the teleconferenced meeting that is closed to the public may not include the consideration of any agenda item being heard pursuant to Section 11125.5.*

*(F) At least one member of the state body shall be physically present at the location specified in the notice of the meeting.*

*(2) For the purposes of this subdivision, "teleconference" means a meeting of a state body, the members of which are at different locations, connected by electronic means, through either audio or both audio and video. This section does not prohibit a state body from providing members of the public with additional locations in which the public may observe or address the state body by electronic means, through either audio or both audio and video.*

~~—(c) A state body shall, to the extent legally or financially possible, conduct teleconference meetings, subject to the requirements set out in subdivision (b).~~

(c) (1) *If a state body operates an Internet Web site, the state body shall, subject to all otherwise applicable requirements of this article, provide a supplemental live audio or video broadcast on its Internet Web site of each of its meetings that are open to the public.*

(2) *If a technical failure prevents the body from providing a live broadcast on its Internet Web site pursuant to this subdivision, that failure shall not constitute a violation of this section if the board exercised reasonable diligence in providing the live broadcast.*

(3) *Failure to provide a live broadcast due to a technical failure shall not prohibit the body from meeting and taking actions as otherwise provided by law.*



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**SB 227 – (Wayland) – Business and professions: licensure**



<b>Bill Number: SB 227</b>	<b>AUTHOR: Senate Member WYLAND</b>
<b>SPONSOR:</b>	<b>VERSION: 02/09/11</b>
<b>INTRODUCED: 2/9/11</b>	<b>BILL STATUS : 2/17/11 Referred to Com. on RLS</b>
<b>BILL LOCATION: Senate</b>	<b>HISTORY:</b> 2/17 Referred to Com. on RLS. 2/10 From printer. May be acted upon on or after March 12. 2/9 Introduced. Read first time. To Com. on RLS. for assignment. To print.
<b>AGENDA ITEM: 5.10</b>	
<b>SUBJECT: Business and professions: licensure</b>	

### SUMMARY

Existing law, under the Business and Professions Code, provides for the regulation and licensure of various professionals. Existing law provides that the term "licentiate," as used in the Business and Professions Code, refers to any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by that code and as specified.

Analysis: This bill would make technical, non-substantive changes to that provision.

### TYPE OF BILL

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Non-Fiscal  
 Non-Tax Levy

### ATTACHED:

1) Language

### COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_



BILL NUMBER: SB 227      INTRODUCED  
BILL TEXT

INTRODUCED BY    Senator Wyland

FEBRUARY 9, 2011

An act to amend Section 23.8 of the Business and Professions Code,  
relating to business and professions.

LEGISLATIVE COUNSEL'S DIGEST

SB 227, as introduced, Wyland. Business and professions:  
licensure.

Existing law, under the Business and Professions Code, provides for the regulation and licensure of various professionals. Existing law provides that the term "licentiate," as used in the Business and Professions Code, refers to any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by that code and as specified.

This bill would make technical, nonsubstantive changes to that provision.

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

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

SECTION 1. Section 23.8 of the Business and Professions Code is amended to read:

23.8. "Licentiate" or "licensee" means any person authorized by a license, certificate, registration, or *any* other means to engage in a business or profession *that is* regulated by this code or referred to in Sections 1000 and 3600.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**SB 231 – (Emmerson) – Regulatory Boards: healing arts**



<b>Bill Number: SB 231</b>	<b>AUTHOR: Senate Member EMMERSON</b>
<b>SPONSOR:</b>	<b>VERSION: 2/9/11</b>
<b>INTRODUCED: 2/9/11</b>	<b>BILL STATUS : 2/17/11 Referred to Com. on RLS</b>
<b>BILL LOCATION: Senate</b>	<b>HISTORY:</b> 2/17 Referred to Com. on RLS. 2/10 From printer. May be acted upon on or after March 12. 2/9 Introduced. Read first time. To Com. on RLS. for assignment. To print.
<b>AGENDA ITEM: 5.11</b>	
<b>SUBJECT: Regulatory boards: healing arts</b>	

### SUMMARY

Existing law creates various regulatory boards within the Department of Consumer Affairs. Existing law authorizes health-related boards to adopt regulations requiring licensees to display their license or registration in the locality in which they are treating patients and to make specified disclosures to patients.

Analysis: This bill would make non-substantive, technical changes to that provision.

### TYPE OF BILL

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Non-Fiscal  
 Non-Tax Levy

### ATTACHED:

1) Language

### COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: SB 231      INTRODUCED  
BILL TEXT

INTRODUCED BY    Senator Emmerson

FEBRUARY 9, 2011

An act to amend Section 104 of the Business and Professions Code,  
relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

SB 231, as introduced, Emmerson. Regulatory boards: healing arts.  
Existing law creates various regulatory boards within the  
Department of Consumer Affairs. Existing law authorizes  
health-related boards to adopt regulations requiring licensees to  
display their license or registration in the locality in which they  
are treating patients and to make specified disclosures to patients.

This bill would make nonsubstantive, technical changes to that  
provision.

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

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

SECTION 1. Section 104 of the Business and Professions Code is  
amended to read:

104. All boards or other regulatory entities within the  
department's jurisdiction that the department determines to be  
~~health-related~~ *health related* may adopt  
regulations to require ~~licensees~~ *a licensee*  
to display ~~their licenses or registrations~~  
*his or her license or registration* in the  
locality in which ~~they are~~ *he or she is*  
treating patients, and to inform patients as to the identity of the  
regulatory agency they may contact if they have any questions or  
complaints regarding the licensee. In complying with this  
requirement, those boards may take into consideration the particular  
settings in which ~~licensees practice~~ *a*  
*licensee practices* , or other circumstances ~~which~~  
*that* may make ~~the~~ displaying  
or providing ~~of~~ information to the consumer  
extremely difficult for the licensee in ~~their~~  
*his or her* particular type of practice.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**SB 399 – (Huff) – Healing Arts: advertising**



<b>Bill Number: SB 399</b>	<b>AUTHOR: Senate Member HUFF</b>
<b>SPONSOR:</b>	<b>VERSION: 2/16/11</b>
<b>INTRODUCED: 2/16/11</b>	<b>BILL STATUS : 2/24/11 Referred to Com. on RLS</b>
<b>BILL LOCATION: Senate</b>	<b>HISTORY:</b> 2/24 Referred to Com. on RLS. 2/17 From printer. May be acted upon on or after March 19. 2/16 Introduced. Read first time. To Com. RLS. for assignment. To print.
<b>AGENDA ITEM: 5.12</b>	
<b>SUBJECT: Healing Arts: advertising</b>	

### SUMMARY

Existing law provides for the licensure and regulation of the practice of various healing arts practitioners by boards under the Department of Consumer Affairs. Existing law makes it unlawful for those practitioners to disseminate a false, fraudulent, misleading, or deceptive statement and defines those terms for its purposes.

Analysis: This bill would make technical, non-substantive changes to those provisions.

### TYPE OF BILL

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Non-Fiscal  
 Non-Tax Levy

### ATTACHED:

1) Language

### COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: SB 399      INTRODUCED  
BILL TEXT

INTRODUCED BY    Senator Huff

FEBRUARY 16, 2011

An act to amend Section 651 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 399, as introduced, Huff. Healing arts: advertising.

Existing law provides for the licensure and regulation of the practice of various healing arts practitioners by boards under the Department of Consumer Affairs. Existing law makes it unlawful for those practitioners to disseminate a false, fraudulent, misleading, or deceptive statement and defines those terms for its purposes.

This bill would make technical, nonsubstantive changes to those provisions.

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

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

SECTION 1. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

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

(1) Contains a misrepresentation of fact.

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

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

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the

fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

(i) For the purposes of this section, a dentist licensed under Chapter 4 (commencing with Section 1600) may not hold himself or herself out as a specialist, or advertise membership in or specialty recognition by an accrediting organization, unless the practitioner has completed a specialty education program approved by the American Dental Association and the Commission on Dental Accreditation, is eligible for examination by a national specialty board recognized by the American Dental Association, or is a diplomate of a national specialty board recognized by the American Dental Association.

(ii) A dentist licensed under Chapter 4 (commencing with Section 1600) shall not represent to the public or advertise accreditation either in a specialty area of practice or by a board not meeting the requirements of clause (i) unless the dentist has attained membership in or otherwise been credentialed by an accrediting organization that is recognized by the board as a bona fide organization for that area of dental practice. In order to be recognized by the board as a bona fide accrediting organization for a specific area of dental practice other than a specialty area of dentistry authorized under clause (i), the organization shall condition membership or credentialing of its members upon all of the following:

(I) Successful completion of a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school and is beyond the dental degree at a graduate or postgraduate level.

(II) Prior didactic training and clinical experience in the specific area of dentistry that is greater than that of other dentists.

(III) Successful completion of oral and written examinations based on psychometric principles.

(iii) Notwithstanding the requirements of clauses (i) and (ii), a dentist who lacks membership in or certification, diplomate status, other similar credentials, or completed advanced training approved as bona fide either by an American Dental Association recognized accrediting organization or by the board, may announce a practice emphasis in any other area of dental practice only if the dentist incorporates in capital letters or some other manner clearly distinguishable from the rest of the announcement, solicitation, or advertisement that he or she is a general dentist.

(iv) A statement of certification by a practitioner licensed under

Chapter 7 (commencing with Section 3000) shall only include a statement that he or she is certified or eligible for certification by a private or public board or parent association recognized by that practitioner's licensing board.

(B) A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she limits his or her practice to specific fields, but shall not include a statement that he or she is certified or eligible for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, unless that board or association is (i) an American Board of Medical Specialties member board, (ii) a board or association with equivalent requirements approved by that physician and surgeon's licensing board, or (iii) a board or association with an Accreditation Council for Graduate Medical Education approved postgraduate training program that provides complete training in that specialty or subspecialty. A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification, unless the physician and surgeon is also licensed under Chapter 4 (commencing with Section 1600) and the use of the term "board certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

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

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

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

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent

association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

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

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

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

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

(8) A statement of publications authored by the practitioner.

(9) A statement of teaching positions currently or formerly held by the practitioner, together with pertinent dates.

(10) A statement of his or her affiliations with hospitals or clinics.

(11) A statement of the charges or fees for services or commodities offered by the practitioner.

(12) A statement that the practitioner regularly accepts installment payments of fees.

(13) Otherwise lawful images of a practitioner, his or her physical facilities, or of a commodity to be advertised.

(14) A statement of the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised.

(15) An advertisement of a registered dispensing optician may

include statements in addition to those specified in paragraphs (1) to (14), inclusive, provided that any statement shall not violate subdivision (a), (b), (c), or (e) or any other section of this code.

(16) A statement, or statements, providing public health information encouraging preventative or corrective care.

(17) Any other item of factual information that is not false, fraudulent, misleading, or likely to deceive.

(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

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

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



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**SB 540 – (Price) – Dentistry**

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, CA 95815  
 P 916-263.1978 F 916.263.2688 | www.dhcc.ca.gov



<b>Bill Number: SB 540</b>	<b>AUTHOR: Senate Member PRICE</b>
<b>SPONSOR:</b>	<b>VERSION: 2/17/11</b>
<b>INTRODUCED: 2/17/11</b>	<b>BILL STATUS: 4/12/11 Set for hearing May 2.</b>
<b>BILL LOCATION: Senate</b>	<b>HISTORY:</b> 2/17 Introduced. Read first time. To Com. on RLS. for assignment. 2/18 From printer. May be acted upon on or after March 20To print. 3/3 Referred to Com. on B., P. & E. D. 4/4 Set for hearing April 25. 4/11 Hearing postponed by committee. 4/12 Set for hearing May 5.
<b>AGENDA ITEM: 5.13</b>	
<b>SUBJECT: Dentistry</b>	

**SUMMARY**

Existing law, until January 1 2012, provides for the Dental Board of California within the Department of Consumer Affairs. Existing law, until January 1, 2012, allows the board, with the approval of the Director of Consumer Affairs, to appoint a person exempt from civil services as the executive officer of the board. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

Analysis: This bill would extend the Dental Board of California until January 1, 2016, and instead specify that the board would be subject to review by the appropriate policy committees of the Legislature.

**TYPE OF BILL**

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Fiscal  
 Non-Tax Levy

**ATTACHED:**

1) Language

**COMMITTEE POSITION:**

**SUPPORT:**\_\_\_\_\_

**OPPOSE:**\_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: SB 540      INTRODUCED  
BILL TEXT

INTRODUCED BY    Senator Price

FEBRUARY 17, 2011

An act to repeal and amend Sections 1601.1 and 1616.5 of the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as introduced, Price. Dentistry.

Existing law, until January 1, 2012, provides for the Dental Board of California within the Department of Consumer Affairs. Existing law, until January 1, 2012, allows the board, with the approval of the Director of Consumer Affairs, to appoint a person exempt from civil service as the executive officer of the board. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

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

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

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

SECTION 1. Section 1601.1 of the Business and Professions Code, as added by Section 3 of Chapter 31 of the Statutes of 2008, is repealed.

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

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

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

~~— (d) This section shall remain in effect only until January 1, 2012, and as of that date, is repealed, unless a later enacted statute that is enacted before January 1, 2012, deletes or extends that date. The repeal of this section renders the board subject to~~

~~the review required by Division 1.2 (commencing with Section 473).~~

SEC. 2. Section 1601.1 of the Business and Professions Code, as added by Section 1 of Chapter 35 of the Statutes of 2008, is amended to read:

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

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

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

(d) This section shall remain in effect only until January 1, ~~2012~~ 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2012~~ 2016, deletes or extends that date. ~~The~~ Notwithstanding any other provision of law, the repeal of this section renders the board subject to ~~the review required by Division 1.2 (commencing with Section 473)~~ review by the appropriate policy committees of the Legislature.

SEC. 3. Section 1616.5 of the Business and Professions Code, as added by Section 5 of Chapter 31 of the Statutes of 2008, is repealed.

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

~~(b) This section shall remain in effect only until January 1, 2012, and as of that date, is repealed, unless a later enacted statute that is enacted before January 1, 2012, deletes or extends that date.~~

SEC. 4. Section 1616.5 of the Business and Professions Code, as amended by Section 3 of Chapter 33 of the Statutes of 2008, is repealed.

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

~~(b) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.~~

SEC. 5. Section 1616.5 of the Business and Professions Code, as



added by Section 2 of Chapter 35 of the Statutes of 2008, is amended to read:

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

(b) This section shall remain in effect only until January 1, ~~2012~~ 2016 , and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2012~~ 2016 , deletes or extends that date.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**SB 544 – (Price) – Healing Arts**



<b>Bill Number: SB 544</b>	<b>AUTHOR: Senate Member PRICE</b>
<b>SPONSOR:</b>	<b>VERSION: 4/14/11</b>
<b>INTRODUCED: 2/17/11</b>	<b>BILL STATUS : 4/14 From committee with author's amendments. Read second time and amended. Re-refer to Com. on B. P &amp; E.D. Set for hearing May 2.</b>
<b>BILL LOCATION: Senate RLS</b>	<b>HISTORY :</b> 2/17 Introduced. Read first time. To Com. on RLS for assignment. To print 2/18 From printer. May be acted upon on or after March 20. 3/3 Referred to Com. on RLS. 3/21 From committee with author's amendments. Read second time and amended. Re-referred to Com on RLS. 3/24 Re-referred to Com. on B.P & E.D. 4/8 Set for hearing April 25. 4/14 From committee with author's amendments. Read second time and amended. Re-refer to Com. on B. P & E.D.
<b>AGENDA ITEM:</b>	
<b>SUBJECT: Healing arts</b>	

### SUMMARY

Existing law, a healing arts licensee, except as specified, may refer a person to any laboratory, pharmacy, clinic, or health care facility, as defined, even if the licensee has a proprietary interest or co-ownership in the laboratory, pharmacy, clinic, or health care facility.

Analysis: This bill would make a technical, non-substantive change to a related provision.

### TYPE OF BILL

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Fiscal  
 Non-Tax Levy

### ATTACHED:

- 1) Language

### COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: SB 544      AMENDED  
BILL TEXT

AMENDED IN SENATE   APRIL 14, 2011  
AMENDED IN SENATE   MARCH 21, 2011

INTRODUCED BY      Senator Price

FEBRUARY 17, 2011

~~An act to add Section 1623 to the Business and Professions Code, relating to dentistry.~~    An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.55, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and Professions Code, and to add section 12529.8 to the Government Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local

governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

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

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

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

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

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

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

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

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

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

Existing law requires the district attorney, city attorney, and

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

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

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

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

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

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

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

The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex

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

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

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

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

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

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

(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

40. (a) Notwithstanding any other provision of law, for purposes of a board investigation, a state agency shall, upon receiving a request in writing from a board for records about a particular licensee, immediately provide to the board all records about a licensee in the custody of the state agency, including, but not limited to, confidential records, medical records, and records related to closed or open investigations.

(b) If a state agency has knowledge that a person it is investigating is licensed by a board, the state agency shall notify the board that it is conducting an investigation against one of its licensees. The notification of investigation to the board shall include the name, address, and, if known, the professional license type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. The state agency shall cooperate with the board in providing any requested information.

(c) A board shall maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by federal or state law.

SEC. 4. Section 42 is added to the Business and Professions Code , to read:

42. Notwithstanding any other provision of law, all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a board shall provide records to the board upon request prior to receiving payment from the board for the cost of providing the records. These records include, but are not limited to, confidential records, medical records, and records related to closed or open investigations.

SEC. 5. Section 44 is added to the Business and Professions Code , to read:

44. (a) A licensee of a board shall not include or permit to be included any of the following provisions in an agreement to settle a civil litigation action filed by a consumer arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(d) If a board complies with Section 2220.7, that board shall not be subject to the requirements of this section.

SEC. 6. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director or his or her designee may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees,

dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by ~~the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine~~ any of the healing arts boards described in Division 2 (commencing with Section 500) . The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both , for their consideration .

(b) The director shall report to the Chairpersons of the Senate Committee on Business ~~and~~ , Professions ~~Committee~~ and Economic Development and the Assembly Committee on Health ~~Committee~~ annually ~~, commencing March 1, 1995,~~ regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

SEC. 7. Section 155 of the Business and Professions Code is amended to read:

155. (a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary to properly ~~to~~ investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Investigators used by any healing arts board, as described in Division 2 (commencing with Section 500), shall not be required to be employees of the Division of Investigation and a healing arts board may contract for investigative services provided by the Department of Justice.

~~—(e)~~

(d) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

SEC. 8. Section 159.5 of the Business and Professions Code is amended to read:

159.5. There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division. There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards described in Section 720.

Except as provided in Section ~~160~~, ~~investigators who have the authority of peace officers,~~ 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in ~~subdivision (a) of Section 160~~ Section 160 of this code and in subdivision ~~(a)~~ (b) of Section 830.3 of the Penal Code, shall be in the division and the personnel shall be appointed by the director.

SEC. 9. Section 505 is added to the Business and Professions Code , to read:

505. (a) Each healing arts board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:

(1) The total number of complaints closed or resolved without discipline, prior to accusation.

(2) The total number of complaints and reports referred for formal investigation.

(3) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(4) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(5) The total number of final licensee disciplinary actions taken, by category.

(6) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(7) The average time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(8) The total number of licensees in diversion or on probation for alcohol or drug abuse, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(9) The total number of probation violation reports and probation revocation filings, and their dispositions.

(10) The total number of petitions for reinstatement, and their dispositions.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the healing arts board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(c) A board that complies with Section 2313 shall not be subject to the requirements of this section.

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall become inoperative on October 1, 2016.

SEC. 10. Section 726 of the Business and Professions Code is amended to read:

726. (a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division ~~—~~ and under any initiative act referred

to in this division ~~and under Chapter 17 (commencing with Section 9000) of Division 3~~ .

(b) For purposes of Division 1.5 (commencing with Section 475), the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board described in this division.

~~—This~~

(c) This section shall not apply to sexual contact between a ~~physician and surgeon~~ licensee and his or her spouse or person in an equivalent domestic relationship when that ~~physician and surgeon~~ licensee provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

SEC. 11. Section 734 is added to the Business and Professions Code , to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 12. Section 735 is added to the Business and Professions Code , to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

SEC. 13. Section 736 is added to the Business and Professions Code , to read:

736. (a) The use or prescribing for or administering to himself or herself of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or conviction of any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or conviction of any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea

of nolo contendere is deemed to be a conviction within the meaning of this section. Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(c) A violation of subdivision (a) is a misdemeanor, and upon conviction shall be punished by a fine of up to ten thousand dollars (\$10,000), or by imprisonment in the county jail of up to six months, or by both that fine and imprisonment.

SEC. 14. Section 737 is added to the Business and Professions Code , to read:

737. It shall be unprofessional conduct for any licensee of a healing arts board to fail to comply with the following:

(a) Furnish information in a timely manner to the healing arts board or the board's investigators or representatives if requested by the board.

(b) Cooperate and participate in any investigation or other regulatory or disciplinary proceeding pending against the licensee. However, this subdivision shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require a licensee to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

SEC. 15. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) ~~A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine shall report either~~ licensee of a healing arts board described in this division shall report any of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or ~~information or of the conviction~~ the charging of a felony, or of the arrest, conviction, or disciplinary action .

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand

dollars (\$5,000) and shall constitute unprofessional conduct

SEC. 16. Section 803 of the Business and Professions Code is amended to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from ~~the Board of Behavioral Sciences or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200))~~ a healing arts board described in this division, has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars (\$30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the ~~agency~~ board that issued the license.

SEC. 17. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the ~~Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board,~~ appropriate healing arts board described in this division and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

SEC. 18. Section 803.6 of the Business and Professions Code is amended to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the ~~Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other appropriate allied health board, as applicable,~~ appropriate healing arts board described in this division where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared

for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the appropriate healing arts board.

SEC. 19. Section 803.7 is added to the Business and Professions Code , to read:

803.7. The Department of Justice shall ensure that subsequent reports and subsequent disposition information authorized to be issued to any board identified in Section 101 are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

SEC. 20. Section 803.8 is added to the Business and Professions Code , to read:

803.8. (a) The office of the Attorney General shall serve, or submit to a healing arts board for service, an accusation within 60 calendar days of receipt from the healing arts board.

(b) The office of the Attorney General shall serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.

(c) The office of the Attorney General shall set a hearing date within three days of receiving a notice of defense, unless the healing arts board gives the office of the Attorney General instruction otherwise.

SEC. 21. Section 822 of the Business and Professions Code is amended to read:

822. If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper , including issuing a limited or restricted license .

The licensing agency shall not reinstate a revoked or suspended certificate or license or lift any restrictions or limitations until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

SEC. 22. Section 857 is added to the Business and Professions Code , to read:

857. (a) Each healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California shall query the federal National Practitioner Data Bank prior to any of the following:

(1) Granting a license to an applicant who is currently residing in another state.

(2) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state.

(3) Granting a petition for reinstatement of a revoked or surrendered license.

(b) Notwithstanding subdivision (a), a healing arts board, the

State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California may query the federal National Practitioner Data Bank prior to issuing any license.

(c) A healing arts board shall charge a fee to cover the actual cost to conduct the queries described in this section.

SEC. 23. Article 16 (commencing with Section 880) is added to Chapter 1 of Division 2 of the Business and Professions Code , to read:

Article 16. Unlicensed Practice

880. (a) (1) It is a public offense, punishable by a fine not to exceed one hundred thousand dollars (\$100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(A) Any person who does not hold a current and valid license to practice a healing art under this division to engage in that practice.

(B) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in this division or to violate any provision of this division.

(2) Subparagraph (A) of paragraph (1) shall not apply to any person who is already being charged with a crime under the specific healing arts licensing provisions for which he or she engaged in unauthorized practice.

(b) Notwithstanding any other provision of law, any person who is licensed under this division, and who supervises the practice of a healing art by any person who does not hold a current and valid license to practice that healing art under this division, is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars (\$100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

SEC. 24. Section 1688 is added to the Business and Professions Code , to read:

1688. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 25. Section 1688.1 is added to the Business and Professions Code , to read:

1688.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.



(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 26. Section 1688.2 is added to the Business and Professions Code , to read:

1688.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 27. Section 1688.3 is added to the Business and Professions Code , to read:

1688.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 28. Section 1688.4 is added to the Business and Professions Code , to read:

1688.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 29. Section 1688.5 is added to the Business and Professions Code , to read:

1688.5. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's

hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 30. Section 1688.6 is added to the Business and Professions Code , to read:

1688.6. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his

or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 31. Section 1947.1 is added to the Business and Professions Code , to read:

1947.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 32. Section 1947.2 is added to the Business and Professions Code , to read:

1947.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be

considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 33. Section 1947.3 is added to the Business and Professions Code , to read:

1947.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the

issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the

qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 34. Section 1947.4 is added to the Business and Professions Code , to read:

1947.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 35. Section 1947.5 is added to the Business and Professions Code , to read:

1947.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 36. Section 1947.6 is added to the Business and Professions Code , to read:

1947.6. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it



impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licensee a copy of the report along with the reasons for the filing of the report and notice advising the licensee of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 37. Section 1947.7 is added to the Business and Professions Code , to read:

1947.7. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described

in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 38. Section 1947.8 is added to the Business and Professions Code , to read:

1947.8. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant

to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 39. Section 2246 of the Business and Professions Code is amended to read:

2246. (a) Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(b) Except as otherwise provided, any proposed decision or decision issued under this article in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1,

or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 40. Section 2533.5 is added to the Business and Professions Code , to read:

2533.5. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 41. Section 2533.6 is added to the Business and Professions Code , to read:

2533.6. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 42. Section 2533.7 is added to the Business and Professions Code , to read:

2533.7. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the

license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 43. Section 2533.8 is added to the Business and Professions Code , to read:

2533.8. (a) Except as otherwise provided, any proposed decision

or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this Section.

SEC. 44. Section 2533.9 is added to the Business and Professions Code , to read:

2533.9. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1,

2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 45. Section 2533.10 is added to the Business and Professions Code , to read:

2533.10. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of

patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 46. Section 2533.11 is added to the Business and Professions Code , to read:

2533.11. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board



shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or

clinic.

SEC. 47. Section 2533.12 is added to the Business and Professions Code , to read:

2533.12. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and

experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licensee a copy of the report along with the reasons for the filing of the report and notice advising the licensee of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 48. Section 2533.13 is added to the

Business and Professions Code , to read:

2533.13. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information including the name and license number in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2533.11 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what

types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 49. Section 2533.14 is added to the Business and Professions Code , to read:

2533.14. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has

been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 50. Section 2570.38 is added to the Business and Professions Code , to read:

2570.38. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 51. Section 2570.39 is added to the Business and Professions Code , to read:

2570.39. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 52. Section 2570.40 is added to the

Business and Professions Code , to read:

2570.40. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction,

including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 53. Section 2570.41 is added to the Business and Professions Code , to read:

2570.41. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 54. Section 2570.42 is added to the Business and Professions Code , to read:

2570.42. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a

misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 55. Section 2570.43 is added to the Business and Professions Code , to read:

2570.43. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the



required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the healing arts board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 56. Section 2570.44 is added to the Business and Professions Code, to read:

2570.44. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the

licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 57. Section 2570.45 is added to the Business and Professions Code , to read:

2570.45. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu

of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the

standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licensee a copy of the report along with the reasons for the filing of the report and notice advising the licensee of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 58. Section 2570.46 is added to the

Business and Professions Code , to read:

2570.46. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2570.44 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 59. Section 2570.47 is added to the Business and Professions Code , to read:

2570.47. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be

received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 60. Section 2608.5 of the Business and Professions Code is repealed.

~~2608.5. Each member of the board, or any licensed physical therapist appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility providing physical therapy care, treatment or services and the physical therapy staff thereof, with respect to the physical therapy care, treatment, services, or facilities provided therein, and may inspect physical therapy patient records with respect to the care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the board to any person other than a physical therapist and shall be subject to the restrictions against disclosure described in Section 2263.~~

SEC. 61. Section 2660.5 of the Business and Professions Code is repealed.

~~2660.5. The board shall deny a physical therapist license or physical therapist assistant approval to an applicant who is required to register pursuant to Section 290 of the Penal Code. This section does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.~~

SEC. 62. Section 2661.8 is added to the Business and Professions Code , to read:

2661.8. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority

to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SE C. 63. Section 2661.9 is added to the Business and Professions Code , to read:

2661.9. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 64. Section 2661.10 is added to the Business and Professions Code , to read:

2661.10. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially

related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 65. Section 2661.11 is added to the Business and Professions Code, to read:

2661.11. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this



section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 66. Section 2661.12 is added to the Business and Professions Code , to read:

2661.12. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 67. Section 2661.13 is added to the Business and Professions Code , to read:

2661.13. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until

proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 68. Section 2661.14 is added to the Business and Professions Code , to read:

2661.14. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the

penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with

a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 69. Section 2661.15 is added to the Business and Professions Code , to read:

2661.15. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description

of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licensee a copy of the report along with the reasons for the filing of the report and notice advising the licensee of his or her right to submit additional

statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 70. Section 2661.16 is added to the

Business and Professions Code , to read:

2661.16. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information including the name and license number in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2661.14 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 71. Section 2661.17 is added to

the Business and Professions Code , to read:

2661.17. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 72. Section 2766 is added to the Business and Professions Code , to read:

2766. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 73. Section 2766.1 is added to the Business and Professions Code , to read:

2766.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 74. Section 2766.2 is added to the Business and Professions Code , to read:

2766.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if



no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 7 5. Section 2766.3 is added to the Business and Professions Code, to read:

2766.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain

any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 76. Section 2766.4 is added to the Business and Professions Code , to read:

2766.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 77. Section 2766.5 is added to the Business and Professions Code , to read:

2766.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types

of documents that belong to or are controlled by a health facility or clinic.

SEC. 78. Section 2766.6 is added to the Business and Professions Code , to read:

2766.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty

of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 79. Section 2766.7 is added to the Business and Professions Code , to read:

2766.7. (a) Unless otherwise provided, on or after July 1, 2013, the board shall post on the Internet the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(1) With regard to the status of every license, whether or not the

licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(2) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(3) Any felony conviction of a licensee reported to the board.

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(5) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(6) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(7) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the healing arts board and shall be adopted by regulation.

(b) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(c) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, nor the city and county of the licensee's address of record.

SEC. 80. Section 2766.8 is added to the Business and Professions Code , to read:

2766.8. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law

judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 81. Section 2879.1 is added to the Business and Professions Code , to read:

2879.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 82. Section 2879.2 is added to the Business and Professions Code , to read:

2879.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 83. Section 2879.3 is added to the Business and Professions Code , to read:

2879.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for



appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 84. Section 2879.4 is added to the Business and Professions Code , to read:

2879.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 85. Section 2879.5 is added to the Business and Professions Code , to read:

2879.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to

Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 86. Section 2879.6 is added to the Business and Professions Code , to read:

2879.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the

practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 87. Section 2879.7 is added to the Business and Professions Code , to read:

2879.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board

together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars

(\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 88. Section 2879.8 is added to the Business and Professions Code , to read:

2879.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2879.7 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 89. Section 2879.10 is added to the Business and Professions Code , to read:

2879.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to

practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 90. Section 2960.1 of the Business and Professions Code is amended to read:

2960.1. (a) Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or

against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 91. Section 2969.1 is added to the Business and Professions Code , to read:

2969.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 92. Section 2969.2 is added to the Business and Professions Code , to read:

2969.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 93. Section 2969.3 is added to the Business and Professions Code , to read:

2969.3. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described



in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 94. Section 2969.4 is added to the Business and Professions Code , to read:

2969.4. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant

to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 95. Section 3112 is added to the Business and Professions Code , to read:

3112. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a certificate of registration has been filed and the registrant has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the certificate of registration has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a certificate of registration has been filed by the board and the registrant has agreed to the revocation or surrender of his or her certificate of registration.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 96. Section 3112.1 is added to the Business and Professions Code , to read:

3112.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a registrant or applicant in lieu of the issuance of an accusation or statement of

issues against that registrant or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a registrant executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 97. Section 3112.2 is added to the Business and Professions Code , to read:

3112.2. (a) The certificate of registration of a registrant shall be suspended automatically during any time that the registrant is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of registration of the registrant has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the registrant in writing of the certificate of registration suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the registrant was convicted was substantially related to the qualifications, functions, or duties of a registrant, the board shall suspend the certificate of registration until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a registrant and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a registrant in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting

aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a registrant may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the registrant so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a registrant. If the conviction of a registrant who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a certificate of registration issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 98. Section 3112.3 is added to the Business and Professions Code , to read:

3112.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the registrant engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the certificate.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 99. Section 3112.4 is added to the Business and Professions Code , to read:

3112.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for

registration in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is registered under this chapter, the board shall promptly revoke the certificate of registration of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the certificate of registration on probation.

(3) The board shall not reinstate or reissue the individual's certificate of registration. The board shall not issue a stay of certificate of registration denial nor place the certificate of registration on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a certificate of registration to an individual who is required to register as a sex offender shall be applicable.

SEC. 100. Section 3112.5 is added to the Business and Professions Code , to read:

3112.5. (a) Notwithstanding any other provision of law making a communication between a registrant and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with

the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a registrant, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the registrant or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from registrants in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the registrant is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a registrant for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The registrant shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 101. Section 3112.6 is added to the Business and Professions Code , to read:

3112.6. (a) (1) Notwithstanding any other provision of law, a registrant who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the registrant is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide

the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A registrant who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the board against a registrant shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a

health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the certificate.

(d) A failure or refusal of a registrant to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her certificate.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a registrant who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 102. Section 3112.7 is added to the Business and Professions Code , to read:

3112.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the registrant.

(2) Any document or exhibits relevant to the suspension or



termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the registrant, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licensee a copy of the report along with the reasons for the filing of the report and notice advising the licensee of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 103. Section 3112.8 is added to the Business and Professions Code, to read:

3112.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or

control regarding every registrant for which the board licenses:

(a) With regard to the status of every registrant, whether or not the registrant or former registrant is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a registrant, whether or not the registrant or former registrant has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a registrant reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a registrant that resulted in the termination or revocation of a registrant's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3112.6 or 805.

(g) Any misdemeanor conviction of a registrant that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 104. Section 3112.9 is added to the Business and Professions Code , to read:

3112.9. (a) Unless otherwise provided, if a registrant possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may

decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the certificate or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a registrant who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a registrant's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a registrant whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the registrant by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 105. Section 3405 is added to the Business and Professions Code , to read:

3405. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her

license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 106. Section 3405.1 is added to the Business and Professions Code , to read:

3405.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 107. Section 3405.2 is added to the Business and Professions Code , to read:

3405.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice

to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 108. Section 3405.3 is added to the Business and Professions Code , to read:

3405.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 109. Section 3405.4 is added to the Business and Professions Code , to read:

3405.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 110. Section 3405.5 is added to the Business and Professions Code , to read:

3405.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney

General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 111. Section 3405.6 is added to the Business and Professions Code , to read:

3405.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this

time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist a board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be



tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, a board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records.

SEC. 112. Section 3405.7 is added to the Business and Professions Code , to read:

3405.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause,

resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licensee a copy of the report along with the reasons for the filing of the report and notice advising the licensee of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 113. Section 3405.8 is added to the

Business and Professions Code , to read:

3405.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3405.6 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 114. Section 3405.9 is added to the Business and Professions Code , to read:

3405.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or

rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 115. Section 3531.1 is added to the Business and Professions Code , to read:

3531.1. (a) The committee may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been

issued.

(b) The committee may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the committee and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 116. Section 3531.2 is added to the Business and Professions Code , to read:

3531.2. (a) Notwithstanding Section 11415.60 of the Government Code, the committee may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable committee's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable committee's Internet Web site.

(e) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed settlement agreements adopted pursuant to this section.

SEC. 117. Section 3531.3 is added to the Business and Professions Code , to read:

3531.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The committee shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The committee shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the committee shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the committee.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the

Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the committee.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the committee when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the committee from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the committee shall not apply to proceedings conducted pursuant to this section.

SEC. 118. Section 3531.4 is added to the

Business and Professions Code , to read:

3531.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this

section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 119. Section 3531.5 is added to the Business and Professions Code , to read:

3531.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the committee shall be subject to the following requirements:

(1) The committee shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the committee shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The committee shall not stay the revocation and place the license on probation.

(3) The committee shall not reinstate or reissue the individual's license. The committee shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 120. Section 3531.6 is added to the Business and Professions Code , to read:

3531.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the committee. Members of the committee, deputies, employees, agents, the office of the Attorney General, and representatives of the committee shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until

proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the committee about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the committee and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the committee or any other federal or state law, regulation, or rule relevant to the practice regulated by the committee, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the committee, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The committee may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the committee to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the committee in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the committee.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 121. Section 3531.7 is added to the Business and Professions Code , to read:

3531.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing



the penalties for failure to comply with this section shall be required to pay to the committee a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the committee within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the committee, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the committee in obtaining the patient's authorization. The committee shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee, shall pay to the committee a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the committee, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the committee a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the committee pursuant to this section shall be deposited into the fund administered by the committee.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the committee.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If the committee complies with Section 1684.1, 2225.5, or 2969, the committee shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 122. Section 3531.8 is added to the

Business and Professions Code , to read:

3531.8. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the committee the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The committee shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the committee of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the committee shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The committee shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The committee shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The committee shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the committee.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 123. Section 3531.9 is added to the Business and Professions Code , to read:

3531.9. Unless otherwise provided, on or after July 1, 2013, the committee shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the committee licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the committee of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the committee.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the committee unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the committee.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3531.7 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the committee and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter,

including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 124. Section 3531.10 is added to the Business and Professions Code , to read:

3531.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The committee shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the committee, in the discretion of the committee. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the

penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) If the committee complies with Section 2310 it shall not be subject to the requirements of this section.

SEC. 125. Section 3665 is added to the Business and Professions Code , to read:

3665. (a) The committee may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The committee may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the committee and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 126. Section 3665.1 is added to the Business and Professions Code , to read:

3665.1. (a) Notwithstanding Section 11415.60 of the Government Code, the committee may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable committee's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable committee's Internet Web site.

(e) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed settlement agreements adopted pursuant to this section.

SEC. 127. Section 3665.2 is added to the Business and Professions Code , to read:

3665.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The committee shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The committee shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge

from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the committee shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the committee.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the committee.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the committee when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 128. Section 3665.3 is added to the Business and Professions Code , to read:

3665.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding

that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 129. Section 3665.4 is added to the Business and Professions Code , to read:

3665.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the committee shall be subject to the following requirements:

(1) The committee shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the committee shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The committee shall not stay the revocation and place the license on probation.

(3) The committee shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be



applicable.

SEC. 130. Section 3665.5 is added to the Business and Professions Code , to read:

3665.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the committee and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the committee or any other federal or state law, regulation, or rule relevant to the practice regulated by the committee, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The committee may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the committee to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or

representatives of the committee.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 131. Section 3665.6 is added to the Business and Professions Code , to read:

3665.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the committee, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the committee in obtaining the patient's authorization. The committee shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee, shall pay to the committee a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the

release of patient records to the committee, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the committee a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the committee pursuant to this section shall be deposited into the fund administered by the committee.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If the committee complies with Section 1684.1, 2225.5, or 2969, the committee shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 132. Section 3665.7 is added to the Business and Professions Code , to read:

3665.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the committee the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The committee shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the committee of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the committee shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known

legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The committee shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The committee shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 133. Section 3665.8 is added to the

Business and Professions Code , to read:

3665.8. Unless otherwise provided, on or after July 1, 2013, the committee shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the committee licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the committee.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3665.8 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and

statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 134. Section 3665.9 is added to the Business and Professions Code , to read:

3665.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The committee shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the committee, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical

disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 135. Section 3769.4 is added to the Business and Professions Code , to read:

3769.4. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 136. Section 3769.5 is added to the Business and Professions Code , to read:

3769.5. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 137. Section 3769.6 is added to the Business and Professions Code , to read:

3769.6. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be



received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 138. Section 3769.7 is added to the Business and Professions Code , to read:

3769.7. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 139. Section 3769.8 is added to the Business and Professions Code , to read:

3769.8. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However,

nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 140. Section 3769.9 is added to the Business and Professions Code , to read:

3769.9. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal

information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 141. Section 3796.10 is added to the Business and Professions Code , to read:

3796.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to

this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 142. Section 4316 is added to the Business and Professions Code , to read:

4316. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 143. Section 4316.1 is added to the Business and Professions Code , to read:

4316.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 144. Section 4316.2 is added to the Business and Professions Code , to read:

4316.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 145. Section 4316.3 is added to the Business and Professions Code , to read:

4316.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact

that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 146. Section 4316.4 is added to the Business and Professions Code , to read:

4316.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in

accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an

individual who is required to register as a sex offender shall be applicable.

SEC. 147. Section 4316.5 is added to the Business and Professions Code , to read:

4316.5. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 148. Section 4316.6 is added to the Business and Professions Code , to read:

4316.6. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that

license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 149. Section 4375 is added to the Business and Professions Code , to read:

4375. (a) It is the intent of the Legislature, through a request in 2012 from the Joint Legislative Audit Committee, that the Bureau



of State Audits conduct a thorough performance audit of the Pharmacists Recovery Program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that pharmacists and intern pharmacists participating in the program are appropriately monitored, and the public is protected from pharmacists and intern pharmacists who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2013. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(b) It is the intent of the Legislature that the audit shall be paid for with funds from the Pharmacy Board Contingent Fund.

SEC. 150. Section 4526 is added to the Business and Professions Code , to read:

4526. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 151. Section 4526.1 is added to the Business and Professions Code , to read:

4526.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 152. Section 4526.2 is added to the Business and Professions Code , to read:

4526.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 153. Section 4526.3 is added to the Business and Professions Code , to read:

4526.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 154. Section 4526.4 is added to the Business and Professions Code , to read:

4526.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender

pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 155. Section 4526.5 is added to the Business and Professions Code , to read:

4526.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested

certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 156. Section 4526.6 is added to the Business and Professions Code , to read:

4526.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the

licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form

prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 157. Section 4526.8 is added to the Business and Professions Code , to read:

4526.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and the license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 4526.6 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal

information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 158. Section 4526.9 is added to the Business and Professions Code , to read:

4526.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to



this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 159. Section 4888 is added to the Business and Professions Code , to read:

4888. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 160. Section 4888.1 is added to the Business and Professions Code , to read:

4888.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 161. Section 4888.2 is added to the Business and Professions Code , to read:

4888.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 162. Section 4888.3 is added to the Business and Professions Code , to read:

4888.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact

that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 163. Section 4888.4 is added to the Business and Professions Code , to read:

4888.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an

individual who is required to register as a sex offender shall be applicable.

SEC. 164. Section 4888.5 is added to the Business and Professions Code , to read:

4888.5. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of

Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licensee a copy of the report along with the reasons for the filing of the report and notice advising the licensee of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 165. Section 4888.6 is added to the

Business and Professions Code , to read:

4888.6. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 166. Section 4888.7 is added to the Business and Professions Code , to read:

4888.7. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 167. Section 4964.1 is added to the Business and Professions Code , to read:

4964.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 168. Section 4964.2 is added to the Business and Professions Code , to read:

4964.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 169. Section 4964.3 is added to the Business and Professions Code , to read:

4964.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.



(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 170. Section 4964.4 is added to the Business and Professions Code , to read:

4964.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 171. Section 4964.55 is added to the Business and Professions Code , to read:

4964.55. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender

pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 172. Section 4964.6 is added to the Business and Professions Code , to read:

4964.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested

certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in

addition to any other authority of the healing arts board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 173. Section 4964.7 is added to the Business and Professions Code , to read:

4964.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the healing arts board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the

filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 174. Section 4964.8 is added to the Business and Professions Code , to read:

4964.8. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the

standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licensee a copy of the report along with the reasons for the filing of the report and notice advising the licensee of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 175. Section 4964.9 is added to the Business and Professions Code , to read:

4964.9. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 4964.7 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 176. Section 4964.10 is added to the Business and Professions Code , to read:

4964.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be

received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 177. Section 4982.26 of the Business and Professions Code is amended to read:

4982.26. (a) The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the license.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or



attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 178. Section 4990.44 is added to the Business and Professions Code , to read:

4990.44. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 179. Section 4990.45 is added to the Business and Professions Code , to read:

4990.45. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 180. Section 4990.46 is added to the Business and Professions Code , to read:

4990.46. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative

Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 181. Section 4990.47 is added to the Business and Professions Code , to read:

4990.47. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an

order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 182. Section 4990.48 is added to the Business and Professions Code , to read:

4990.48. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 183. Section 4990.49 is added to the

Business and Professions Code , to read:

4990.49. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have

access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 184. Section 4990.50 is added to the Business and Professions Code , to read:

4990.50. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars (\$10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars (\$10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure

to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 185. Section 4990.51 is added to the Business and Professions Code , to read:

4990.51. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or

termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licensee involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars (\$100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars (\$50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

SEC. 186. Section 4990.52 is added to the Business and Professions Code , to read:

4990.52. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 4990.50 or 805.

(g) Any misdemeanor conviction of a licensee that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5



(commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 187. Section 4990.53 is added to the Business and Professions Code , to read:

4990.53. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation

imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 188. Section 4992.33 of the Business and Professions Code is amended to read:

4992.33. (a) The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)-(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 189. Section 12529.8 is added to the Government Code, to read:

12529.8. (a) Any healing arts board described in Division 2 (commencing with Section 500) of, the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall assign attorneys to work on location at the licensing unit of the Division of Investigation of the Department

of Consumer Affairs.

(b) The report requirements contained in Section 12529.7 shall apply to any healing arts board that utilizes those provisions for enforcement.

(c) This section shall not apply to any healing arts board listed in subdivision (a) of Section 12529.

SEC. 190. (a) It is the intent of the Legislature that the Department of Consumer Affairs shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees. The Legislature intends the system to be designed as an integrated system to support all business automation requirements of the department's licensing and enforcement functions.

(b) The Legislature also intends the department to enter into contracts for telecommunication, programming, data analysis, data processing, and other services necessary to develop, operate, and maintain the enterprise information technology system.

SEC. 191. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 1623 is added to the Business and Professions Code, to read:~~

~~1623. (a) Notwithstanding any other provision of law, the board may contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person who owes that money to the board, and, for those purposes, may provide to the collection agency the personal information of that person, including his or her birth date, telephone number, and social security number. The contractual agreement shall provide that the collection agency may use or release personal information only as authorized by the contract, and shall provide safeguards to ensure that the personal information is protected from unauthorized disclosure. The contractual agreement shall hold the collection agency liable for the unauthorized use or disclosure of personal information received or collected under this section.~~

~~(b) The board shall not use a collection agency to recover outstanding fees, fines, or cost recovery amounts until the person has exhausted all appeals and the decision is final.~~



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

SB 943 – (Price, Corbett, Emmerson, Hernandez, Negrete McLeod, Walters, and Wyland) – Healing Arts



<b>Bill Number: SB 943</b>	<b>AUTHOR: Senate Member</b>
<b>SPONSOR:</b>	<b>VERSION: 3/31/11</b>
<b>INTRODUCED: 3/31/11</b>	<b>BILL STATUS : 4/12/11 Set for hearing May 2</b>
<b>BILL LOCATION: Sen Business, Professions &amp; Economic Development</b>	<b>HISTORY:</b> 3/31 Introduced. Read first time. To Com. on RLS for assignment. To print. 4/1 From printer. May be acted upon on or after May 1. 4/7 Referred to Com. on B. P. & E.D. 4/12 Set for hearing May 2.
<b>AGENDA ITEM:</b>	
<b>SUBJECT:</b>	

### SUMMARY

Existing law, a healing arts licensee, except as specified, may refer a person to any laboratory, pharmacy, clinic, or health care facility, as defined, even if the licensee has a proprietary interest or co-ownership in the laboratory, pharmacy, clinic, or health care facility.

**Analysis:** This bill would make technical, non-substantive changes related provisions of Business and Professions Code Section 1900-1966.6.

### TYPE OF BILL

Active  
 Non-Urgency  
 Non-Appropriations  
 Majority Vote Required

Non-State-Mandated Local Program  
 Fiscal  
 Non-Tax Levy

### ATTACHED:

1) Language

### COMMITTEE POSITION:

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: SB 943      INTRODUCED  
BILL TEXT

INTRODUCED BY    Committee on Business, Professions and Economic Development (Senators Price (Chair), Corbett, Correa, Emmerson, Hernandez, Negrete McLeod, Vargas, Walters, and Wyland)

MARCH 31, 2011

An act to amend Sections 1916, 1918, 1922, 1927, 1950, 1952, 1955, 1957, 1959, 1961, 1962, 1963, 1966.1, 2736.5, 2836.2, 2936, 4200, 4980.36, 4980.37, 4980.40.5, 4980.42, 4980.43, 4980.45, 4982.25, 4989.54, 4990.38, 4992.3, 4992.36, 4996.13, 4996.24, 4999.12, and 4999.90 of, to add Sections 1902.1, 4999.91, and 4999.455 to, and to repeal Section 1945 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 943, as introduced, Committee on Business, Professions and Economic Development. Healing arts.

Existing law provides for the licensure and regulation of various healing arts licensees by boards within the Department of Consumer Affairs.

(1) Existing law, the Dental Practice Act, provides for the licensure and regulation of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions by the Dental Hygiene Committee of California within the Dental Board of California.

Existing law requires applicants for licensure to provide fingerprint images for submission to governmental agencies, in order to, among other things, establish the identity of the applicant. Existing law requires the committee to submit these fingerprint images to the Department of Justice in order to obtain specified criminal offender record information.

This bill would delete that committee submittal requirement and would require applicants to submit electronic fingerprint images.

Existing law requires the committee to license as a registered dental hygienist in extended functions or a registered dental hygienist in alternative practice a person who meets certain educational, training, and examination requirements.

This bill would additionally require these applicants to complete an application and pay required application fees.

Under existing law, a licensee may have his or her license revoked or suspended, or may be reprimanded or placed on probation by the committee, for conviction of a crime substantially related to the licensee's qualifications, functions, or duties. Existing law authorizes the committee to order a license suspended or revoked or to decline to issue a license if certain procedural events occur.

This bill would additionally authorize the committee to reprimand a licensee or order a license placed on probation.

Under existing law, a licensee or health care facility that fails to comply with a specified request from the committee for a patient's dental hygiene records is subject to a \$250 per day civil penalty

for each day that the records have not been produced, as specified.

This bill would additionally require licensees and health care facilities to comply with a request for a patient's dental records and would make them subject to a civil or administrative penalty or fine up to a maximum of \$250 per day for each day that the records have not been produced, as specified.

(2) Existing law, the Nursing Practice Act, provides for the licensure and regulation of registered nurses by the Board of Registered Nursing.

Existing law requires applicants for licensure as a registered nurse to meet certain educational requirements, to have completed specified courses of instruction, and to not be subject to denial of licensure under specified circumstances. Existing law authorizes applicants who have served on active duty in the medical corps in the United States Armed Forces to submit a record of specified training to the board for evaluation in order to satisfy the courses of instruction requirement. Under existing law, if the applicant satisfies the other general licensure requirements and if the board determines that both education and experience establish competency to practice registered nursing, the applicant shall be granted a license upon passing a certain examination.

This bill would limit that board determination to be based on education only.

(3) Under existing law, the Board of Behavioral Sciences is responsible for the licensure, registration, and regulation of, among others, marriage and family therapists, licensed clinical social workers, and licensed professional clinical counselors.

(A) Existing law, the Marriage and Family Therapist Act, provides for the licensure and regulation of marriage and family therapists and makes a violation of the act a crime. Existing law, with respect to marriage and family therapists and marriage and family therapist interns, requires an applicant to possess a doctoral or master's degree in any of various disciplines, including, but not limited to, marriage, family, and child counseling.

This bill would add couple and family therapy to that list of acceptable disciplines.

Existing law requires that degree to contain a specified number of units of instruction that includes practicum involving direct client contact of a specified number of hours of face-to-face experience counseling individuals, couples, families, or groups and authorizes a portion of those hours to be gained performing client centered advocacy, as defined.

This bill would revise and recast that requirement and would authorize that portion of hours to be gained performing either client centered advocacy or face-to-face experience counseling individuals, couples, families, or groups.

Existing law requires applicants for marriage and family therapy licensure to meet certain experience requirements prior to applying for licensure examinations.

This bill would make revisions to that experience requirement with respect to experience in direct supervisor contact and professional enrichment activities.

Existing law authorizes a licensed professional in private practice meeting certain requirements to supervise or employ no more than a total of 2 individuals registered as either a marriage and family therapist intern or associate clinical social worker.

This bill would authorize such a licensed professional to

supervise or employ no more than a total of 3 individuals and would add clinical counsel interns to that list. Because the bill would change the definition of a crime, it would thereby impose a state-mandated local program.

Under existing law, a marriage and family therapy corporation may employ no more than a total of 2 individuals registered as either a marriage and family therapist intern or associate clinical social worker for each employee. Existing law prohibits the corporation from employing more than 10 individuals registered as either a marriage and family therapist intern or associate clinical social worker.

This bill would authorize the corporation to employ no more than a total of 3 individuals and would add clinical counsel interns to that list. The bill would also authorize the corporation to employ no more than 15 registrants and would include clinical counsel interns.

(B) The Clinical Social Worker Practice Act provides for the licensure and regulation of social workers and makes a violation of the act a crime. Under existing law, qualified members of other professional groups may do work of a psychosocial nature consistent with the standards and ethics of their respective professions.

This bill would specify that licensed professional clinical counselors may do such work.

Existing law authorizes a licensee in private practice meeting certain requirements to supervise or employ no more than a total of 2 individuals registered as either a marriage and family therapist intern or associate clinical social worker.

This bill would authorize that licensed professional to supervise or employ no more than a total of 3 individuals and would add clinical counsel interns to that list.

Under existing law, a licensed clinical social workers' corporation may employ no more than a total of 2 individuals registered as either a marriage and family therapist intern or associate clinical social worker for each employee who has satisfied certain requirements. Existing law prohibits the corporation from employing more than 10 individuals registered as either a marriage and family therapist intern or associate clinical social worker.

This bill would authorize the corporation to employ no more than a total of 3 individuals and would add clinical counsel interns to that list. The bill would also authorize the corporation to employ no more than 15 registrants and would include clinical counsel interns.

By changing the definition of crimes, the bill would impose a state-mandated local program.

(C) Existing law, the Licensed Professional Clinical Counselor Act, provides for the licensure and regulation of professional clinical counselors and makes a violation of the act a crime. Existing law generally authorizes the board to take certain enforcement actions against licensees for a violation of the act.

This bill would authorize the board to deny any application, or to suspend or revoke any license or registration, for specified reasons.

The bill would also authorize a licensee in private practice meeting certain requirements to supervise or employ no more than a total of 3 individuals registered as a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker. The bill would authorize professional clinical counselor corporation to employ no more than a total of 3 individuals



registered as a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker for each employee. The bill would prohibit the corporation from employing more than 15 individuals registered as a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker. Because a violation of these requirements would constitute a crime, the bill would impose a state-mandated local program.

The bill would make other conforming and technical changes, including technical changes to the Psychology Licensing Law and the Pharmacy Law.

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:

SECTION 1. Section 1902.1 is added to the Business and Professions Code, to read:

1902.1. Protection of the public shall be the highest priority for the committee in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

SEC. 2. Section 1916 of the Business and Professions Code is amended to read:

1916. (a) An applicant for licensure under this article shall furnish *electronic* fingerprint images for submission to state and federal criminal justice agencies, including, but not limited to, the Federal Bureau of Investigation, in order to establish the identity of the applicant and for the other purposes described in this section.

~~—(b) The committee shall submit the fingerprint images to the Department of Justice for the purposes of obtaining criminal offender record information regarding state and federal level convictions and arrests, including arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.~~

~~—(c)~~

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate the response to the committee.

~~—(d)~~

(c) The Department of Justice shall provide a response to the committee pursuant to subdivision (p) of Section 11105 of the Penal Code.

~~—(e)~~

(d) The committee shall request from the Department of Justice subsequent arrest notification service, as provided pursuant

to Section 11105.2 of the Penal Code.

~~—(f)—~~

(e) The information obtained as a result of the fingerprinting shall be used in accordance with Section 11105 of the Penal Code, and to determine whether the applicant is subject to denial of licensure pursuant to Division 1.5 (commencing with Section 475) or Section ~~1628.5~~ 1943 .

~~—(g) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.~~

SEC. 3. Section 1918 of the Business and Professions Code is amended to read:

1918. The committee shall license as a registered dental hygienist in extended functions a person who meets all of the following requirements:

(a) Holds a current license as a registered dental hygienist in California.

(b) Completes clinical training approved by the committee in a facility affiliated with a dental school under the direct supervision of the dental school faculty.

(c) Performs satisfactorily on an examination required by the committee.

(d) *Completes an application form and pays all application fees required by the committee.*

SEC. 4. Section 1922 of the Business and Professions Code is amended to read:

1922. The committee shall license as a registered dental hygienist in alternative practice a person who demonstrates satisfactory performance on an examination in California law and ethics required by the committee and who *completes an application form and pays all application fees required by the committee and* meets either of the following requirements:

(a) Holds a current California license as a registered dental hygienist and meets the following requirements:

(1) Has been engaged in the practice of dental hygiene, as defined in Section 1908, as a registered dental hygienist in any setting, including, but not limited to, educational settings and public health settings, for a minimum of 2,000 hours during the immediately preceding 36 months.

(2) Has successfully completed a bachelor's degree or its equivalent from a college or institution of higher education that is accredited by a national *or regional accrediting* agency recognized by ~~the Council on Postsecondary Accreditation or~~ the United States Department of Education, and a minimum of 150 hours of additional educational requirements, as prescribed by the committee by regulation, that are consistent with good dental and dental hygiene practice, including, but not necessarily limited to, dental hygiene technique and theory including gerontology and medical emergencies, and business administration and practice management.

(b) Has received a letter of acceptance into the employment utilization phase of the Health Manpower Pilot Project No. 155 established by the Office of Statewide Health Planning and Development pursuant to Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 of the Health and Safety Code.

SEC. 5. Section 1927 of the Business and Professions Code is amended to read:

1927. A registered dental hygienist in alternative practice shall not do any of the following:

(a) Infer, purport, advertise, or imply that he or she is in any way able to provide dental services or make any type of dental ~~health~~ diagnosis beyond evaluating a patient's dental hygiene status, providing a dental hygiene treatment plan, and providing the associated dental hygiene services.

(b) Hire a registered dental hygienist to provide direct patient services other than a registered dental hygienist in alternative practice.

SEC. 6. Section 1945 of the Business and Professions Code is repealed.

~~1945. On July 1, 2009, a percentage of the funds in the State Dental Auxiliary Fund shall be transferred to the State Dental Hygiene Fund based on the number of registered dental hygienists, registered hygienists in alternative practice, and registered dental hygienists in extended functions licensed on June 30, 2009, compared to all dental auxiliaries licensed by the Committee on Dental Auxiliaries on June 30, 2009. The board's authority to expend those funds, as appropriated in the 2008 Budget Act, shall be vested in the committee to carry out the provisions of this chapter as they relate to dental hygienists for the 2008-09 fiscal year, including the payment of any encumbrances related to dental hygienists, dental hygienists in alternative practice, and dental hygienists in extended functions incurred by the State Dental Auxiliary Fund. The remainder of the funds in the State Dental Auxiliary Fund shall be transferred to the State Dental Assistant Fund pursuant to Section 1721.5.~~

SEC. 7. Section 1950 of the Business and Professions Code is amended to read:

1950. (a) A licensee may have his or her license revoked or suspended, or may be reprimanded or placed on probation by the committee, for conviction of a crime substantially related to the licensee's qualifications, functions, or duties. The record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction occurred shall be conclusive evidence of conviction.

(b) The committee shall undertake proceedings under this section upon the receipt of a certified copy of the record of conviction. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any misdemeanor substantially related to the licensee's qualifications, functions, or duties is deemed to be a conviction within the meaning of this section.

(c) The committee may *reprimand a licensee or order a license suspended or revoked, or placed on probation* or may decline to issue a license, when any of the following occur:

(1) The time for appeal has elapsed.

(2) The judgment of conviction has been affirmed on appeal.

(3) An order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under any provision of the Penal Code, including, but not limited to, Section 1203.4 of the Penal Code, allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

SEC. 8. Section 1952 of the Business and Professions Code is

amended to read:

1952. It is unprofessional conduct for a person licensed under this article to do any of the following:

(a) Obtain or possess in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist, a controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

(b) Use a controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or a dangerous drug as defined in Section 4022, or alcoholic beverages or other intoxicating substances, to an extent or in a manner dangerous or injurious to himself or herself, to any person, or the public to the extent that the use impairs the licensee's ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a charge of violating any federal statute or rules, or any statute or rule of this state, regulating controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug, as defined in Section 4022, or be convicted of more than one misdemeanor, or any felony, involving the use or consumption of alcohol or drugs, if the conviction is substantially related to the practice authorized by his or her license. ~~The record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of a violation of this section. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section; the committee may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under any provision of the Penal Code, including, but not limited to, Section 1203.4 of the Penal Code, allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.~~

*(1) The record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction is had, shall be conclusive evidence of a violation of this section. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.*

*(2) The committee may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under any provision of the Penal Code, including, but not limited to, Section 1203.4 of the Penal Code, allowing a person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.*

SEC. 9. Section 1955 of the Business and Professions Code is amended to read:

1955. (a) (1) A licensee who fails or refuses to comply with a request for a patient's dental or dental hygiene records

that is accompanied by that patient's written authorization for release of the records to the committee, within 15 days of receiving the request and authorization, shall pay to the committee a civil *or administrative penalty or fine up to a maximum* of two hundred fifty dollars (\$250) per day for each day that the documents have not been produced after the 15th day, up to a maximum of five thousand dollars (\$5,000) unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the *dental or dental hygiene* records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's dental hygiene records to the committee within 30 days of receiving this request, authorization, and notice shall subject the health care facility to a civil *or administrative penalty or fine* , payable to the committee, of up to *a maximum of two* hundred fifty dollars (\$250) per day for each day that the documents have not been produced after the 30th day, up to a maximum of five thousand dollars (\$5,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the committee in obtaining the patient's authorization. The committee shall pay the reasonable cost of copying the dental hygiene records.

(b) (1) A licensee who fails or refuses to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the committee shall pay to the committee a civil penalty of one thousand dollars (\$1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) A licensee who fails or refuses to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars (\$5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order issued in the enforcement of a subpoena mandating the release of patient records to the committee, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the committee a civil penalty of up to one thousand dollars (\$1,000) per day for each day that the documents have not been produced, up to ten thousand dollars (\$10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of

compliance with the court order and during any related appeals.

(4) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars (\$5,000). Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars (\$5,000) and shall be reported to the State Department of Public Health and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or ~~certificate~~ permit .

(d) A failure or refusal to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the committee constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil or administrative penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code).

(f) For the purposes of this section, a "health care facility" means a clinic or health care facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

SEC. 10. Section 1957 of the Business and Professions Code is amended to read:

1957. (a) A person whose license has been revoked or suspended, who has been placed on probation, or whose license was surrendered pursuant to a stipulated settlement as a condition to avoid a disciplinary administrative hearing, may petition the committee for reinstatement or modification of the penalty, including modification or termination of probation, after a period of not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(1) At least three years for reinstatement of a license revoked for unprofessional conduct or surrendered pursuant to a stipulated settlement as a condition to avoid an administrative disciplinary hearing.

(2) At least two years for early termination, or modification of a condition, of a probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination, or modification of a condition, of a probation of less than three years.

(b) The petition shall state any fact required by the committee.

(c) The petition may be heard by the committee, or the committee may assign the petition to an administrative law judge designated in Section 11371 of the Government Code.

(d) In considering reinstatement or modification or penalty, the committee or the administrative law judge hearing the petition may

consider the following:

(1) All activities of the petitioner since the disciplinary action was taken.

(2) The offense for which the petitioner was disciplined.

(3) The petitioner's activities during the time the license ~~, certificate,~~ or permit was in good standing.

(4) The petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(e) The hearing may be continued from time to time as the committee or the administrative law judge as designated in Section 11371 of the Government Code finds necessary.

(f) The committee or the administrative law judge may impose necessary terms and conditions on the licentiate in reinstating a license ~~, certificate,~~ or permit or modifying a penalty.

(g) A petition shall not be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole.

(h) A petition shall not be considered while there is an accusation or petition to revoke probation pending against the person.

(i) The committee may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section. Nothing in this section shall be deemed to alter Sections 822 and 823.

SEC. 11. Section 1959 of the Business and Professions Code is amended to read:

1959. A person who holds a valid, unrevoked, and unsuspended ~~certificate~~ license as a registered dental hygienist, registered dental hygienist in alternative practice, or registered dental hygienist in extended functions under this article may append the letters "R.D.H.," "R.D.H.A.P.," or ~~"R.D.H.E.F."~~ "R.D.H.E.F.," respectively, to his or her name.

SEC. 12. Section 1961 of the Business and Professions Code is amended to read:

1961. A person who willfully, under circumstances that cause risk of bodily harm, serious physical or mental illness, or death, practices, attempts to practice, advertises, or holds himself or herself out as practicing dental hygiene without having at the time of so doing a valid, unrevoked, and unsuspended license as provided in this ~~chapter~~ article, is guilty of a crime, punishable by imprisonment in a county jail for up to one year. The remedy provided in this section shall not preclude any other remedy provided by law.

SEC. 13. Section 1962 of the Business and Professions Code is amended to read:

1962. (a) An association, partnership, corporation, or group of three or more registered dental hygienists in alternative practice engaging in practice under a name that would otherwise be in violation of Section 1960 may practice under that name if the association, partnership, corporation, or group holds an unexpired, unsuspended, and unrevoked permit issued by the committee under this section.

(b) An individual registered dental hygienist in alternative practice or a pair of registered dental hygienists in alternative

practice who practice dental hygiene under a name that would otherwise violate Section 1960 may practice under that name if the licensees hold a valid permit issued by the committee under this section. The committee shall issue a written permit authorizing the holder to use a name specified in the permit in connection with the holder's practice if the committee finds all of the following:

(1) The applicant or applicants are duly licensed registered dental hygienists in alternative practice.

(2) The place where the applicant or applicants practice is owned or leased by the applicant or applicants, and the practice conducted at the place is wholly owned and entirely controlled by the applicant or applicants and is an approved area or practice setting pursuant to Section 1926.

(3) The name under which the applicant or applicants propose to operate contains at least one of the following designations: "dental hygiene group," "dental hygiene practice," or "dental hygiene office," contains the family name of one or more of the past, present, or prospective associates, partners, shareholders, or members of the group, and is in conformity with Section 651 and not in violation of subdivisions (i) and (l) of Section ~~1680~~ 1950.5 .

(4) All licensed persons practicing at the location designated in the application hold valid licenses and no charges of unprofessional conduct are pending against any person practicing at that location.

(c) A permit issued under this section shall expire and become invalid unless renewed in the manner provided for in this article for the renewal of ~~certificates~~ permits issued under this article.

(d) A permit issued under this section may be revoked or suspended if the committee finds that any requirement for original issuance of a permit is no longer being fulfilled by the permitholder. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

(e) If charges of unprofessional conduct are filed against the holder of a permit issued under this section, or a member of an association, partnership, group, or corporation to whom a permit has been issued under this section, proceedings shall not be commenced for revocation or suspension of the permit until a final determination of the charges of unprofessional conduct, unless the charges have resulted in revocation or suspension of a license.

SEC. 14. Section 1963 of the Business and Professions Code is amended to read:

1963. The committee may ~~prefer~~ file a complaint for violation of any part of this article ~~before~~ with any court of competent jurisdiction and may, by its officers, counsel and agents, assist in presenting the law or facts at the trial. The district attorney of each county in this state shall prosecute all violations of this article in their respective counties in which the violations occur.

SEC. 15. Section 1966.1 of the Business and Professions Code is amended to read:

1966.1. (a) The committee shall establish criteria for the acceptance, denial, or termination of licensees in a diversion program. Unless ordered by the committee as a condition of a licensee's disciplinary probation, only those licensees who have voluntarily requested diversion treatment and supervision by a diversion evaluation committee shall participate in a diversion program.



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

(c) A licensee under current investigation by the committee may also request entry into a diversion program by contacting the committee. The committee may refer the licensee requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licensee to enter into the diversion program, the committee may require the licensee, while under current investigation for any violations of this article or other violations, to execute a statement of understanding that states that the licensee understands that his or her violations of this article or other statutes, that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licensee are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section ~~1681~~ 1951, or the illegal

possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the committee shall close the investigation without further action if the licensee is accepted into the committee's diversion program and successfully completes the requirements of the program. If the licensee withdraws or is terminated from the program by a diversion evaluation committee, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the committee.

(e) Neither acceptance nor participation in the diversion program shall preclude the committee from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licensee for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All licensees shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licensee presents a threat to the public's health and safety shall result in the utilization by the committee of diversion treatment records in disciplinary or criminal proceedings.

(g) Any licensee terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the committee for acts committed before, during, and after participation in the diversion program. A licensee who has been under investigation by the committee and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the committee.

SEC. 16. Section 2736.5 of the Business and Professions Code is amended to read:

2736.5. (a) Any person who has served on active duty in the medical corps of any of the armed forces of the United States and who has successfully completed the course of instruction required to qualify him for rating as a medical service technician--independent duty, or other equivalent rating in his particular branch of the armed forces, and whose service in the armed forces has been under honorable conditions, may submit the record of such training to the

board for evaluation.

(b) If such person meets the qualifications of paragraphs (1) and (3) of subdivision (a) of Section 2736, and if the board determines that his education ~~and experience~~ would give reasonable assurance of competence to practice as a registered nurse in this state, he shall be granted a license upon passing the standard examination for such licensure.

(c) The board shall, by regulation, establish criteria for evaluating the education ~~and experience~~ of applicants under this section.

(d) The board shall maintain records of the following categories of applicants under this section:

(1) Applicants who are rejected for examination, and the areas of such applicants' preparation which are the causes of rejection.

(2) Applicants who are qualified by their military education ~~and experience~~ alone to take the examination, and the results of their examinations.

(3) Applicants who are qualified to take the examination by their military education ~~and experience~~ plus supplementary education, and the results of their examinations.

(e) The board shall attempt to contact by mail or other means individuals meeting the requirements of subdivision (a) who have been or will be discharged or separated from the armed forces of the United States, in order to inform them of the application procedure provided by this section. The board may enter into an agreement with the federal government in order to secure the names and addresses of such individuals.

SEC. 17. Section 2836.2 of the Business and Professions Code is amended to read:

2836.2. Furnishing or ordering of drugs or devices by nurse practitioners is defined to mean the act of making a pharmaceutical agent or agents available to the patient in strict accordance with a standardized procedure. All nurse practitioners who are authorized pursuant to Section ~~2831.1~~ 2836.1 to furnish or issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration.

SEC. 18. Section 2936 of the Business and Professions Code is amended to read:

2936. The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology. The board shall establish as its standards of ethical conduct relating to the practice of psychology, the "Ethical Principles and Code of Conduct" published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location in their principal psychological business office, a notice which reads as follows:

"NOTICE TO CONSUMERS: The Department of Consumer Affairs' Board of Psychology receives and responds to questions and complaints regarding the practice of psychology. If you have questions or complaints, you may contact the board on the Internet at

www.psychboard.ca.gov, by calling 1-866-503-3221, or by writing to the following address:

Board of Psychology

~~1422 Howe Avenue, Suite 22~~

~~Sacramento, California 95825-3236"~~

2005 Evergreen Street, Suite 1400

Sacramento, California 95815-3894"

SEC. 19. Section 4200 of the Business and Professions Code is amended to read:

4200. (a) The board may license as a pharmacist an applicant who meets all the following requirements:

(1) Is at least 18 years of age.

(2) (A) Has graduated from a college of pharmacy or department of pharmacy of a university recognized by the board; or

(B) If the applicant graduated from a foreign pharmacy school, the foreign-educated applicant has been certified by the Foreign Pharmacy Graduate Examination Committee.

(3) Has completed at least 150 semester units of collegiate study in the United States, or the equivalent thereof in a foreign country. No less than 90 of those semester units shall have been completed while in resident attendance at a school or college of pharmacy.

(4) Has earned at least a baccalaureate degree in a course of study devoted to the practice of pharmacy.

(5) Has completed 1,500 hours of pharmacy practice experience or the equivalent in accordance with Section 4209.

(6) Has ~~passed a written and practical examination given by the board prior to December 31, 2003, or has~~ passed the North American Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists on or after January 1, 2004.

(b) Proof of the qualifications of an applicant for licensure as a pharmacist shall be made to the satisfaction of the board and shall be substantiated by affidavits or other evidence as may be required by the board.

(c) Each person, upon application for licensure as a pharmacist under this chapter, shall pay to the executive officer of the board the fees provided by this chapter. The fees shall be compensation to the board for investigation or examination of the applicant.

SEC. 20. Section 4980.36 of the Business and Professions Code is amended to read:

4980.36. (a) This section shall apply to the following:

(1) Applicants for licensure or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

(2) Applicants for licensure or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

(3) Applicants for licensure or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree meeting the requirements of this section in marriage, family, and child counseling, marriage and family therapy, *couple and family therapy*, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage

and family therapy, obtained from a school, college, or university approved by the Bureau for Private Postsecondary ~~and Vocational~~ Education or accredited by either the Commission on the Accreditation of Marriage and Family Therapy Education or a regional accrediting agency recognized by the United States Department of Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval.

(c) A doctor's or master's degree program that qualifies for licensure or registration shall do the following:

(1) Integrate all of the following throughout its curriculum:

(A) Marriage and family therapy principles.

(B) The principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments, among others.

(C) An understanding of various cultures and the social and psychological implications of socioeconomic position, and an understanding of how poverty and social stress impact an individual's mental health and recovery.

(2) Allow for innovation and individuality in the education of marriage and family therapists.

(3) Encourage students to develop the personal qualities that are intimately related to effective practice, including, but not limited to, integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(4) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(5) Provide students with the opportunity to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(d) The degree described in subdivision (b) shall contain no less than 60 semester or 90 quarter units of instruction that includes, but is not limited to, the following requirements:

(1) Both of the following:

(A) No less than 12 semester or 18 quarter units of coursework in theories, principles, and methods of a variety of psychotherapeutic orientations directly related to marriage and family therapy and marital and family systems approaches to treatment and how these theories can be applied therapeutically with individuals, couples, families, adults, including elder adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships.

(B) Practicum that involves direct client contact, as follows:

(i) A minimum of six semester or nine quarter units of practicum in a supervised clinical placement that provides supervised fieldwork experience.

(ii) A minimum of ~~225~~ 150 hours of face-to-face experience counseling individuals, couples, families, or groups. ~~Up to 75 of those hours may be gained performing client centered advocacy, as defined in Section 4980.03.~~

(iii) A student must be enrolled in a practicum course while counseling clients.

(iv) The practicum shall provide training in all of the following areas:

(I) Applied use of theory and psychotherapeutic techniques.

(II) Assessment, diagnosis, and prognosis.

(III) Treatment of individuals and premarital, couple, family, and child relationships, including trauma and abuse, dysfunctions, healthy functioning, health promotion, illness prevention, and working with families.

(IV) Professional writing, including documentation of services, treatment plans, and progress notes.

(V) How to connect people with resources that deliver the quality of services and support needed in the community.

(v) Educational institutions are encouraged to design the practicum required by this subparagraph to include marriage and family therapy experience in low-income and multicultural mental health settings.

(vi) *In addition to the 150 hours required in clause (ii), 75 hours of either of the following:*

*(I) Client-centered advocacy, as defined in Section 4980.03.*

*(II) Face-to-face experience counseling individuals, couples, families, or groups.*

(2) Instruction in all of the following:

(A) Diagnosis, assessment, prognosis, and treatment of mental disorders, including severe mental disorders, evidence-based practices, psychological testing, psychopharmacology, and promising mental health practices that are evaluated in peer reviewed literature.

(B) Developmental issues from infancy to old age, including instruction in all of the following areas:

(i) The effects of developmental issues on individuals, couples, and family relationships.

(ii) The psychological, psychotherapeutic, and health implications of developmental issues and their effects.

(iii) Aging and its biological, social, cognitive, and psychological aspects.

(iv) A variety of cultural understandings of human development.

(v) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.

(vi) The understanding of human behavior within the social context of a representative variety of the cultures found within California.

(vii) The understanding of the impact that personal and social insecurity, social stress, low educational levels, inadequate housing, and malnutrition have on human development.

(C) The broad range of matters and life events that may arise within marriage and family relationships and within a variety of California cultures, including instruction in all of the following:

(i) Child and adult abuse assessment and reporting.

(ii) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(iii) Cultural factors relevant to abuse of partners and family members.

(iv) Childbirth, child rearing, parenting, and stepparenting.

(v) Marriage, divorce, and blended families.

(vi) Long-term care.

(vii) End of life and grief.

(viii) Poverty and deprivation.

(ix) Financial and social stress.

(x) Effects of trauma.

(xi) The psychological, psychotherapeutic, community, and health implications of the matters and life events described in clauses (i) to (x), inclusive.

(D) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.

(E) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability, and their incorporation into the psychotherapeutic process.

(F) The effects of socioeconomic status on treatment and available resources.

(G) Resilience, including the personal and community qualities that enable persons to cope with adversity, trauma, tragedy, threats, or other stresses.

(H) Human sexuality, including the study of physiological, psychological, and social cultural variables associated with sexual behavior and gender identity, and the assessment and treatment of psychosexual dysfunction.

(I) Substance use disorders, co-occurring disorders, and addiction, including, but not limited to, instruction in all of the following:

(i) The definition of substance use disorders, co-occurring disorders, and addiction. For purposes of this subparagraph, "co-occurring disorders" means a mental illness and substance abuse diagnosis occurring simultaneously in an individual.

(ii) Medical aspects of substance use disorders and co-occurring disorders.

(iii) The effects of psychoactive drug use.

(iv) Current theories of the etiology of substance abuse and addiction.

(v) The role of persons and systems that support or compound substance abuse and addiction.

(vi) Major approaches to identification, evaluation, and treatment of substance use disorders, co-occurring disorders, and addiction, including, but not limited to, best practices.

(vii) Legal aspects of substance abuse.

(viii) Populations at risk with regard to substance use disorders and co-occurring disorders.

(ix) Community resources offering screening, assessment, treatment, and followup for the affected person and family.

(x) Recognition of substance use disorders, co-occurring disorders, and addiction, and appropriate referral.

(xi) The prevention of substance use disorders and addiction.

(J) California law and professional ethics for marriage and family therapists, including instruction in all of the following areas of study:

(i) Contemporary professional ethics and statutory, regulatory, and decisional laws that delineate the scope of practice of marriage and family therapy.

(ii) The therapeutic, clinical, and practical considerations involved in the legal and ethical practice of marriage and family therapy, including, but not limited to, family law.

(iii) The current legal patterns and trends in the mental health professions.

(iv) The psychotherapist-patient privilege, confidentiality, the

patient dangerous to self or others, and the treatment of minors with and without parental consent.

(v) A recognition and exploration of the relationship between a practitioner's sense of self and human values and his or her professional behavior and ethics.

(vi) Differences in legal and ethical standards for different types of work settings.

(vii) Licensing law and licensing process.

(e) The degree described in subdivision (b) shall, in addition to meeting the requirements of subdivision (d), include instruction in case management, systems of care for the severely mentally ill, public and private services and supports available for the severely mentally ill, community resources for persons with mental illness and for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill, and collaborative treatment. This instruction may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

(f) The changes made to law by this section are intended to improve the educational qualifications for licensure in order to better prepare future licentiates for practice, and are not intended to expand or restrict the scope of practice for marriage and family therapists.

SEC. 21. Section 4980.37 of the Business and Professions Code is amended to read:

4980.37. (a) This section shall apply to applicants for licensure or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4980.36.

(b) To qualify for a license or registration, applicants shall possess a doctor's or master's degree in marriage, family, and child counseling, marriage and family therapy, *couple and family therapy*, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by a regional accrediting agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary ~~and Vocational~~ Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. In order to qualify for licensure pursuant to this section, a doctor's or master's degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. This instruction shall include no less than 12 semester units or 18 quarter units of coursework in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment. The coursework shall include all of the following areas:

(1) The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.

(2) Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.

(3) Developmental issues and life events from infancy to old age

and their effect on individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families, stepparenting, abuse and neglect of older and dependent adults, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(c) (1) In addition to the 12 semester or 18 quarter units of coursework specified in subdivision (b), the doctor's or master's degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic technique, assessments, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(d) As an alternative to meeting the qualifications specified in subdivision (b), the board shall accept as equivalent degrees those master's or doctor's degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(e) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage and family therapists, a degree program that meets the educational qualifications for licensure or registration under this section shall do all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.

(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(7) Prepare students to be familiar with cross-cultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California's population, including,



but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(f) Educational institutions are encouraged to design the practicum required by this section to include marriage and family therapy experience in low-income and multicultural mental health settings.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 22. Section 4980.40.5 of the Business and Professions Code is amended to read:

4980.40.5. (a) A doctoral or master's degree in marriage, family, and child counseling, marital and family therapy, *couple and family therapy*, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling, or marriage and family therapy, obtained from a school, college, or university approved by the Bureau for Private Postsecondary ~~and Vocational~~ Education as of June 30, 2007, shall be considered by the board to meet the requirements necessary for licensure as a marriage and family therapist and for registration as a marriage and family therapist intern provided that the degree is conferred on or before July 1, 2010.

(b) As an alternative to meeting the qualifications specified in subdivision (a) of Section 4980.40, the board shall accept as equivalent degrees those doctoral or master's degrees that otherwise meet the requirements of this chapter and are conferred by educational institutions accredited by any of the following associations:

- (1) Northwest Commission on Colleges and Universities.
- (2) Middle States Association of Colleges and Secondary Schools.
- (3) New England Association of Schools and Colleges.
- (4) North Central Association of Colleges and Secondary Schools.
- (5) Southern Association of Colleges and Schools.

SEC. 23. Section 4980.42 of the Business and Professions Code is amended to read:

4980.42. (a) Trainees performing services in any work setting specified in subdivision ~~(e)~~ (d) of Section 4980.43 may perform those activities and services as a trainee, provided that the activities and services constitute part of the trainee's supervised course of study and that the person is designated by the title "trainee." Trainees may gain hours of   
experience outside the required practicum. Those hours shall be subject to the requirements of subdivision (b) and to the other requirements of this chapter.

(b) On and after January 1, 1995, all hours of experience gained as a trainee shall be coordinated between the school and the site where the hours are being accrued. The school shall approve each site and shall have a written agreement with each site that details each party's responsibilities, including the methods by which supervision shall be provided. The agreement shall provide for regular progress reports and evaluations of the student's performance at the site. If an applicant has gained hours of experience while enrolled in an institution other than the one that confers the qualifying degree, it shall be the applicant's responsibility to provide to the board satisfactory evidence that those hours of trainee experience were gained in compliance with this section.

SEC. 24. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

(1) A minimum of 3,000 hours completed during a period of at least 104 weeks.

(2) Not more than 40 hours in any seven consecutive days.

(3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctoral degree.

(4) Not more than 1,300 hours of supervised experience obtained prior to completing a master's or doctoral degree.

The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to completing the master's or doctoral degree.

(5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.

(6) No hours of experience may be gained more than six years prior to the date the application for examination eligibility was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.

(7) Not more than a combined total of ~~1,250~~  
1,000 hours of experience in the following:

(A) Direct supervisor contact.

(B) Professional enrichment activities. For purposes of this chapter, "professional enrichment activities" include the following:

(i) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.

(ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.

~~—(C) Client centered advocacy.~~

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) *For all hours gained on or after January 1, 2012, not more than 500 hours of experience in the following:*

~~—(9)~~

(A) Not more than 250 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.

(B) *Client centered advocacy.*

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children. For up to 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 375 hours of experience providing personal

psychotherapy, crisis counseling, or other counseling services via telemedicine in accordance with Section 2290.5.

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.

This subdivision shall only apply to hours gained on and after January 1, 2010.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervisees and in segments lasting no less than one continuous hour.

(6) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctoral degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered

services or other services, and who receive no more than a total, from all work settings, of five hundred dollars (\$500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

SEC. 25. Section 4980.45 of the Business and Professions Code is amended to read:

4980.45. (a) A licensed professional in private practice who has satisfied the requirements of subdivision (g) of Section 4980.03 may supervise or employ, at any one time, no more than a total of ~~two~~ *three* individuals registered as ~~either~~ a marriage and family therapist intern, *clinical counselor intern*, or associate clinical social worker in that private practice.

(b) A marriage and family therapy corporation may employ, at any one time, no more than a total of ~~two~~ *three* individuals registered as ~~either~~ a marriage and family therapist intern, *clinical counselor intern*, or associate clinical social worker for each employee or shareholder who has satisfied the requirements of subdivision (g) of Section 4980.03. In no event shall any *marriage and family therapy* corporation employ, at any one time, more than a total of ~~10~~ *15* individuals registered as ~~either~~ a marriage and family therapist intern, *clinical counselor intern*, or associate clinical social worker. In no event shall any supervisor supervise, at any one time, more than a total of ~~two~~ *three* individuals registered as either a marriage and family therapist intern, *clinical counselor intern*, or associate clinical social worker. Persons who supervise individuals registered as either a marriage and family therapist intern or associate clinical social worker shall be employed full time by the ~~professional~~ *marriage and family therapy* corporation and shall be actively engaged in performing professional services at and for the ~~professional~~ *marriage and family therapy* corporation. Employment and supervision within a marriage and family therapy corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

SEC. 26. Section 4982.25 of the Business and Professions Code is amended to read:

4982.25. The board may deny an application, or may suspend or

revoke a license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice marriage and family therapy, or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a *marriage and family therapist*, clinical social worker, professional clinical counselor, or educational psychologist shall also constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

SEC. 27. Section 4989.54 of the Business and Professions Code is amended to read:

4989.54. The board may deny a license or may suspend or revoke the license of a licensee if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions, and duties of an educational psychologist.

(1) The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

(2) The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee under this chapter.

(3) A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee under this chapter shall be deemed to be a conviction within the meaning of this section.

(4) The board may order a license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty or setting aside the verdict of guilty or dismissing the accusation, information, or indictment.

(b) Securing a license by fraud, deceit, or misrepresentation on an application for licensure submitted to the board, whether engaged in by an applicant for a license or by a licensee in support of an application for licensure.

(c) Administering to himself or herself a controlled substance or using any of the dangerous drugs specified in Section 4022 or an alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to himself or herself or to any other person or to the public or to the extent that the use impairs his or her ability to safely perform the functions authorized by the license. The board shall deny an application for a license or revoke the license of any person, other than one who is licensed as a physician and surgeon,

who uses or offers to use drugs in the course of performing educational psychology.

(d) Failure to comply with the consent provisions in Section 2290.5.

(e) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(f) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(g) Commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee.

(h) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(i) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as ~~a~~

*an educational psychologist, a clinical social worker, professional clinical counselor, or marriage and family therapist.*

(j) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(k) Gross negligence or incompetence in the practice of educational psychology.

(l) Misrepresentation as to the type or status of a license held by the licensee or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(m) Intentionally or recklessly causing physical or emotional harm to any client.

(n) Engaging in sexual relations with a client or a former client within two years following termination of professional services, soliciting sexual relations with a client, or committing an act of sexual abuse or sexual misconduct with a client or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed educational psychologist.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients.

(q) Failing to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(r) Performing, holding himself or herself out as being able to perform, or offering to perform any professional services beyond the

scope of the license authorized by this chapter or beyond his or her field or fields of competence as established by his or her education, training, or experience.

(s) Reproducing or describing in public, or in any publication subject to general public distribution, any psychological test or other assessment device the value of which depends in whole or in part on the naivete of the subject in ways that might invalidate the test or device. An educational psychologist shall limit access to the test or device to persons with professional interests who can be expected to safeguard its use.

(t) Aiding or abetting an unlicensed person to engage in conduct requiring a license under this chapter.

(u) When employed by another person or agency, encouraging, either orally or in writing, the employer's or agency's clientele to utilize his or her private practice for further counseling without the approval of the employing agency or administration.

(v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(x) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(z) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.

(aa) Impersonation of another by any licensee or applicant for a license, or, in the case of a licensee, allowing any other person to use his or her license.

(ab) Permitting a person under his or her supervision or control to perform, or permitting that person to hold himself or herself out as competent to perform, professional services beyond the level of education, training, or experience of that person.

SEC. 28. Section 4990.38 of the Business and Professions Code is amended to read:

4990.38. The board may deny an application or may suspend or revoke a license or registration issued under the chapters it administers and enforces for any disciplinary action imposed by *this state or* another state or territory or possession of the United States, or by a governmental agency on a license, certificate or registration to practice marriage and family therapy, clinical



social work, educational psychology, professional clinical counseling, or any other healing art. The disciplinary action, which may include denial of licensure or revocation or suspension of the license or imposition of restrictions on it, constitutes unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

SEC. 29. Section 4992.3 of the Business and Professions Code is amended to read:

4992.3. The board may deny a license or a registration, or may suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter is a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022 or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice

authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person who uses or offers to use drugs in the course of performing clinical social work. This provision does not apply to any person also licensed as a physician and surgeon under Chapter 5 (commencing with Section 2000) or the Osteopathic Act who lawfully prescribes drugs to a patient under his or her care.

(d) Incompetence in the performance of clinical social work.

(e) An act or omission that falls sufficiently below the standard

of conduct of the profession as to constitute an act of gross negligence.

(f) Violating, attempting to violate, or conspiring to violate this chapter or any regulation adopted by the board.

(g) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity. For purposes of this subdivision, this misrepresentation includes, but is not limited to, misrepresentation of the person's qualifications as an adoption service provider pursuant to Section 8502 of the Family Code.

(h) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee, allowing any other person to use his or her license or registration.

(i) Aiding or abetting any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(j) Intentionally or recklessly causing physical or emotional harm to any client.

(k) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(l) Engaging in sexual relations with a client or with a former client within two years from the termination date of therapy with the client, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a clinical social worker.

(m) Performing, or holding one's self out as being able to perform, or offering to perform or permitting, any registered associate clinical social worker or intern under supervision to perform any professional services beyond the scope of ~~the license authorized by this chapter.~~ *one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.*

(n) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client that is obtained from tests or other means.

(o) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(p) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (o).

(q) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(r) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device. A licensee shall limit access to that test or device to persons with professional interest who are expected to safeguard its use.

(s) Any conduct in the supervision of any registered associate clinical social worker, intern, or trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(t) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(u) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(v) Failure to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(w) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(x) Failure to comply with Section 2290.5.

(y) (1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(z) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of the examination as described in Section 123.

SEC. 30. Section 4992.36 of the Business and Professions Code is amended to read:

4992.36. The board may deny an application, or may suspend or revoke a license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory of the United States, or by any other governmental agency, on a license, certificate, or registration to practice clinical social work or any other healing art shall constitute grounds for disciplinary action for unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a

license, certificate, or registration to practice *clinical social work*, marriage and family therapy, professional clinical counseling, or educational psychology against a licensee or registrant shall also constitute grounds for disciplinary action for unprofessional conduct under this chapter.

SEC. 31. Section 4996.13 of the Business and Professions Code is amended to read:

4996.13. Nothing in this article shall prevent qualified members of other professional groups from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, they shall not hold themselves out to the public by any title or description of services incorporating the words psychosocial, or clinical social worker, or that they shall not state or imply that they are licensed to practice clinical social work. These qualified members of other professional groups include, but are not limited to, the following:

(a) A physician and surgeon certified pursuant to Chapter 5 (commencing with Section 2000).

(b) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900).

(c) Members of the State Bar of California.

(d) Marriage and family therapists licensed pursuant to Chapter 13 (commencing with Section 4980).

(e) *Licensed professional clinical counselors pursuant to Chapter 16 (commencing with Section 4999.10).*

~~—(e)—~~

(f) A priest, rabbi, or minister of the gospel of any religious denomination.

SEC. 32. Section 4996.24 of the Business and Professions Code is amended to read:

4996.24. (a) A licensee in private practice who has satisfied the requirements of Section 1870 of Title 16 of the California Code of Regulations may supervise or employ, at any one time, no more than a total of ~~two~~ three individuals registered as either a marriage and family therapist intern , *clinical counselor intern*, or associate clinical social worker in that private practice.

(b) A licensed clinical social workers' corporation may employ, at any one time, no more than a total of ~~two~~ three individuals registered as either a marriage and family therapist intern , *clinical counselor intern*, or associate clinical social worker for each employee or shareholder who has satisfied the requirements of Section 1870 of Title 16 of the California Code of Regulations.

(c) In no event shall any *licensed clinical social workers'* corporation employ, at any one time, more than a total of ~~10~~ 15 individuals registered as either a marriage and family therapist intern , *clinical counselor intern*, or associate clinical social worker. In no event shall any supervisor supervise, at any one time, more than a total of ~~two~~ three individuals registered as either a marriage and family therapist intern , *clinical counselor intern*, or associate clinical social worker. Persons who supervise individuals registered as either a marriage and family therapist intern , *clinical counselor intern*, or associate clinical social worker shall be employed full time by the ~~professional~~ *licensed clinical social*

workers' corporation and shall be actively engaged in performing professional services at and for the ~~professional~~ *licensed clinical social workers'* corporation.

Employment and supervision within the licensed clinical social workers' corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

SEC. 33. Section 4999.12 of the Business and Professions Code is amended to read:

4999.12. For purposes of this chapter, the following terms have the following meanings:

(a) "Board" means the Board of Behavioral Sciences.

(b) "Accredited" means a school, college, or university accredited by the Western Association of Schools and Colleges, or its equivalent regional accrediting association.

(c) "Approved" means a school, college, or university that possessed unconditional approval by the Bureau for Private Postsecondary ~~and Vocational~~ Education at the time of the applicant's graduation from the school, college, or university.

(d) "Applicant" means an unlicensed person who has completed a master's or doctoral degree program, as specified in Section 4999.32 or 4999.33, as applicable, and whose application for registration as an intern is pending or who has applied for examination eligibility, or an unlicensed person who has completed the requirements for licensure specified in this chapter and is no longer registered with the board as an intern.

(e) "Licensed professional clinical counselor" or "LPCC" means a person licensed under this chapter to practice professional clinical counseling, as defined in Section 4999.20.

(f) "Intern" means an unlicensed person who meets the requirements of Section 4999.42 and is registered with the board.

(g) "Clinical counselor trainee" means an unlicensed person who is currently enrolled in a master's or doctoral degree program, as specified in Section 4999.32 or 4999.33, as applicable, that is designed to qualify him or her for licensure under this chapter, and who has completed no less than 12 semester units or 18 quarter units of coursework in any qualifying degree program.

(h) "Approved supervisor" means an individual who meets the following requirements:

(1) Has documented two years of clinical experience as a licensed professional clinical counselor, licensed marriage and family therapist, licensed clinical psychologist, licensed clinical social worker, or licensed physician and surgeon who is certified in psychiatry by the American Board of Psychiatry and Neurology.

(2) Has received professional training in supervision.

(3) Has not provided therapeutic services to the clinical counselor trainee or intern.

(4) Has a current and valid license that is not under suspension or probation.

(i) "Client centered advocacy" includes, but is not limited to, researching, identifying, and accessing resources, or other activities, related to obtaining or providing services and supports for clients or groups of clients receiving psychotherapy or counseling services.

(j) "Advertising" or "advertise" includes, but is not limited to, the issuance of any card, sign, or device to any person, or the

causing, permitting, or allowing of any sign or marking on, or in, any building or structure, or in any newspaper or magazine or in any directory, or any printed matter whatsoever, with or without any limiting qualification. It also includes business solicitations communicated by radio or television broadcasting. Signs within church buildings or notices in church bulletins mailed to a congregation shall not be construed as advertising within the meaning of this chapter.

(k) "Referral" means evaluating and identifying the needs of a client to determine whether it is advisable to refer the client to other specialists, informing the client of that judgment, and communicating that determination as requested or deemed appropriate to referral sources.

(l) "Research" means a systematic effort to collect, analyze, and interpret quantitative and qualitative data that describes how social characteristics, behavior, emotion, cognitions, disabilities, mental disorders, and interpersonal transactions among individuals and organizations interact.

(m) "Supervision" includes the following:

(1) Ensuring that the extent, kind, and quality of counseling performed is consistent with the education, training, and experience of the person being supervised.

(2) Reviewing client or patient records, monitoring and evaluating assessment, diagnosis, and treatment decisions of the clinical counselor trainee.

(3) Monitoring and evaluating the ability of the intern or clinical counselor trainee to provide services to the particular clientele at the site or sites where he or she will be practicing.

(4) Ensuring compliance with laws and regulations governing the practice of licensed professional clinical counseling.

(5) That amount of direct observation, or review of audio or videotapes of counseling or therapy, as deemed appropriate by the supervisor.

SEC. 34. Section 4999.90 of the Business and Professions Code is amended to read:

4999.90. The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any intern or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

(a) The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order

granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(b) Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

(c) Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

(d) Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

(e) Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

(g) Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use his or her license or registration.

(h) Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

(i) Intentionally or recklessly causing physical or emotional harm to any client.

(j) The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications, functions, or duties of a licensee or registrant.

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed professional clinical counselor.

(l) Performing, or holding oneself out as being able to perform,

or offering to perform, or permitting any clinical counselor trainee or intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

(m) Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

(n) Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional clinical counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

(p) Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

(q) Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

(r) Any conduct in the supervision of a registered intern, associate clinical social worker, or clinical counselor trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a clinical counselor trainee or intern under one's supervision or control to perform, or permitting the clinical counselor trainee or intern to hold himself or herself out as competent to perform, professional services beyond the clinical counselor trainee's or intern's level of education, training, or experience.

(u) The violation of any statute or regulation of the standards of the profession, and the nature of the services being rendered, governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z) (1) Engaging in an act described in Section 261, 286, 288a, or



289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(aa) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

(ab) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a *professional clinical counselor*, clinical social worker, educational psychologist, or marriage and family therapist.

(ac) Failing to comply with the procedures set forth in Section 2290.5 when delivering health care via telemedicine.

SEC. 35. Section 4999.91 is added to the Business and Professions Code, to read:

4999.91. The board may deny any application, or may suspend or revoke any license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by this state or another state or territory of the United States, or by any other governmental agency, on a license, certificate, or registration to practice professional clinical counseling or any other healing art shall constitute grounds for disciplinary action for unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice clinical counseling, clinical social work, professional clinical counseling, marriage and family therapy, or educational psychology shall also constitute grounds for disciplinary action for unprofessional conduct under this chapter.

SEC. 36. Section 4999.455 is added to the Business and Professions Code, to read:

4999.455. (a) A licensed professional in private practice who has satisfied the requirements of subdivision (h) of Section 4999.12 may supervise or employ, at any one time, no more than a total of three individuals registered as a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker in that private practice.

(b) A professional clinical counselor corporation may employ, at any one time, no more than three individuals registered as a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker for each employee or shareholder who has satisfied the requirements of subdivision (h) of Section 4999.12. In no event shall any professional clinical counselor corporation

employ, at any one time, more than 15 individuals registered as a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker. In no event shall any supervisor supervise, at any one time, more than three individuals registered as a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker. Persons who supervise individuals registered as a marriage and family therapist intern, clinical counselor intern, or associate clinical social worker shall be employed full time by the professional clinical counselor corporation and shall be actively engaged in performing professional services at and for the professional clinical counselor corporation. Employment and supervision within a professional clinical counselor corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

SEC. 37. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 5**

**Other Bills of Interest**

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, CA 95815  
 P 916-263.1978 F 916.263.2688 | www.dhcc.ca.gov



<b>Bill Number: SB 541</b>	<b>AUTHOR: Senate Member PRICE</b>
<b>SPONSOR:</b>	<b>VERSION: 2/17/11</b>
<b>INTRODUCED: 2/17/11</b>	<b>BILL STATUS: 4/12/11 Set for hearing May 2.</b>
<b>BILL LOCATION: Senate B &amp; P and E.D.</b>	<b>HISTORY:</b> 2/17 Introduced. Read first time. To Com. on RLS. for assignment. 2/18 From printer. May be acted upon on or after March 20To print. 3/3 Referred to Com. on B., P. & E. D. 4/4 Set for hearing April 25. 4/11 Hearing postponed by committee. 4/12 Set for hearing May 5.
<b>AGENDA ITEM: 5.13</b>	
<b>SUBJECT: Contractors' State License</b> <b>Regulatory boards: expert consultants</b>	

**SUMMARY**

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment. This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance.

**Analysis:** The bill would require each board to establish policies and procedures for the selection and use of these consultants. This bill would declare that it is to take effect immediately as an urgency statute.

**TYPE OF BILL**

Active  
 Non-Urgency  
 Non-Appropriations  
 2/3 Vote Required

Non-State-Mandated Local Program  
 Fiscal  
 Non-Tax Levy

**ATTACHED:**

- 1) Language

**COMMITTEE POSITION:**

**SUPPORT:** \_\_\_\_\_

**OPPOSE:** \_\_\_\_\_

**NEUTRAL:** \_\_\_\_\_

**WATCH:** \_\_\_\_\_

BILL NUMBER: SB 541      AMENDED  
BILL TEXT

AMENDED IN SENATE   APRIL 13, 2011

INTRODUCED BY      Senator Price

FEBRUARY 17, 2011

An act to ~~amend Sections 7000.5 and 7011 of~~  
add Section 40 to the Business and Professions Code,  
relating to ~~contractors~~ profession and  
vocations, and declaring the urgency thereof, to take effect  
immediately .

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. Contractors' State License  
~~Board.~~ Regulatory boards: expert consultants.

*Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.*

*This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~Existing law establishes within the Department of Consumer Affairs, until January 1, 2012, the Contractors' State License Board and a registrar of contractors, for purposes of the licensure and regulation of contractors. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.~~

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

Vote: ~~majority~~ 2/3 . Appropriation:  
no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 40 is added to the Business and Professions Code , to read:

40. (a) Subject to the standards described in Section 19130 of the Government Code, any board, as defined in Section 22, the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California may enter into an agreement with an expert consultant to do any of the following:

(1) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.

(2) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.

(3) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.

(b) An executed contract between a board and an expert consultant shall be exempt from the provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) Each board shall establish policies and procedures for the selection and use of expert consultants.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

~~SECTION 1. Section 7000.5 of the Business and Professions Code is amended to read:~~

~~7000.5. (a) There is in the Department of Consumer Affairs a Contractors' State License Board, which consists of 15 members.~~

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

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

~~SEC. 2. Section 7011 of the Business and Professions Code is amended to read:~~

~~7011. (a) The board, by and with the approval of the director, shall appoint a registrar of contractors and fix his or her compensation.~~

~~(b) The registrar shall be the executive officer and secretary of the board and shall carry out all of the administrative duties as provided in this chapter and as delegated to him or her by the board.~~

~~(c) For the purpose of administration of this chapter, there may be appointed a deputy registrar, a chief reviewing and hearing officer, and, subject to Section 159.5, other assistants and subordinates as may be necessary.~~

~~(d) Appointments shall be made in accordance with the provisions of civil service laws.~~

~~(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted~~

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



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 6**

Update on Retroactive Fingerprinting





## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Legislative and Regulatory Subcommittee Members
<b>FROM</b>	Traci Napper, Legislation and Regulations Analyst Dental Hygiene Committee of California
<b>SUBJECT</b>	<b>LEG 6 Update on Retroactive Fingerprinting (California Code of Regulations, Title 16, §1105 &amp; 1106)</b>

Verbal report will be provided.



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Legislative and Regulatory Subcommittee Members
<b>FROM</b>	Traci Napper, Legislation and Regulations Analyst Dental Hygiene Committee of California
<b>SUBJECT</b>	<b>LEG 7 – Update on Clean-up Legislation</b>

### Informational only

At its' December 5, 2010 meeting, the Committee accepted amendments to Business and Professions Code Sections 1900-1966.6. Staff forwarded the language to both the Department of Consumer Affairs Legislative Policy and Review Division and Senate Business and Professions Committee for inclusion in the Department's omnibus bill.

The language was reviewed by both DCA and Senate Business and Professions Committee consultants. Attached is a chart showing substantive and non-substantive changes accepted by the DHCC. The 14 highlighted sections are included in the omnibus bill SB 943.

The Business and Professions Committee's legal counsel reviewed the language as attached. The DHCC still needs to find an author.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 7**

Update on clean-up legislation

## DHCC's Sections 1900-1966.6

[illegible]



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 8**

Proposed regulatory language to implement Business and Professions Code 901 regarding authorization for Out of State licensed practitioners to provide healthcare services at sponsored free health care clinics



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Legislative and Regulatory Subcommittee Members
<b>FROM</b>	Lori Hubble, Executive Officer
<b>SUBJECT</b>	<b>LEG 8 – Proposed regulatory language to implement Business and Professions Code 901 regarding authorization for Out of State licensed practitioners to provide healthcare services at sponsored free health clinics</b>

### Background

Assembly Bill 2699 (Chapter 270, Statutes of 2010) was authored by Assembly member Karen Bass. This bill provides, until January 1, 2014, an exemption from the licensure regulation requirements for a health care practitioner, licensed or certified in good standing in another state or states, who offers or provides volunteer health care services for which they are licensed or certified through a sponsored, to uninsured or underinsured persons, on a short term voluntary basis, in association with a sponsoring entity that registers with the applicable healing arts board. The bill requires an exempt health care practitioner to obtain prior authorization from the applicable licensing board. The bill authorizes the specific healing arts boards to adopt regulations.

The Department of Consumer Affairs has encouraged the healing arts boards to initiate rulemakings to implement the provisions of AB2699. Staff has conferred with legal counsel and developed draft regulations and forms.

### Committee Action Requested

☐ Accept the proposed regulatory language based and direct staff to take all necessary steps to initiate the formal rulemaking process, authorize the Executive Officer to make any non-substantive changes to the rulemaking package and set the proposed regulations for a public hearing.

**Proposed Regulations**

**Sections 1149 - 1154, Division 11 of Title 16, Article 13 entitled “Sponsored Free Health Care Events—Requirements for Exemption” of the California Code of Regulations is added to read:**

**Article 13.  
Sponsored Free Health Care Events—Requirements for Exemption.**

**§1149. Definitions.**

For the purposes of section 901 of the Code:

(a) “Community-based organization” means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

(b) “Out-of-state practitioner” means a person who is not licensed in California to engage in the practice of dental hygiene but who holds a current valid and active license or certificate in good standing in another state, district, or territory of the United States to practice dental hygiene.

(c) The term “in good standing” means the applicant:

- (1) Has not been charged with an offense for any act substantially related to the practice of dental hygiene for which the applicant is licensed by any public agency;
- (2) Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed upon the applicant’s professional conduct or practice, including any voluntary surrender of a license;
- (3) Has not been the subject of an adverse judgment resulting from the practice for which the applicant is licensed that the Committee determines constitutes evidence of a pattern or negligence or incompetence.

NOTE: Authority cited: Sections 901 and 1906, Business and Professions Code.

Reference: Section 901, Business and Professions Code.

**§1150. Sponsoring Entity Registration and Recordkeeping Requirements.**

(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the code shall register with the Committee not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the Committee by submitting to the Committee a completed Form 901-A (04/2011), which is hereby incorporated by reference.

(b) Determination of Completeness of Form. The Committee may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form 901-A on behalf of the Committee. The Committee or its delegatee shall inform the sponsoring entity within 15 calendar days of receipt of Form 901-A in writing that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to complete the form and be registered. The Committee or its delegate shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.

(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by section 901 as well as a copy of the authorization for participation issued by the Committee to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five years after the date on which a sponsored event ended. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the Committee at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the Committee.

(d) Requirement for Prior Committee Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the Committee.

(e) Report. Within 15 calendar days after a sponsored event has concluded, the sponsoring entity shall file a report with the Committee summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:

- (1) The date(s) of the sponsored event;
- (2) The location(s) of the sponsored event;
- (3) The type(s) and general description of all health care services provided at the sponsored event; and
- (4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.

NOTE: Authority cited: Sections 901 and 1906, Business and Professions Code.  
Reference: Section 901, Business and Professions Code.

#### **§1151. Out-of-State Practitioner Authorization to Participate in Sponsored Event.**

(a) Request for Authorization to Participate. An out-of-state practitioner ("applicant") may request authorization from the Committee to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the Committee to provide those services. An applicant shall request authorization by submitting to the Committee a completed Form 901-B (04/2011), which is hereby incorporated by reference, accompanied by a non-refundable, non-transferable processing fee of \$55.00. The applicant shall also furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the Committee to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history record check.

(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the Committee shall notify the sponsoring entity or local government entity administering the sponsored event whether that request is approved or denied.

(c) Denial of Request for Authorization to Participate.

(1) The Committee shall deny a request for authorization to participate if:

(A) The submitted Form 901-B is incomplete and the applicant has not responded timely to the Committee's request for additional information.



- (B) The applicant does not possess a current valid and active license in good standing.
- (C) The applicant has not satisfactorily completed a course of instruction, approved by the committee, in the following procedures, if these procedures are to be performed, and the sponsoring entity will not be providing an appropriately licensed or authorized dentist for direct supervision of these procedures:
  - (i) Periodontal Soft-tissue curettage.
  - (ii) Administration of local anesthetic agents.
  - (iii) Administration of nitrous oxide and oxygen, whether administered alone or in combination with each other.
- (D) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial of an application for licensure by the Committee.
- (E) The Committee has been unable to obtain a timely report from a criminal history records check.
- (F) The applicant was previously denied an application to practice dentistry, dental hygiene, or dental assisting in this state.

(2) The Committee may deny a request for authorization to participate if:

- (A) The request is received less than 20 calendars days before the date on which the sponsored event will begin.
- (B) The applicant has been previously denied a request for authorization by the Committee to participate in a sponsored event.
- (C) The applicant has previously had an authorization to participate in a sponsored event terminated by the Committee.
- (D) The applicant has participated in three (3) or more sponsored events during the 12 month period immediately preceding the current application.

(d) Appeal of Denial .An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in section 1152.

NOTE: Authority cited: Sections 144, 901 and 1906, Business and Professions Code.  
Reference: Section 901, Business and Professions Code.

### **§1152. Termination of Authorization and Appeal.**

(a) Grounds for Termination. The Committee may terminate an out-of-state practitioner's authorization to participate in a sponsored event for any of the following reasons:

- (1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the Committee.
- (2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the Committee.
- (3) The Committee has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.

(b) Notice of Termination. The Committee shall provide both the sponsoring entity or a local government entity administering the sponsored event and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice

is provided during a sponsored event, the Committee may provide the notice to any representative of the sponsored event on the premises of the event.

(c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination.

Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the Committee shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

(d) Appeal of Termination. An out-of-state practitioner may appeal the Committee's decision to terminate an authorization in the manner provided by section 901(j)(2) of the Code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act.

(e) Agency Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an agency conference with the executive officer regarding the reasons for the termination of authorization to participate. The executive officer shall, within 30 days from receipt of the request, hold an agency conference with the out-of-state practitioner. At the conclusion of the agency conference, the executive officer may affirm or dismiss the termination of authorization to participate. The executive officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the agency conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an agency conference. If the termination is dismissed after the agency conference, the request for a hearing shall be deemed to be withdrawn.

NOTE: Authority cited: Sections 901 and 1906, Business and Professions Code.  
Reference: Section 901, Business and Professions Code.

#### §1153. Additional Practice Requirements for Out-of-State Practitioners Authorized to Participate in Sponsored Free Health Care Events.

(a) Each out-of-state practitioner authorized to participate in a sponsored event and provide dental hygiene services at the sponsored event pursuant to Section 1154 shall provide a written notice to each patient or prospective patient prior to performing any services. This notice shall be in at least 12 point font, and include, at a minimum, the following information:

- (1) The state, district, or territory where the out-of-state practitioner is licensed in good standing;
- (2) The name of each governmental agency that has issued the out-of-state practitioner a license to practice dental hygiene and the effective dates of each license;
- (3) The out-of-state practitioner's license number(s);
- (4) The dates the out-of-state practitioner is authorized to practice by the Committee; and,
- (5) A disclosure that states: "The Dental Hygiene Committee of California has only authorized me to provide services under my license from another state and only at this free health care event for a period not to exceed ten (10) days."

(b) This notice required by this Section shall be provided separate and apart from all other notices or authorizations that a patient may be given or required to sign and shall be retained by the patient.

NOTE: Authority cited: Sections 901 and 1906, Business and Professions Code.  
Reference: Section 901, Business and Professions Code.



## REGISTRATION OF SPONSORING ENTITY UNDER BUSINESS & PROFESSIONS CODE SECTION 901

In accordance with California Business and Professions Code Section 901(d), a non-government organization administering an event to provide health care services to uninsured and underinsured individuals at no cost may include participation by certain health care practitioners licensed outside of California if the organization registers with the California licensing authorities having jurisdiction over those professions. This form shall be completed and submitted by the sponsoring organization **at least 90 calendar days prior to the sponsored event.** *Note that the information required by Business and Professions Code Section 901(d) must also be provided to the county health department having jurisdiction in each county in which the sponsored event will take place.* Only one form (per event) should be completed and submitted.

### PART 1 – ORGANIZATIONAL INFORMATION

1. Organization Name: \_\_\_\_\_

2. Organization Contact Information (*use principal office address*):

Address Line 1 _____	Phone Number of Principal Office _____
Address Line 2 _____	Alternate Phone _____
City, State, Zip _____	Website _____
County _____	

Organization Contact Information in California (*if different*):

Address Line 1 _____	Phone Number _____
Address Line 2 _____	Alternate Phone _____
City, State, Zip _____	
County _____	

3. Type of Organization:

Is the organization operating pursuant to Section 501(c)(3) of the Internal Revenue Code?  
       \_\_\_\_\_ Yes      \_\_\_\_\_ No

If not, is the organization a community-based organization\*?  
       \_\_\_\_\_ Yes      \_\_\_\_\_ No

Organization's Tax Identification Number \_\_\_\_\_

If a community-based organization, please describe the mission, goals and activities of the organization (*attach separate sheet(s) if necessary*): \_\_\_\_\_

---

---

---

---

---

---

\* A "community based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

## PART 2 – RESPONSIBLE ORGANIZATION OFFICIALS

Please list the following information for each of the principal individual(s) who are the officers or officials of the organization responsible for operation of the sponsoring entity.

### Individual 1:

Name	Title
Address Line 1	Phone
Address Line 2	Alternate Phone
City, State, Zip	E-mail address
County	

### Individual 2:

Name	Title
Address Line 1	Phone
Address Line 2	Alternate Phone
City, State, Zip	E-mail address
County	

### Individual 3:

Name	Title
Address Line 1	Phone
Address Line 2	Alternate Phone
City, State, Zip	E-mail address
County	

(*Attach additional sheets if needed to list additional principal organizational individuals*)

### PART 3 – EVENT DETAILS

1. Name of event, if any: \_\_\_\_\_

2. Date(s) of event (not to exceed ten calendar days): \_\_\_\_\_

3. Location(s) of the event (be as specific as possible, including address):

---

---

---

---

4. Describe the intended event, including a list of all types of healthcare services intended to be provided (*attach additional sheet(s) if necessary*): \_\_\_\_\_

---

---

---

---

---

---

5. Attach a list of all out-of-state health care practitioners who you currently believe intend to apply for authorization to participate in the event. The list should include the name, profession, and state of licensure of each identified individual.

\_\_\_ *Check here to indicate that list is attached.*

6. Please check each licensing authority that will have jurisdiction over an out-of-state licensed health practitioner who intends to participate in the event:

- |                                     |                                    |
|-------------------------------------|------------------------------------|
| ___ Acupuncture Board               | ___ Physician Assistant Committee  |
| ___ Board of Behavioral Sciences    | ___ Physical Therapy Board         |
| ___ Board of Chiropractic Examiners | ___ Board of Podiatric Medicine    |
| ___ Dental Board                    | ___ Board of Psychology            |
| ___ Dental Hygiene Committee        | ___ Board of Registered Nursing    |
| ___ Medical Board                   | ___ Respiratory Care Board         |
| ___ Naturopathic Medicine Committee | ___ Speech-Language Pathology,     |
| ___ Board of Occupational Therapy   | Audiology & Hearing Aid Dispensers |
| ___ Board of Optometry              | Board                              |
| ___ Osteopathic Medical Board       | ___ Veterinary Medical Board       |
| ___ Board of Pharmacy               | ___ Board of Vocational Nursing &  |
|                                     | Psychiatric Technicians            |

**Note:**

- Each individual out-of-state practitioner must request authorization to participate in the event by submitting an application (Form DBC- 901-B) to the Board.
- The organization and the applicant will be notified in writing by the Committee whether authorization for an individual out-of-state practitioner has been granted.

- I understand the recordkeeping requirements imposed by California Business and Professions Code Section 901 and Title 16, California Code of Regulations Section 1023.16 to maintain records both at the sponsored event and for five (5) years in California.
- I understand that our organization must file a report with each applicable committee within fifteen (15) calendar days of the completion of the event.

This form, and any attachments, shall be submitted to:

\_\_\_\_\_ Department of Consumer Affairs  
 Attn: Executive Office  
 1625 North Market Blvd.  
 Sacramento, CA 95834

\_\_\_\_\_ Dental Hygiene Committee of California  
 Attn: Licensing & Examinations Unit  
 2005 Evergreen Street, Suite 1050  
 Sacramento, CA 95815

Questions regarding the completion of this form should be directed to: the Licensing and Examinations Unit of the Dental Hygiene Committee of California at the address listed above, or by phone or email as follows:

Phone: (916) 263-1978

I certify under penalty of perjury that the information provided on this form and any attachments is true and current and that I am authorized to sign this form on behalf of the organization:

\_\_\_\_\_  
 Name Printed

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Date

#### **NOTICE OF COLLECTION OF PERSONAL INFORMATION**

Disclosure of your personal information is mandatory. The information on this form is required pursuant to Title 16, California Code of Regulations Sections 1023.16 and Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected or denied as incomplete. The information provided will be used to determine compliance with Article 8 of Division 10 of Title 16 of the California Code of Regulations (beginning at Section 1023.15). The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the Committee, unless the records are exempted from disclosure by Section 1798.40 of the Civil Code. Individuals may obtain information regarding the location of his or her records by contacting the Executive Officer at the Committee at the address and telephone number listed above.



## **REQUEST FOR AUTHORIZATION TO PRACTICE WITHOUT A LICENSE AT A REGISTERED FREE HEALTH CARE EVENT**

In accordance with California Business and Professions Code Section 901 any dental hygienist licensed/certified and in good standing in another state, district, or territory in the United States may request authorization from the Dental Hygiene Committee of California (Committee) to participate in a free health care event offered by a sponsoring entity, registered with the Committee pursuant to Section 901, for a period not to exceed ten (10) days. The Committee may deny requests for authorization received less than twenty (20) calendar days before the date on which the sponsored event will begin.

Note: If you are submitting fingerprint cards to the Committee ("Ink on Cards") along with your application, the Committee recommends that you submit your completed application package to the Committee at least 60 days prior to the scheduled event to assist in the timely processing of your fingerprint submissions through the California Department of Justice and Federal Bureau of Investigation.

### **PART 1 - APPLICATION INSTRUCTIONS**

An application must be complete and must be accompanied by all of the following:

- A processing fee of \$55.00, made payable to the Dental Hygiene Committee of California. If submitting fingerprint cards instead of using Live Scan, please submit an additional \$51 fee, payable to the Dental Board of California, to process your fingerprint cards for a total fee of **\$106.00**. See additional details below.
- A copy of each valid and current license and/or certificate authorizing the applicant to engage in the practice of dental hygiene issued by any state, district, or territory of the United States.
- A copy of a valid photo identification of the applicant issued by one of the jurisdictions in which the applicant holds a license or certificate to practice.
- Copies of Certificates of Completion showing at least 25 units of continuing education, including current CPR within two years of the date of this application.
- Any documents or statements requested on this application.
- Fingerprints. Fingerprints can be done with electronic Live Scan or ink on cards.

**Live Scan** is available only in California, for either residents or visitors, and is far speedier. The California Department of Justice (DOJ) has the form you need to complete and take to the Live Scan service location in California, and a list of the locations where it is obtainable (see [ag.ca.gov/fingerprints](http://ag.ca.gov/fingerprints)). The procedure is that you take the completed form to the service location, pay a fee and your fingerprints are taken on a glass without ink. The fingerprints are then transmitted electronically to the DOJ, and the DOJ sends the report to the Dental Hygiene Committee. Usually the report is received within two days. There is a low rate of rejections with this method.

**Ink on Cards.** If you are not able to come to California, you may contact the Committee to obtain a copy of California "Ink on Cards" to have fingerprints made – 2 cards. Other States' resident Ink Cards will not be accepted. ***Be sure to type or print legibly in black ink all the areas on both cards asking for personal information, that the cards are dated and signed by the official taking the fingerprints, and have your signature on them.*** Include the 2 cards in your application with a \$51 non-refundable processing fee. Reports on some cards are received within a month after submission. Others may take many months due to needing to be repeated because of unreadable prints or other factors beyond the control of the Dental Hygiene Committee.

The Committee will not grant authorization until this form has been completed in its entirety, all required enclosures have been received by the Committee, and any additional information requested by the Committee has been provided by the applicant and reviewed by the Committee, and a determination has been made to grant authorization.

The Committee shall process this request and notify the sponsoring entity listed in this form if the request is approved or denied within 20 calendar days of receipt. If the Committee requires additional or clarifying information, the committee will contact you directly. Written approval or denial of requests will be provided directly to the sponsoring entity and to the applicant.

## **PART 2 – NAME AND CONTACT INFORMATION**

1. Applicant Name: \_\_\_\_\_  
First Middle Last

2. Social Security Number: \_\_\_\_ - \_\_\_\_ - \_\_\_\_ Date of Birth: \_\_\_\_\_

3. Applicant's Contact Information\*:

Address Line 1	Phone
Address Line 2	Alternate Phone
City, State, Zip	E-mail address

(\*If an authorization is issued, this address information will be considered your "address of record" with the Committee and will be made available to the public upon request.)

4. Applicant's Employer : \_\_\_\_\_

Employer's Contact Information:

Address Line 1	Phone
Address Line 2	Facsimile
City, State, Zip	E-mail address (if available)



### PART 3 – LICENSURE INFORMATION

1. Do you hold a current license, certification, or registration issued by a state, district, or territory of the United States authorizing the unrestricted practice of dental hygiene in your jurisdiction(s)?

No ☐ If no, you are not eligible to participate as an out-of-state practitioner in the sponsored event.

Yes ☐ If yes, list every license, certificate, and registration authorizing you to engage in the practice of dental hygiene in the following table. If there are not enough boxes to include all the relevant information please attach an addendum to this form. Please also attach a copy of each of your current licenses, certificates, and registrations.

State/ Jurisdiction	Issuing Agency/Authority	License Number	Expiration Date

2. Do you possess valid certification according to committee requirements in periodontal soft tissue curettage, administration of nitrous oxide and oxygen and administration local anesthetic agents? Yes ☐ No ☐

3. CONTINUING EDUCATION. Provide copies of certificates of completion including CPR certification. Do not send originals.

4. Are you currently the subject of any investigation by any governmental entity? Yes ☐ No ☐  
If yes, provide a detailed explanation of the circumstances surrounding the investigation.

5. Have you ever had charges filed against a dental hygiene license that you currently hold or held in the past, including charges that are still pending? ☐Yes ☐No

If yes, provide a detailed explanation and a copy of the documents relating to the filing of charges.

6. Have you ever had any disciplinary action taken against a dental hygiene license or other healing arts license? ☐ Yes ☐No

Disciplinary action includes, but is not limited to, suspension, revocation, probation, confidential discipline, consent order, letter of reprimand or warning, or any other restriction or action taken against a dental hygiene license. If yes, provide a detailed explanation and a copy of all documents relating to the disciplinary action.

7. Have you ever surrendered a dental hygiene license, either voluntary or otherwise?  
Yes ☐ No ☐

If yes, provide a detailed explanation and a copy of all documents relating to the surrender.

8. Have you ever been the subject of a malpractice settlement or judgment? Yes ☐ No ☐

If yes, provide a detailed explanation of the circumstances and outcome relating to the malpractice settlement or judgment. You may be required to provide additional information after review of your explanation.

**IMPORTANT REQUIREMENT:** If a disciplinary action is filed against any license you currently hold pending the Committee's decision on this application for authorization, you must notify the Board in writing within 48 hours.

9. With the exception of conviction of an infraction resulting in a fine of less than \$1,000, have you ever been convicted of any crime, including an infraction, misdemeanor or felony? Yes ☐ No ☐

"Conviction" includes a plea of no contest and any conviction that has been set aside pursuant to Section 1203.4 of the Penal Code. Therefore, you must disclose any convictions in which you entered a plea of no contest and any convictions that were subsequently set aside pursuant to Section 1203.4 of the Penal Code.

10. Do you have a current physical or mental impairment related to drugs or alcohol?  
Yes ☐ No ☐

11. Have you been adjudicated by a court to be mentally incompetent or are you currently under a conservatorship? Yes ☐ No ☐

If yes, provide a detailed explanation of the circumstances, date and time of the court order or the duration of the conservatorship.

#### **PART 4 – SPONSORED EVENT**

1. Name of non-profit or community-based organization hosting the free healthcare event (the "sponsoring entity"): \_\_\_\_\_

2. Name of event: \_\_\_\_\_

3. Date(s) & location(s) of the event: \_\_\_\_\_  
\_\_\_\_\_

4. Date(s) & location(s) applicant will be performing healthcare services (if different):  
\_\_\_\_\_  
\_\_\_\_\_

5. Please specify the healthcare services you intend to provide: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Name and phone number of contact person with sponsoring entity: \_\_\_\_\_

<b>PART 5 – ACKNOWLEDGMENT/CERTIFICATION</b>
--

I, the undersigned, declare under penalty of perjury under the laws of the State of California and acknowledge that:

- I will comply with all applicable practice requirements required of licensed dental hygienists and all regulations of the Committee.
- In accordance with Business and Professions Code Section 901(i), I will only practice within the scope of my licensure and/or certification and within the scope of practice for California-licensed dental hygienists.
- I will provide the services authorized by this request and Business and Professions Code Section 901 to uninsured and underinsured persons only and shall receive no compensation for such services.
- I will provide the services authorized by this request and Business and Professions Code Section 901 only in association with the sponsoring entity listed herein and only on the dates and at the locations listed herein for a period not to exceed 10 calendar days.
- I am responsible for knowing and complying with California law and practice standards while participating in a sponsored event located in California.
- Practice of a regulated profession in California without proper licensure and/or authorization may subject me to potential administrative, civil and/or criminal penalties.
- The Committee may notify the licensing authority of my home jurisdiction and/or other appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.
- I have read the questions in the foregoing application and that all information provided by me in this application is true and complete to the best of my knowledge. By submitting this application and signing below, I am granting permission to the Committee to verify the information provided and to perform any investigation pertaining to the information I have provided as the Committee deems necessary.

**My signature on this application, or copy thereof, authorizes the National Practitioner Data Bank to release any and all information required by the Dental Hygiene Committee of California.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name Printed: \_\_\_\_\_

**NOTE:** Authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

**NOTICE OF COLLECTION OF PERSONAL INFORMATION**

Disclosure of your personal information is mandatory. The information on this application is required pursuant to Title 16, California Code of Regulations Section 1023.17 and Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected as incomplete or denied. The information provided will be used to determine compliance with Article 8 of Division 10 of Title 16 of the California Code of Regulations (beginning at Section 1023.15). The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the Board, unless the records are exempted from disclosure by Section 1798.40 of the Civil Code. Individuals may obtain information regarding the location of his or her records by contacting the Executive Officer at the Committee at the address and telephone number listed above.

BILL NUMBER: AB 2699    CHAPTERED  
BILL TEXT

CHAPTER    270

FILED WITH SECRETARY OF STATE    SEPTEMBER 24, 2010  
APPROVED BY GOVERNOR    SEPTEMBER 23, 2010  
PASSED THE SENATE    AUGUST 30, 2010  
PASSED THE ASSEMBLY    AUGUST 31, 2010  
AMENDED IN SENATE    AUGUST 27, 2010  
AMENDED IN SENATE    AUGUST 2, 2010  
AMENDED IN SENATE    JULY 15, 2010  
AMENDED IN ASSEMBLY    MAY 12, 2010  
AMENDED IN ASSEMBLY    APRIL 26, 2010  
AMENDED IN ASSEMBLY    APRIL 14, 2010  
AMENDED IN ASSEMBLY    APRIL 5, 2010

INTRODUCED BY    Assembly Member Bass

FEBRUARY 19, 2010

An act to amend Section 900 of, and to add and repeal Section 901 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2699, Bass. Healing arts: licensure exemption.

Existing law provides for the licensure and regulation of various healing arts practitioners by boards within the Department of Consumer Affairs. Existing law provides an exemption from these requirements for a health care practitioner licensed in another state who offers or provides health care for which he or she is licensed during a state of emergency, as defined, and upon request of the Director of the Emergency Medical Services Authority, as specified.

This bill would also provide, until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner, as defined, licensed or certified in good standing in another state or states, who offers or provides health care services for which he or she is licensed or certified through a sponsored event, as defined, (1) to uninsured or underinsured persons, (2) on a short-term voluntary basis, (3) in association with a sponsoring entity that registers with the applicable healing arts board, as defined, and provides specified information to the county health department of the county in which the health care services will be provided, and (4) without charge to the recipient or a 3rd party on behalf of the recipient, as specified. The bill would also require an exempt health care practitioner to obtain prior authorization to provide these services from the applicable licensing board, as defined, and to satisfy other specified requirements, including payment of a fee as determined by the applicable licensing board. The bill would require the applicable licensing board to notify the sponsoring entity, as defined, of the sponsored event whether the board approves or denies a request for authorization to provide these services within 20 days of receipt of the request. The bill would also prohibit a contract of liability insurance issued, amended, or renewed on or after January 1, 2011, from excluding coverage of these

practitioners or a sponsoring entity for providing care under these provisions.

Because this bill would expand the definition of certain crimes, the bill would create 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.

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

SECTION 1. Section 900 of the Business and Professions Code is amended to read:

900. (a) Nothing in this division applies to a health care practitioner licensed in another state or territory of the United States who offers or provides health care for which he or she is licensed, if the health care is provided only during a state of emergency as defined in subdivision (b) of Section 8558 of the Government Code, which emergency overwhelms the response capabilities of California health care practitioners and only upon the request of the Director of the Emergency Medical Services Authority.

(b) The director shall be the medical control and shall designate the licensure and specialty health care practitioners required for the specific emergency and shall designate the areas to which they may be deployed.

(c) Health care practitioners shall provide, upon request, a valid copy of a professional license and a photograph identification issued by the state in which the practitioner holds licensure before being deployed by the director.

(d) Health care practitioners deployed pursuant to this chapter shall provide the appropriate California licensing authority with verification of licensure upon request.

(e) Health care practitioners providing health care pursuant to this chapter shall have immunity from liability for services rendered as specified in Section 8659 of the Government Code.

(f) For the purposes of this section, "health care practitioner" means any person who engages in acts which are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

(g) For purposes of this section, "director" means the Director of the Emergency Medical Services Authority who shall have the powers specified in Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

SEC. 2. Section 901 is added to the Business and Professions Code, to read:

901. (a) For purposes of this section, the following provisions apply:

(1) "Board" means the applicable healing arts board, under this division or an initiative act referred to in this division, responsible for the licensure or regulation in this state of the respective health care practitioners.

(2) "Health care practitioner" means any person who engages in acts that are subject to licensure or regulation under this division or under any initiative act referred to in this division.

(3) "Sponsored event" means an event, not to exceed 10 calendar days, administered by either a sponsoring entity or a local government, or both, through which health care is provided to the public without compensation to the health care practitioner.

(4) "Sponsoring entity" means a nonprofit organization organized pursuant to Section 501(c)(3) of the Internal Revenue Code or a community-based organization.

(5) "Uninsured or underinsured person" means a person who does not have health care coverage, including private coverage or coverage through a program funded in whole or in part by a governmental entity, or a person who has health care coverage, but the coverage is not adequate to obtain those health care services offered by the health care practitioner under this section.

(b) A health care practitioner licensed or certified in good standing in another state, district, or territory of the United States who offers or provides health care services for which he or she is licensed or certified is exempt from the requirement for licensure if all of the following requirements are met:

(1) Prior to providing those services, he or she:

(A) Obtains authorization from the board to participate in the sponsored event after submitting to the board a copy of his or her valid license or certificate from each state in which he or she holds licensure or certification and a photographic identification issued by one of the states in which he or she holds licensure or certification. The board shall notify the sponsoring entity, within 20 calendar days of receiving a request for authorization, whether that request is approved or denied, provided that, if the board receives a request for authorization less than 20 days prior to the date of the sponsored event, the board shall make reasonable efforts to notify the sponsoring entity whether that request is approved or denied prior to the date of that sponsored event.

(B) Satisfies the following requirements:

(i) The health care practitioner has not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under Section 480 and is in good standing in each state in which he or she holds licensure or certification.

(ii) The health care practitioner has the appropriate education and experience to participate in a sponsored event, as determined by the board.

(iii) The health care practitioner shall agree to comply with all applicable practice requirements set forth in this division and the regulations adopted pursuant to this division.

(C) Submits to the board, on a form prescribed by the board, a request for authorization to practice without a license, and pays a fee, in an amount determined by the board by regulation, which shall be available, upon appropriation, to cover the cost of developing the authorization process and processing the request.

(2) The services are provided under all of the following circumstances:

(A) To uninsured or underinsured persons.

(B) On a short-term voluntary basis, not to exceed a 10-calendar-day period per sponsored event.

(C) In association with a sponsoring entity that complies with subdivision (c).

(D) Without charge to the recipient or to a third party on behalf of the recipient.

(c) The board may deny a health care practitioner authorization to

practice without a license if the health care practitioner fails to comply with the requirements of this section or for any act that would be grounds for denial of an application for licensure.

(d) A sponsoring entity seeking to provide, or arrange for the provision of, health care services under this section shall do both of the following:

(1) Register with each applicable board under this division for which an out-of-state health care practitioner is participating in the sponsored event by completing a registration form that shall include all of the following:

(A) The name of the sponsoring entity.

(B) The name of the principal individual or individuals who are the officers or organizational officials responsible for the operation of the sponsoring entity.

(C) The address, including street, city, ZIP Code, and county, of the sponsoring entity's principal office and each individual listed pursuant to subparagraph (B).

(D) The telephone number for the principal office of the sponsoring entity and each individual listed pursuant to subparagraph (B).

(E) Any additional information required by the board.

(2) Provide the information listed in paragraph (1) to the county health department of the county in which the health care services will be provided, along with any additional information that may be required by that department.

(e) The sponsoring entity shall notify the board and the county health department described in paragraph (2) of subdivision (d) in writing of any change to the information required under subdivision (d) within 30 calendar days of the change.

(f) Within 15 calendar days of the provision of health care services pursuant to this section, the sponsoring entity shall file a report with the board and the county health department of the county in which the health care services were provided. This report shall contain the date, place, type, and general description of the care provided, along with a listing of the health care practitioners who participated in providing that care.

(g) The sponsoring entity shall maintain a list of health care practitioners associated with the provision of health care services under this section. The sponsoring entity shall maintain a copy of each health care practitioner's current license or certification and shall require each health care practitioner to attest in writing that his or her license or certificate is not suspended or revoked pursuant to disciplinary proceedings in any jurisdiction. The sponsoring entity shall maintain these records for a period of at least five years following the provision of health care services under this section and shall, upon request, furnish those records to the board or any county health department.

(h) A contract of liability insurance issued, amended, or renewed in this state on or after January 1, 2011, shall not exclude coverage of a health care practitioner or a sponsoring entity that provides, or arranges for the provision of, health care services under this section, provided that the practitioner or entity complies with this section.

(i) Subdivision (b) shall not be construed to authorize a health care practitioner to render care outside the scope of practice authorized by his or her license or certificate or this division.

(j) (1) The board may terminate authorization for a health care



practitioner to provide health care services pursuant to this section for failure to comply with this section, any applicable practice requirement set forth in this division, any regulations adopted pursuant to this division, or for any act that would be grounds for discipline if done by a licensee of that board.

(2) The board shall provide both the sponsoring entity and the health care practitioner with a written notice of termination including the basis for that termination. The health care practitioner may, within 30 days after the date of the receipt of notice of termination, file a written appeal to the board. The appeal shall include any documentation the health care practitioner wishes to present to the board.

(3) A health care practitioner whose authorization to provide health care services pursuant to this section has been terminated shall not provide health care services pursuant to this section unless and until a subsequent request for authorization has been approved by the board. A health care practitioner who provides health care services in violation of this paragraph shall be deemed to be practicing health care in violation of the applicable provisions of this division, and be subject to any applicable administrative, civil, or criminal fines, penalties, and other sanctions provided in this division.

(k) 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.

(l) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Education and Outreach Agenda**

Agenda



Notice is hereby given that a public meeting of the Education and Outreach Subcommittee of the Dental Hygiene Committee of California will be held as follows:

**EDUCATION/OUTREACH SUBCOMMITTEE MEETING**

**Friday, April 29, 2011  
Doubletree Hotel LAX  
1985 East Grand Avenue  
El Segundo, CA 90245**

**Upon conclusion of Legislation and Regulatory Subcommittee**

**AGENDA**

**EDU 1 – Roll Call**

**EDU 2 – Public Comment**

**EDU 3 – Chairperson's Report**

**EDU 4 – Approval of December 5, 2010 Minutes**

**EDU 5 – Outreach Events**  
a. Upcoming  
b. Attended

**EDU 6 – Report on Governor Brown's February 18, 2011 directive prohibiting purchases of free giveaways.**

**EDU 7 – Information on Website**

**EDU 8 – Future Agenda Items**

**EDU 9 – Adjournment**

**Education/Outreach  
Subcommittee**

Chair – Rita Chen Fujisawa,  
Public Member  
William Langstaff, DDS  
Andrew Wong, Public Member

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at [www.dhcc.ca.gov](http://www.dhcc.ca.gov).

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Education and Outreach Agenda Item 3**

**Chairperson's Report**



## MEMORANDUM

<b>DATE</b>	April 04, 2011
<b>TO</b>	Dental Hygiene Committee of California Education and Outreach Members
<b>FROM</b>	Rita Chen Fujisawa Chair, Education and Outreach Subcommittee
<b>SUBJECT</b>	<b>Agenda Item 3</b> <b>DHCC Education and Outreach Chairperson's Report</b>

- My thanks to President Rhona Lee, who has agreed to step in to chair the April 29, 2011 subcommittee meeting during my absence.
- Since the beginning of 2011 I have participated with Alex Calero in a workgroup tasked with providing input on improving the DCA Executive Officer Performance Evaluation Form.

To date, I have attended three conference calls organized by Kim Kirchmeyer and Cindy Kanemoto, Chief, Licensing for Job Creation Unit. The revised evaluation form incorporates the State of California Leadership Competency Model which identifies the general competencies required for successful performance as an executive with the State of California. The evaluation tool focuses on behavioral and performance based competencies, rather than on specific tasks.

The work group worked has had an opportunity to define their expectations and objectives for a performance evaluation, identified some problems with the current form and discussed ways to improve the overall process to make it a useful tool for both the board as well as the EO. DCA is also currently looking into a way to translate the form into an online format which will help in compiling the results and make it more user friendly.

The group anticipates a few more calls before the form is finalized and then introduced at an upcoming monthly board/committee teleconference hosted by DCA Director, Brian Stiger. DHCC will have an opportunity experience the process and the revised form when it is time to conduct the 2011 EO review.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Education and Outreach Agenda Item 4**

Approval of December 5, 2010 Minutes

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, California 95815  
Phone 916.263.1978 Fax 916.263.2688 | www.dhcc.ca.gov



***Dental Hygiene Committee of California  
Education/Outreach Subcommittee Meeting***

*Department of Consumer Affairs  
2005 Evergreen Street  
Sacramento, CA 95815*

**Sunday, December 5, 2010**

**DRAFT MINUTES**

**1. Roll Call/Establishment of Quorum**

Members Present

Rita Chen Fujisawa, Public Member – Chair  
Cathy DiFrancesco, RDH  
Michelle Hurlbutt, RDH

Staff Present

Lori Hubble, Executive Officer  
Tom Jurach, Administrative Analyst  
Traci Napper, Associate Government  
Program Analyst

Members Not Present

Andrew Wong, Public Member

The meeting began at 10:21 a.m. Members introduced themselves for roll call. Because member Andrew Wong was not present, Cathy DiFrancesco was temporarily appointed in his place.

**2. Public Comment**

There was no public comment.

**3. Approval of September 27, 2010 Minutes**

It was m/s/c (DiFrancesco/ Hurlbutt) to approve the September 27, 2010 Education and Outreach Subcommittee meeting minutes as submitted. The motion passed unanimously.

**4. DHCC Web Site Statistics**

Tom Jurach, DHCC Administrative Analyst, provided information about DHCC's internet statistics. He presented the number of web hits on the DHCC main page for the months of June-October, 2010 and called attention to the increased activity during the summer as being indicative of RDH candidates using the website for examination preparation with web hits falling off dramatically after July.

Mr. Jurach presented the global internet activity information and called attention to the amount of activity coming from New York, USA and Moscow, Russia.

In addition Mr. Jurach presented the top five DHCC web pages defined by traffic. Respectively the most heavily trafficked was the DHCC home page, followed by licensee renewal, licensee verification, application information and the required application forms.

## **5. *2011 Calendar of Outreach Events***

Ms. Chen Fujisawa announced the upcoming 2011 outreach calendar.

Public comment was made by Ellen Standley, California Dental Hygienists' Association President, who invited DHCC to the CDHA Fall Scientific Session scheduled for late October/Early November 2011 in Northern California.

The event date will be submitted to the DHCC President and Executive Officer for consideration.

## **6. *Future Agenda Items***

JoAnn Galliano, educator, mentioned that the Western Regional Exam Board (WREB) distributes a statistical analysis of examination information and would like the DHCC to draw a similar comparison. This document would provide information to participants of the exam and would serve as a welcoming aid. She would like the DHCC to evaluate the incorporation of similar data in its exam material.

Ms. Hurlbutt requested that committee members have an opportunity to review newly developed outreach materials before they are distributed to the general public.

## **7. *Adjournment***

There being no further business, the subcommittee meeting adjourned at 10:38 a.m.





**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Education and Outreach Agenda Item 5**

**DHCC Outreach Events**



<b>DATE</b>	April 29, 2011
<b>TO</b>	Dental Hygiene Committee of California Education and Outreach
<b>FROM</b>	Tom Jurach, Administrative Analyst
<b>SUBJECT</b>	<b>Agenda Item 5</b> <b>2011 Calendar of Outreach Events</b>

Event	Location	Dates
-------	----------	-------

**Attended:**

**CDHEA Meeting** .....Long Beach, CA ..... January 28-30, 2011

**Scheduled to Attend:**

**CDA Convention** .....Anaheim, CA ..... May 12-15, 2011

**CDHA Scientific Session** .....Anaheim, CA ..... May 13, 2011

**CDHA House of Delegates Meeting** ...Anaheim, CA ..... June 4-5, 2011

**CDA Convention** .....San Francisco, CA... September 22-24, 2011

**CDHA Fall Scientific Session** .....San Mateo, CA ..... October 29, 2011

**CHDA Board of Trustees** .....San Mateo, CA ..... October 30, 2011



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Education and Outreach Agenda Item 6**

Report on Governor Brown's February 18, 2011 directive  
prohibiting purchases of free giveaways



<b>DATE</b>	April 29, 2011
<b>TO</b>	Dental Hygiene Committee of California Education and Outreach
<b>FROM</b>	Lori Hubble, Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 6</b> <b>Report on Governor Brown's February 18, 2011 directive prohibiting purchases of free giveaways</b>

Governor Jerry Brown's administration directed all state agencies and departments to stop spending taxpayer dollars on free giveaway and gift items as part of continuing efforts to cut costs and tackle the state's budget gap.

A statewide review revealed that from 2007 to 2010 state agencies and departments spent a total of \$7.5 million on items including key chains, squeeze toys, pens, hats, trinkets, shirts, cups and other gift items known colloquially as "S.W.A.G.," or "Stuff We All Get." These include promotional and marketing items across almost every agency in the state.

This ban impacts the DHCC's outreach and marketing abilities by prohibiting us from ordering promotional materials for outreach events such as conventions and speaking engagements to educators, licensees, and students.

The DHCC spent \$1,054.33 on promotional materials in fiscal year 2009-2010. Director Stiger stipulated that we should not give away previously purchased swag.



**Friday, April 29, 2011**

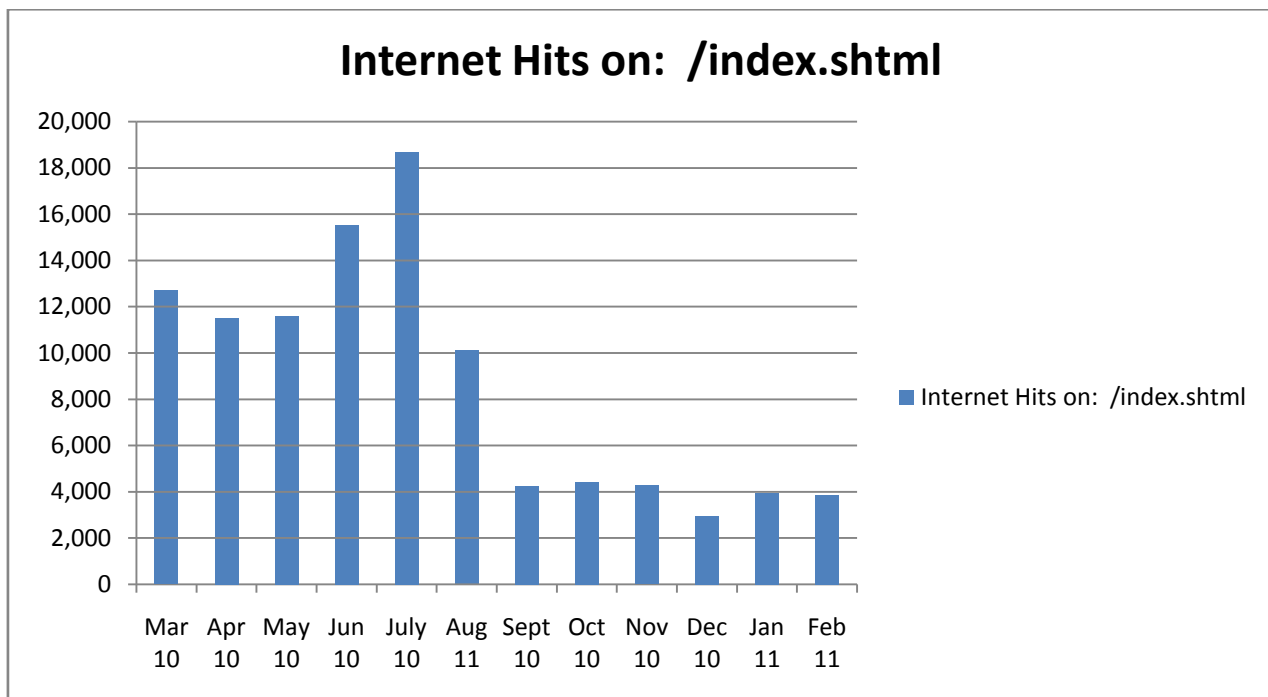
**Dental Hygiene Committee of California**

**Education and Outreach Agenda Item 7**

Information on Website



<b>DATE</b>	April 29, 2011
<b>TO</b>	Dental Hygiene Committee of California Education and Outreach
<b>FROM</b>	Tom Jurach, Administrative Analyst
<b>SUBJECT</b>	<b>Agenda Item 6</b> <b>DHCC Web Site Statistics March 2010 – February 2011</b>



“Hits” identifies the total number of visitors viewing the DHCC home page (index.shtml).



## Agenda Item 6 – Web Site Statistics

### Top 5 DHCC Web Page Hits and Quantity of Hits per Month per Page

*/index.html* is the DHCC Home Page

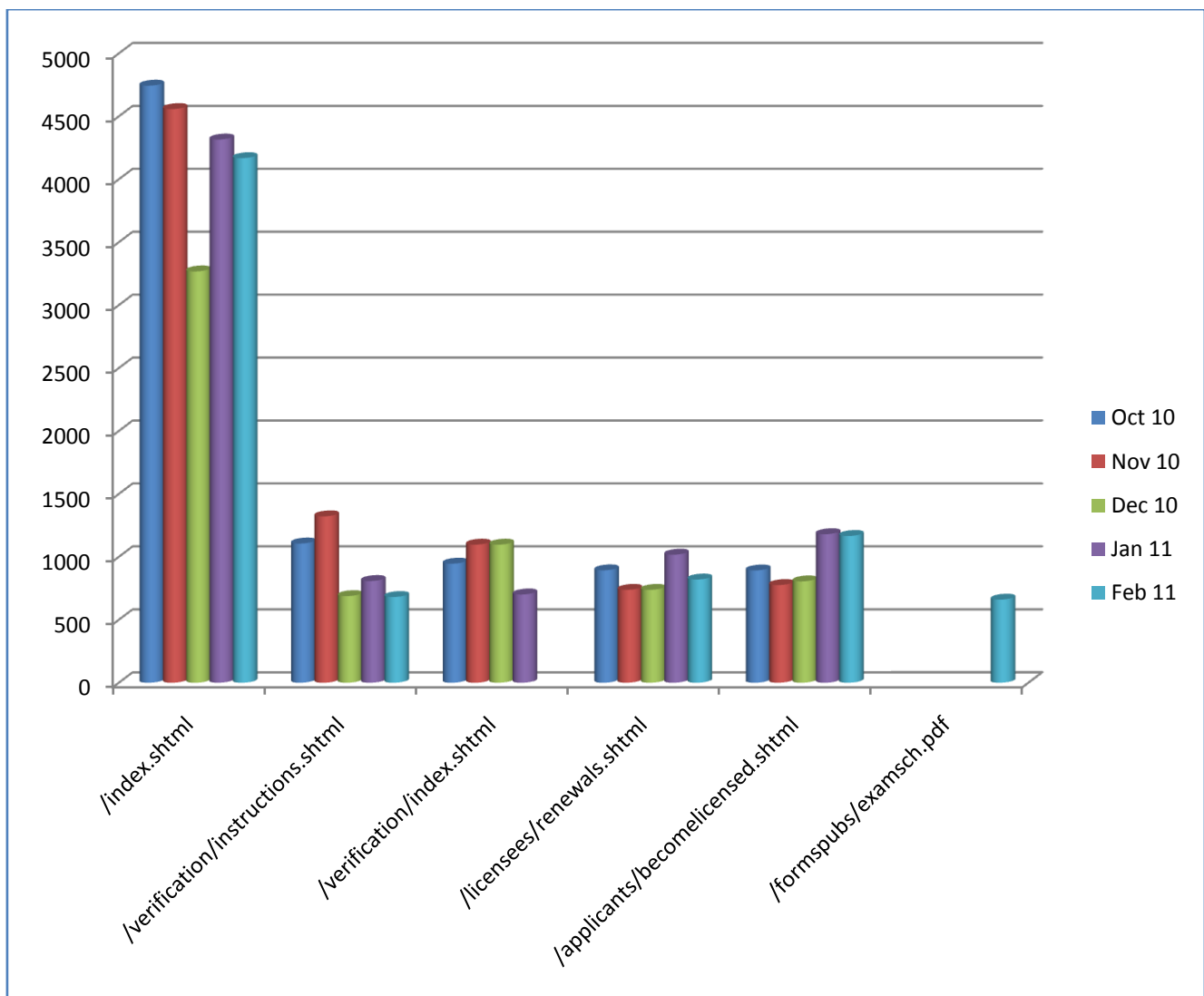
*/verification/instructions.shtml* is our license verification page

*/verification/index.shtml* is the page that springboards to the license verification page

*/licensees/renewals.shtml* is our renewal information page

*/applicants/becomelicensed\_rdh\_lbc.shtml* describes our licensing process

*/formspubs/index.shtml* contains various DHCC forms





## Agenda Item 6 – Web Site Statistics

**Global Activity:** October 2010 – February 2011. The size of the orange dot indicates the activity from each locale. The larger the dot, the greater the activity. Web activity is based upon the DHCC homepage ([/index.shtml](http://index.shtml)).







**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Licensing and Examination Agenda**

Agenda



Notice is hereby given that a public meeting of the Licensing and Examination Subcommittee of the Dental Hygiene Committee of California will be held as follows:

**LICENSING AND EXAMINATION SUBCOMMITTEE MEETING**

**Friday, April 29, 2011  
Doubletree Hotel LAX  
1985 East Grand Avenue  
El Segundo, CA 90245**

**Upon conclusion of Outreach and Education Subcommittee**

**Agenda**

**LIC 1** – Roll Call

**LIC 2** – Public Comment

**LIC 3** – Approval of December 5, 2010 Minutes

**LIC 4** – Chairperson's Report

- a. Report on CDHEA Meeting January, 28-29, 2011
- b. Report on American Dental Education Association House of Delegates Meeting March 12-16, 2011
- c. Continued Competency – Michelle Hurlbutt, RDH, will present a report.

**LIC 5** – Clinical and Written Examination Statistics

**LIC 6** – Licensure Statistics

- a. Registered Dental Hygienist
- b. Registered Dental Hygienist in Alternative Practice
- c. Registered Dental Hygienist in Extended Functions
- d. Fictitious Name permits

**LIC 7** – Update on regulations relating to courses in the administration of nitrous oxide and oxygen, administration of local anesthetic agents and periodontal soft tissue curettage (Title 16, California Code of Regulations, Section 1072.2)

**LIC 8** – Future Agenda Items

**Licensing and Examination  
Subcommittee**

Chair – Michelle Hurlbutt, RDH  
Cathy DiFrancesco, RDH  
Rhona Lee, RDHEF

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at [www.dhcc.ca.gov](http://www.dhcc.ca.gov).

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Licensing and Examination Agenda Item 3**

Approval of December 5, 2010 Minutes

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, California 95815  
Phone 916.263.1978 Fax 916.263.2688 | www.dhcc.ca.gov



***Dental Hygiene Committee of California  
Licensing and Examination Subcommittee Meeting***

*Department of Consumer Affairs  
2005 Evergreen Street  
Sacramento, CA 95815*

**Saturday, December 4, 2010**

**DRAFT MINUTES**

**1. Roll Call/Establishment of Quorum**

Members Present

Michelle Hurlbutt, RDH – Chair  
Cathy DiFrancesco, RDH  
Rhona Lee, RDHEF

Staff Present

Lori Hubble, Executive Officer  
Nichole Johnston, Staff Services Analyst  
Liz Roberts, Management Services Technician

The meeting began at 10:09 a.m. Roll was called and a quorum established.

**2. Public Comment**

There was no public comment.

**3. Approval of September 27, 2010 Minutes**

It was m/s/c (DiFrancesco/Lee) to approve the September 27, 2010 Licensing/Examination Subcommittee minutes as submitted.

**4. Chairperson's Report**

Ms. Hurlbutt stated that she attended two monthly DCA teleconferences in place of DHCC President Lee. Concerns about budget and hiring freeze were discussed and DCA introduced the concept of continuing competency for future discussion. Ms. Hurlbutt and Ms. Hubble will attend the California Dental Hygiene Educators Association Directors meeting on January 28, 2011 to discuss alternative pathways for initial licensure. In addition, Ms. Hubble will be part of a panel discussion regarding the clinical examination.

## **5. *Licensure Statistics***

The licensure statistics were presented.

## **6. *Clinical and Written Examination Statistics***

Ms. DiFrancesco asked if it were possible to separate the exam cancellations from the fail statistics. Ms. Johnston responded that currently due to DCA's antiquated computer system, DHCC is unable to differentiate between the two. Ms. DiFrancesco questioned the accuracy of the statistics. Ms. Johnston responded that the data is skewed because of the computer system's inability to separate cancellations from fails, or fees collected from actual attendance. Ms. Hurlbutt asked if statistical data could be manually tracked by either DHCC staff or exam personnel. Ms. Johnston responded that because candidates' information is confidential, neither staff nor exam personnel would have access to their files. Ms. Hubble expanded that due to DHCC staffing shortages and the time required to manually collect such data, these statistics should be removed as future agenda items until BreEZe, DCA's new computer system, is operational.

Carol Minter, RDH, faculty member at Sacramento City College Dental Hygiene Program asked the following in regards to the clinical exam:

- If DHCC could provide statistics that differentiated between failures due to probing errors vs. calculus deposits;
- What defined gross trauma;
- If gross trauma exam failures were caused by the use of an ultrasonic device or hand scaling;
- If candidates are given time warnings during the exam;
- If so, is it consistent at both northern and southern exams.

Ms. Hubble addressed the first question by stating that the collection of statistics reflective of failures occurring as a result of probing errors vs. calculus deposits could be considered when BreEZe, the new DCA computer system, is on-line.

Ms. Hurlbutt answered the second question by referencing the definition of gross trauma in the examination information packet, which is supplied to each candidate before an exam and is also available as a download on DHCC's website. Ms. Hubble stated that the majority of gross traumas seen were due to the usage of the ultrasonic device.

Stephanie Lemos, RDH Exam Clinic Supervisor, stated that all candidates at each exam location are given several time warnings during the examination. Ms. Hurlbutt agreed that in her observations she had seen consistent time warnings given to candidates at both northern and southern locations.

## **7. *Alternative Testing Methods To Administer Law and Ethics Written Examination***

Ms. Hubble commented that due to the high cost, this is something that DHCC would need to investigate and review in the future.

## **8. Discussion of Reference Materials for Development of the RDH and RDHAP Ethics Written Examinations**

Ms. Hurlbutt pointed out that the examination references for the RDH and RDHAP written examinations are different. Also, the RDHAP content outline contained repealed statute citations.

Ms. Hubble stated that recently the RDHAP Law and Ethics PSI candidate handbook was revised to include current statute citations. In addition, the ethical reference materials will be the same for both the RDH and RDHAP exams. The revised PSI candidate handbook will be made available on the DHCC website.

Ms. Hurlbutt brought attention to several letters from the Subject Matter Experts (SME) who attended the Law and Ethics development meeting in 2010. Ms. Hurlbutt asked if DHCC should have the CDA Code of Ethics omitted as reference materials for the exam. Ms. Hurlbutt referenced a written letter from JoAnn Galliano, RDH, faculty from Chabot College who wrote that she did not support the use of the CDA Code of Ethics because she felt the ethics examination questions should be specific for the dental hygiene profession versus the dental professions' code of ethics. Ms. Galliano was unable to provide more commentary as she was not in attendance for today's meeting.

Public comment from Debi Gerger, RDH, Director of West Coast University Dental Hygiene program concurred and did not support having the CDA Code of Ethics as part of the reference materials for the Law and Ethics examination because the focus for CDA is specifically on the practice dentistry and not the practice of dental hygiene.

Public comment from Judy Yamamoto, RDH faculty from Foothill College, agreed with Ms. Gerger, that the CDA Code of Ethics should be removed for the law and ethics exam because hygiene has become its own entity and it should be separated from dentistry.

Ms. Lee and Ms. DiFrancesco stated support in favor of keeping the CDA Code of Ethics at this time. Ms. Hurlbutt stated she was in favor of removing the CDA Code of Ethics from the written exam; however, because the exam development had already begun, DHCC can not make changes at this time. Ms. Hubble explained the current exam is under contract with Office of Professional Examination Services until June 2011.

No action was taken.

## **9. Update on regulations relating to courses in the administration of nitrous oxide and oxygen, administration of local anesthetic agents and periodontal soft tissue curettage (California Code of Regulations, Title 16, 1072.2)**

Ms. DiFrancesco reported that she, Ms. Hurlbutt and Ms. Hubble had met with SMEs to review regulatory language regarding courses in nitrous oxide and oxygen, administration of local anesthesia and periodontal soft tissue curettage and more time is needed for review.

It was m/s/c (DiFrancesco/Lee) to remove 1107 & 1108 (SLN course approval) from regulations for further modification.

## **10. *Alternative Methods of Initial Licensure Update on Standardized Exit Exam Concept for California Graduates***

Ms. Hurlbutt gave a verbal update on the concept:

- The Standardized Exit Exam (SEE) would be controlled by the DHCC;
- It would be given at the California education site;
- The SEE exam would only affect California graduates;
- At this time more information is needed.
- Concurrently, the portfolio concept is being researched; however, more information is needed;
- A report will be made at a future subcommittee meeting.

Public comment from Judy Yamamoto stated that we do not need to follow the Dental Board's example with portfolios. Comprehensive portfolios from students would be difficult to evaluate.

No action was taken.

## **11. *Future Agenda Items:***

Ms. Hurlbutt would like to have preliminary information on continued competency at the next subcommittee meeting and possibly invite a DCA spokesperson to give background information at a future meeting.

There was no public comment. There being no further business, the meeting adjourned at 11:23 a.m. for lunch to be followed by closed session.

## **Return to Open Session**

## **14. *Adjournment***

The meeting adjourned at 6:26 p.m.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Licensing and Examination Agenda Item 4**

**Chairperson's Report**





## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Michelle Hurlbutt, Chair Licensing and Examination Subcommittee
<b>SUBJECT</b>	<b>Agenda Item 4: Chairperson's Report</b>

A verbal report will be provided on the attached items.



## MEMORANDUM

<b>DATE</b>	April 15, 2011
<b>TO</b>	Licensing and Examination Subcommittee Members
<b>FROM</b>	Michelle Hurlbutt, RDH, MSDH Dental Hygiene Educator Member Chair, Licensing and Examination Subcommittee
<b>SUBJECT</b>	<b>Agenda Item 4: Chairperson's Report</b>

**RE: California Dental Hygiene Educators' Association (CDHEA)  
Report of Meeting with Dental Hygiene Directors on Alternative Pathways  
for Licensure**

At the CDHEA annual meeting, held January 28-30, 2011, Lori Hubble and Michelle Hurlbutt met with the dental hygiene directors at their meeting on January 28, 2011. We updated the directors regarding 2011 changes to the DHCC clinical examination as well as discussed alternative pathways for licensure. To follow are our key observations from this meeting:

- Most dental hygiene directors were supportive of eliminating live patient examination for initial licensure
- There was support from some dental hygiene directors for the continuance of our current clinical examination that includes evaluation of live patient care
- The majority of dental hygiene directors were supportive of investigating a standardized exit examination that would be conducted at the educational program site and controlled by an independent third party, such as the DHCC
- There was support from some dental hygiene directors for the use of portfolio assessment for initial licensure of dental hygienists and there was also support from some dental hygiene directors for the use of portfolio assessment for license renewal
- Several dental hygiene directors indicated they would serve on a task force to investigate alternative pathways for initial licensure

Based on our meeting and conversations throughout the weekend, our recommendation is:

*That DHCC form a task force with three dental hygiene educators from northern schools and three dental hygiene educators from southern schools and two members of the subcommittee charged with the development of a white paper with recommendations on alternative pathways for initial licensure.*

Justification: This recommendation supports the DHCC Strategic Plan. It will be important to have dental hygiene education involvement in the investigation of alternative pathways for licensure. In addition, due to the hiring freeze, our DHCC staff has no time to develop a white paper nor do they have the expertise needed to produce a white paper with recommendations on this topic.



## MEMORANDUM

<b>DATE</b>	April 15, 2011
<b>TO</b>	Licensing and Examination Subcommittee Members
<b>FROM</b>	Michelle Hurlbutt, RDH, MSDH Dental Hygiene Educator Member Chair, Licensing and Examination Subcommittee
<b>SUBJECT</b>	<b>Agenda Item 4: Chairperson's Report</b>

**RE: American Dental Education Association (ADEA) House of Delegates  
New policy on elimination of live patient examination**

As the sole national organization representing academic dentistry, the American Dental Education Association (ADEA) is the voice of dental education. ADEA members are more than 19,000 students, faculty, staff, and administrators from all of the U.S. and Canadian dental schools, many allied and postdoctoral education programs, and numerous corporations working in oral health education. Dental education is a broad and varied field that trains people as general dentists, specialists, dental hygienists, dental assistants, and dental laboratory technicians. ADEA membership mirrors this diversity.

At the recent ADEA annual meeting, held March 12-16, 2011, delegates attending the House of Delegates adopted the following new policy dealing with elimination of live patient examination in dentistry and an amendment to also include dental hygiene:

**Resolved, that the ADEA House of Delegates approves the "ELIMINATION OF LIVE PATIENT EXAM BY 2015" policy; Resolved, that this policy be added as item B to the ADEA Policy Statement III. Licensure and Certification; and Resolved, that items B through D in the current ADEA Policy Statement III. Licensure and Certification be relettered C through E.**

**B. Live Patient Examination.** By the year 2015, the live patient exam for dental licensure should be eliminated and all states should offer methods of licensure in dentistry that includes advanced education of at least one year, portfolio assessment, and/or other non-live patient based methods and include independent third party assessment.

*Amendment to Resolution 10H-2011 by Council of Students, Residents, and Fellows*

**10H-Resolved, that the ADEA House of Delegates approves the "Elimination of Live Patient Exam by 2014" policy; Resolved that this policy be added as item C to the ADEA Policy Statement III. Licensure and Certification; and Resolved, that items B through D in the current ADEA Policy Statement III. Licensure and Certification be relettered D through F.**

**C. Live Patient Examination for dental hygiene licensure.** By the year 2015, the live patient exam for dental hygiene licensure should be eliminated and all states should offer methods of licensure in dental hygiene, that includes portfolio assessment and/or other non-live patient based methods and include independent third party assessment.



College of  
**Dental Hygienists**  
of Ontario

*Protecting your health and your smile*

## **Quality Assurance Program**

---

Section B

# College of Dental Hygienists of Ontario

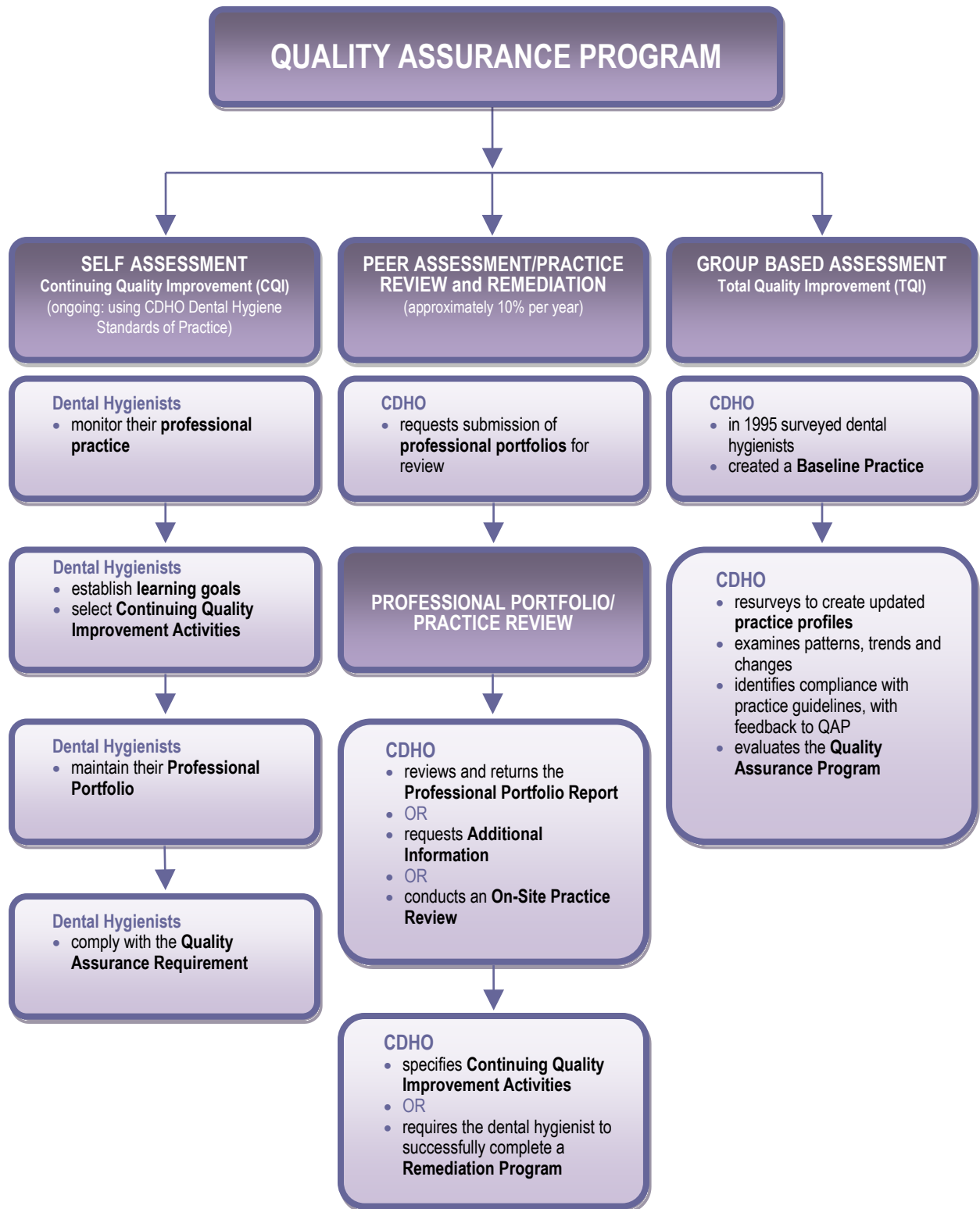
## Quality Assurance Program

### Table of Contents

---

#### Section B Quality Assurance Program

Outline of Quality Assurance Program.....	-B-1-
Introduction.....	-B-3-
Components of the Quality Assurance Program.....	-B-4-
1. Self Assessment (A Continuing Quality Improvement Component) .....	-B-4-
2. Peer Assessment (A Quality Assurance Component).....	-B-4-
3. Group-Based Assessment (A Total Quality Improvement Component) .....	-B-5-
4. CDHO Dental Hygiene Standards of Practice .....	-B-5-
5. Entry to Practice .....	-B-5-
6. Practice Enhancement / Remediation .....	-B-6-



# College of Dental Hygienists of Ontario

## Quality Assurance Program

---

### *Introduction*

In Ontario, the *Regulated Health Professions Act*, 1991 (RHPA) requires all health regulatory colleges under the Act to develop and to maintain a Quality Assurance Program to ensure the provision of optimal quality care to the public and to promote continuing quality improvement among its members. The role of the Regulatory College is to assure the public that dental hygiene care is safe, ethical, effective and of high quality.

The mission of the College of Dental Hygienists of Ontario (CDHO) is to regulate the practice of dental hygiene in the interest of the overall health and safety of the public of Ontario.

In the development of the Quality Assurance Program, CDHO acknowledges that dental hygienists are competent professionals whose goals include maintaining and improving their level of competence based on accepted standards of practice.

As self-regulating professionals, dental hygienists are expected to:

- assure that their professional responsibility to the client prevails;
- apply the *CDHO Dental Hygiene Standards of Practice*, CDHO Code of Ethics, and CDHO regulations and bylaws to their dental hygiene practice;
- maintain and improve their level of competence through the continuous acquisition of knowledge, skills and judgment; and
- be accountable for their actions.

The Quality Assurance Committee is a statutory committee of the CDHO and, as such, it is responsible for the implementation, the ongoing maintenance and evaluation of the Quality Assurance Program. The CDHO Quality Assurance Program is designed to foster openness and candidness between dental hygienists and the Quality Assurance Committee.

---

## Quality Assurance Program

Under the RHPA, the mandate of the CDHO is to govern in the public interest. Within this mandate, there has been a shift of focus from enforcement or quality control to that of quality improvement. This shift requires CDHO to contribute directly to the improvement of the quality of health services, a responsibility that reinforces individual accountability for ensuring continuing quality improvement. To this end, the Quality Assurance Program encompasses seven main components.

## Components of the Quality Assurance Program

---

### 1. Self Assessment (A Continuing Quality Improvement Component)

#### Maintenance of a Professional Portfolio

The *Professional Portfolio* is the major component of the Quality Assurance Program. It serves as a positive focus for continuous quality improvement and will permit the incorporation of three methods of review: self-assessment, peer assessment and group-based assessment.

The *Professional Portfolio* will permit you to reflect on your dental hygiene practice, to identify areas of your practice that require enhancement/improvement and to customize your continuing quality improvement activities in a manner that suits your personal situation and resources. Continuing quality improvement activities may include but are not limited to self-study, study groups, distance education, journal reading, continuing education courses and professional activities.

The primary focus of the Quality Assurance Program will be to ensure that clients receive quality care from all practitioners. Mechanisms will be developed and refined over time to assist dental hygienists to meet this standard and to ensure that it is being met. All registered dental hygienists will be responsible for establishing and maintaining a *Professional Portfolio* throughout their dental hygiene careers as a requirement for the annual renewal of their certificate of registration. Dental hygienists will document continuing quality improvement activities sufficient, in accordance with the policies and guidelines published by the College, to demonstrate that they continue to have the knowledge, skills, attitudes and judgment required to practise dental hygiene in a safe and competent manner. The contents of the *Professional Portfolio* are confidential. **When CDHO requests a Professional Portfolio/Practice Review, only authorized personnel will have access to the Professional Portfolio.**

---

### 2. Peer Assessment (A Quality Assurance Component)

#### Professional Portfolio/Practice Review

The Quality Assurance Committee/Panel will review approximately 10% of dental hygienists' Professional Portfolios on an annual basis. Selection for the review will be based on a stratified random sample using pre-determined demographic criteria to ensure sufficient numbers of dental hygienists from different groups of interest. A written report of the assessment will be forwarded to the dental hygienist with notice that the dental hygienist has the right to make written submissions to the Committee. If a review of a dental hygienist's Professional Portfolio by the Quality Assurance Committee determines that the assessment criteria/guidelines for a satisfactory portfolio have not been met, or if concerns are identified from other information before it, the panel may direct a review of the dental hygienist's practice at her/his practice location.



After considering the report and the dental hygienist's written submission and any other available information, the Panel may require the dental hygienist to correct any deficiency within a specified period of time, may grant an exemption, or may direct the dental hygienist to complete specified continuing education programs within a specified period of time and/or direct a review of the dental hygienist's practice at her/his practice location.

In circumstances where the Committee determines that the dental hygienist's knowledge, skills, judgment or attitudes are unsatisfactory and believes that any other order available to it is inadequate alone to address the concerns, the Committee may direct the Registrar to impose terms, conditions or limitations on the dental hygienist's certificate of registration.

**Changes to the Professional Portfolio/Practice Review policies, forms and assessment guidelines will be published annually by the Quality Assurance Committee.**

---

### ***3. Group-Based Assessment (A Total Quality Improvement Component)***

The College shall periodically collect and analyze information about the nature and quality of dental hygiene practices, including information from dental hygienists, and shall make group-based comparisons of the information. The College will use this information and its analysis to prepare guidelines and advisory notices to the profession, to facilitate total quality improvement for the practice of dental hygiene and to adjust the College's Quality Assurance Program as required. Dental hygienists will be requested periodically to provide the College with information about their dental hygiene practice.

---

### ***4. CDHO Dental Hygiene Standards of Practice***

The *CDHO Dental Hygiene Standards of Practice* are expressed as criteria. Criteria are variables believed or known to be relevant indicators of the quality of dental hygiene care. The associated standards refer to the desired and achievable level or range of performance with which actual performance is compared. In the *CDHO Dental Hygiene Standards of Practice*, the criteria are grouped according to structure, process and outcomes of dental hygiene care. Each criterion has standards relating to the five areas of responsibility; clinical therapy, health promotion, education, administration and research/scientific inquiry. The *CDHO Dental Hygiene Standards of Practice* are to be used by dental hygienists to assess their dental hygiene practices and to identify learning goals that will direct continuing quality improvement activities.

---

### ***5. Entry to Practice***

CDHO requires that an individual wishing to become registered as a dental hygienist must be (1) a graduate of an accredited/assessed equivalent dental hygiene education program and (2) hold a certificate from the National Dental Hygiene Certification Board.

---

## **6. *Practice Enhancement / Remediation***

Practice enhancement/remediation activities are required for dental hygienists found deficient in their knowledge, skills, attitudes and judgment as identified through the portfolio/practice audit. Required courses will be identified by the Quality Assurance Committee to remediate the identified deficiencies. Successful completion of these activities is required as specified in the Quality Assurance Regulations. The dental hygienist is responsible for the costs associated with practice enhancement/remediation activities.

Please review all the materials in your package carefully. If you have any questions regarding the Quality Assurance Program, contact Lisa Taylor 416-961-6234, ext. 239 or 1-800-268-2346.

# ***Meeting the Ongoing Challenge of Continued Competence***

*Properly conceived and executed, regulation can both protect the public's interest and support the ability of health care professionals and organizations to innovate and change to meet the needs of their patients.*

*– Crossing the Quality Chasm, 2001*

## **I. Introduction and Purpose**

Nursing is a profession that requires the application of substantial knowledge, skills and abilities. The unsafe or unethical practice of nursing could cause harm to the public unless there is a high level of accountability. (Sheets, 1999) Thus, it is the responsibility of boards of nursing to hold nurses professionally accountable. The regulation of nursing is all about public protection and patient safety. As the pace of technological and scientific development accelerates, one of the greatest challenges to all health care practitioners is the attainment, maintenance and advancement of professional competence. In 1995, the Citizen Advocacy Center (CAC) asked the question, "Can the public be confident that health care professionals who demonstrated minimum levels of competence when they earned their licenses continue to be competent years and decades after they have been in practice?" CAC's response in 1995 was: "No." (Swankin, 1995). Ten years later, nursing is still seeking an answer.

The National Council of State Boards of Nursing has long acknowledged continued competence as a critical regulatory issue for Boards of Nursing. In an effort to have language applicable to all practitioners at every level of practice, NCSBN defined competence as... *the application of knowledge and the interpersonal, decision-making and psychomotor skills expected for the practice role, within the context of public health.* (NCSBN, 1996) (See Attachment A for a chronological listing of NCSBN activities, beginning in 1985.)

Continued competence has been studied and talked about. There have been proposed regulatory approaches but there has not been agreement on what to do about it. The nursing profession "...has clearly seen the need for continuing competence but has grapple with how this can be universally accepted by all nurses." (Bryant, 2005, p. 25) But increasingly licensing boards are being challenged to provide assurance to the public that licensees meet minimum levels of competence throughout their careers, not only at the time of entry and initial licensure. Continued competence is a critical challenge for regulatory boards in the 21<sup>st</sup> century. It is time to address that challenge.

## **II. Background**

While some boards of nursing have addressed the challenge with state initiatives, there has not been an elegant national regulatory solution for evaluating continued competence. Why is this so?

- Competence is multifaceted and may be difficult to measure.
- The sheer volume of nurses in practice makes it difficult to identify feasible and meaningful yet cost-effective regulatory approaches.
- There is no agreement on who should be responsible for continued competence.
- Nursing careers take widely divergent paths, varying by professional role, settings, clients, therapeutic modalities and other professional criteria as well as level of health care delivery.
- In addition, there is the inherent evolution of practice from the new graduate-entry-level to the experienced-focused practice level of competence.

- Thus, it is not clear what standard should be used to evaluate continued competence. Should the standard be based upon:
  - Current entry-level competency for the profession (i.e., NCLEX)?
  - Generalist core competency each licensure level (RN, LPN/VN, APRN)?<sup>1</sup>
  - Focused areas of practice for?
  - Essential emerging knowledge?
  - Some combination of the above?
  - None of the above (something not yet identified and/or articulated)?
- It is not clear how to evaluate whether a standard has been met.
- It is not clear what to do if a licensee cannot demonstrate continued competence. (NCSBN, 1996).

These are challenging issues that NCSBN has been struggling to address (See Attachment B for a more detailed discussion of these background questions.) But after many years, there are still insufficient answers. Rouse observes that a "...perfect solution – simple, effective, inexpensive and acceptable to all – does not exist and is unlikely to ever be realized." (Rouse, 2004) A better approach may be to work around these issues and ask some new questions.

### III. New Questions

What are some new questions that may help us look out of, around and under the box?

A. How can boards of nursing be more effective in protecting the public?

*Boards could be more proactive in providing the public assurance that practitioners continue to be safe years after completing education and first becoming licensed. When legal authority for nursing practice was granted to registered nurses at the beginning of the 20<sup>th</sup> century and to licensed practical/vocational nurses mid-century, it brought nursing a new level of professionalism. Now, at the beginning of the 21<sup>st</sup> century, in a time of unprecedented challenges and coping with new knowledge and advancements in technology knowing that at one point in time a nurse was qualified is not enough. Boards have a role in assuring the public that licensed nurses meet minimum standards of competence throughout their professional lives.*

B. Assuming there is not a perfect regulatory solution that would guarantee the continued competence of all nurses, what could the boards require that would be creditable with the public and acceptable to the profession?

*In the interest of public protection, jurisdictions have strict requirements for obtaining initial licensure. However, requirements for licensure renewal are generally less stringent. One approach is to replace current periodic renewal processes with more substantive requirements for "licensure maintenance."*

C. Why should nurses have to do more to maintain licensure?

*Licensure is a privilege and each licensed nurse has responsibility to the licensing entity granting the authority to practice and to the public who receives nursing services. This responsibility includes the duty to attain and maintain licensure. Just as the board identifies the requirements for initial licensure, the board identifies the requirements to renew licensure. Currently, for most boards, that means paying a fee and avoiding serious disciplinary action. Requiring a licensee to maintain licensure means the board would need to articulate credible and meaningful requirements for ongoing licensure.*

---

<sup>1</sup> Generalist core competence could consist of those content areas that course all nursing roles and all nursing settings for each level of licensure.

D. What could demonstrate licensure maintenance?

*Licensure maintenance could include multiple elements, but should start with an assessment of the nurse's practice to direct professional development activities. In 1991, the NCSBN first articulated that learning strategies, such as continuing education, should be selected on the basis of assessment to identify learning needs.*

E. What are activities that have credibility with the public and are meaningful to nurses?

*The public needs assurance that nurses have current knowledge and are safe practitioners. The nurse needs the incentive of value added to one's career and practice. Accordingly, the public looks for requirements that demonstrate currency and ability to practice safely. Nurses would benefit from requirements that are relevant to the nurse's practice, promote professional development and can be used to meet the multiple demands of employers, boards and others.*

F. Licensure maintenance rather than continued competence – isn't this just semantics?

*How language is used is important for how a proposal is perceived. For example, if a nurse does not obtain continuing education hours, does that really mean that he or she is incompetent? Or does it mean the nurse didn't take CE courses? If a nurse takes the requisite continuing education course, does that show that the nurse is really competent? Or does it mean that the nurse signed an attendance sheet at a class?*

*Talking about continued competence makes professionals feel singled out and vulnerable. The concept of continued competence is intended to encourage practitioners to maintain their practice. But it is threatening to many. There is fear of the licensing board. There is fear of losing one's livelihood. There is fear of failure.*

*Licensure maintenance implies universality, something required of everyone. It may allow people to get past the rhetoric and focus on the real challenge – the identification of substantive content for re-qualification requirements.*

#### **IV. Who is Asking?**

Ben Shimberg, who was a nationally recognized expert in testing, credentialing and professional regulation, first became interested in continued competence in 1967 because of the work of a governmental commission created to address the question of "medical obsolescence." That commission stated that simply making educational opportunities available was not enough – there had to be incentives to insure that physicians and other health professionals kept up-to-date and maintained the skills to deliver high quality care. (CAC, 1996.) In 1970, the US Public Health Service called for the development of more sophisticated approaches tied to re-licensure or recertification (suggesting the consideration of peer review, re-examination, self assessment and supervisory assessment as well as continuing education). (CAC, 1996)

The NCSBN Nursing Practice & Education (NP&E) Committee considered the measurement of competence from an empirical and standard-setting perspective in the 1991 paper *The NCSBN Conceptual Framework for Continued Competence*. This paper stressed the importance of both assessment (to determine learning needs) as well as strategies to promote continued competence. (NCSBN, 1996)

In *Reforming Health Care Workforce Regulation: Policy Considerations for the 21<sup>st</sup> Century*, the Pew Taskforce on Health Care workforce Regulation recommended, “(3) States should base their practice acts on demonstrated initial and continued competence...[and] (7) States should require each regulatory board to develop, implement and evaluate continuing competence requirements to assure the continuing competence of regulated health care professionals...” (Pew, 1995).

In 1996, the Essential and Continued Competence Subcommittee completed a new position paper entitled *Assuring Competence: A Regulatory Responsibility* that incorporated the definition of competence referenced above, standards for competence (see Attachment C) and a Model for Individual Competence Evaluation. (NCSBN, 1996)

In 1998, the NP&E Committee, building upon previous NCSBN Work, developed the Continued Competence Accountability Profile (CCAP). CCAP was a portfolio approach where the nurse applied the steps of the nursing process – assessment, planning, implementation and evaluation – to the nurse’s own professional development. (NCSBN, 1998) CCAP was presented at the 1998 Area Meetings as an alternative to continuing education. The response of the membership at that time was that the concept was interesting, with many excellent elements. However, CCAP was viewed as too complex and not administratively feasible as a regulatory approach to continued competence.

The Institute of Medicine (IOM) stunned the nation in 1999 with, *To Err is Human: Building a Safer Health System*. That reported that between 44,000 and 98,000 people die each year from preventable medical errors. (IOM, 1999) This report addressed a whole range of errors from omissions to commissions to inappropriate therapies. A major concern identified is the length of time between the discovery of more effective treatments and their incorporation into routine patient care. This has direct implications for practitioners to stay current in their knowledge and skills. The IOM recommended the implementation of periodic reexamination and relicensing of physicians, nurses and other providers based on competence and knowledge of safety practices, and to work with certifying and credentialing organizations to develop more effective methods to identify and take action when providers are unsafe. (IOM, 1999)

In *Crossing the Quality Chasm: A New Health System for the 21<sup>st</sup> Century*, the Institute of Medicine observed that “There are no consistent methods for ensuring the continued competence of health professionals within the current state licensing functions or other processes”. (IOM, 2001)

In April 2003, the IOM issued another report entitled *Health Professions Education – A Bridge to Quality*, which viewed professional competency assurance as the shared responsibility of public and private sectors. The IOM recommended that:

*All health professions boards should move toward requiring licensed health professionals to demonstrate periodically their ability to deliver patient care – as defined by the five competencies defined by the committee<sup>2</sup> – through direct measures of technical competence, patient assessment, evaluation of patient outcomes, and other evidence-based assessment methods. These boards should simultaneously evaluate the different assessment methods. (IOM, 2003)*

*Certification bodies should require their certificate holders to maintain their competence throughout the course of their careers by periodically demonstrating their ability to deliver patient care that reflects the five competencies, among other requirements. (IOM, Bridge, 2003, p\_\_)*

*Keeping Patients Safe: Transforming the Work Environment of Nurses* acknowledged that “prelicensure or pre-employment education cannot provide sufficient frequency and diversity of

---

<sup>2</sup> The authors of the IOM report believe that all health care professionals *should be educated to deliver patient centered care, as members of an interdisciplinary team, emphasizing evidence-based practice, quality improvement approaches and informatics.* (IOM, 2003)

experiences...in the performance of every clinical nursing intervention needed for every clinical nursing intervention needed for patients.” (IOM, *Nurses’ Work Environment*, 2003, p.203). This is amplified in the face of the growth of new knowledge and technology.

The NCSBN research project, *Evaluating the Efficacy of Continuing Education Mandates* (Smith, 2003) revealed how professionals perceive they have attained professional development. That study showed that work experience is a stronger contributor to the growth of abilities than continuing education, working with mentors or self-study. This research was used to support the continued competence approach used in the current NCSBN *Model Nursing Practice Act and Model Nursing Administrative Rules*, adopted by the 2004 NCSBN Delegate Assembly, requires 900 practice hours rather than continuing education. (NCSBN, 2004)

In 2004, the Citizen Advocacy Center (CAC) presented the *CAC Road Map to Continued Competence*, built upon ten principles:

1. Using **collaboration** among a broad base of stakeholders
2. For the purpose of **quality**
3. Using **evidence-based** approaches
4. That **build upon what works**
5. With a **uniform definition of competence** across all health field professions.
6. It must be **mandated** to be successful.
7. It must be a **clinician responsibility** that positively develops careers.
8. The cost should be borne by health professionals, **using licensing fees to pay for competency assurance.**
9. **Due process** must be respected and balanced with the public’s **right to know**,
10. **Licensing boards should have ultimate authority.** (CAC, 2004)

The CAC Road Map consists of a two phased plan built upon the action areas of conducting research, seeking legislative and regulatory mandates, using evidence-based methods to demonstrate continuing competence, changing education programs, financing, continued competence programs and reforming continuing education programs. (CAC, 2004) The plan includes national meetings to build consensus and identify priorities as well as pilot projects to study the reliability, validity and accuracy of various assessment and assurance methods. (CAC, 2004) The targeted destination to be reached via the road map is “a destination where all health care professionals periodically demonstrate their competence through one of a variety of acceptable methodologies.” (CAC, 2004). A final resource put forward by CAC is a five step model for the individual practitioner, that includes routine periodic assessment, the development of a personal plan, the implementation of a personal plan, documentation of all steps and demonstration/evaluation of competence. (CAC, 2004).

## V. Review of Approaches Already in Use

### *Nursing Regulation*

Currently, the most common continued competence requirement for nursing licensing boards is continuing education, which is required of RNs by 25 boards and of LPN/VNs by 24 boards. Of these, 12 boards require specific subject matter as part of licensure maintenance (NCSBN, 2002). Other nursing board approaches to continued competence include requiring a specified number of practice hours (21 boards for RNs, 22 board for LPN/VNs; also see NCSBN Models) or a nursing refresher course if a nurse who has had an inactive license seeks to return to practice (24 boards for both RNs and LPN/VNs). Three states require a competency examination under specific circumstances (e.g., an extended number of years out of practice). (NCSBN, 2002) Several states have completed continued competence initiatives or have an initiative under way.

Although the Colorado Board of Nursing discontinued its continuing education requirement in 1994 because it found no evidence that it was effective in assuring continued competence, as noted above (Karen Brumley, personal communication February 1994) other states to have CE requirements. For example, the Arkansas Board of Nursing also worked on the challenge of continued competence, and

implemented continuing education requirements for nurses holding active licensure. The Board must recognize the approval bodies that approve the continuing education programs that are used to meet this requirement. More information regarding the Arkansas CE requirements can be found at [www.arsbn.org](http://www.arsbn.org) (personal communication Faith Fields).

The Kentucky Board of Nursing held a number of open forums in 1997 to examine competency issues. A professional portfolio including skills assessment inventories, peer review, formal nursing courses and continuing education was developed. Currently, the continued competence requirements for Kentucky, which is moving to an annual renewal process, offers a number of alternative activities that nurses can select (ranging from continued education hours to research to publication to a combination of CE and work evaluation). (Spur, 2004) The Texas Board of Nurse Examiners was authorized by the Texas Legislature to offer grants for conducting pilot programs to study the questions 1) What constitutes basic competency and 2) Can valid and reliable methods of measurement be developed? (Green, 1999) The eight funded projects considered tests, skill demonstration, peer evaluation, critical thinking skills tests and portfolios. Currently, the Texas Board of Nurse Examiners is authorized to recognize, prepare or implement continuing competency programs for license holders and may require participation in continuing competency programs as a condition of renewal of a license. Such programs may allow a license holder to demonstrate competency through various methods, including targeted continuing education programs, consideration of the license holder's professional portfolio (including certifications). The board may not require more than a total of 20 hours of continuing education in a two-year period, and may not require more than 10 hours consisting of classroom instruction in approved programs. (Texas Administrative Code, Title 22 Part II, Chapter 216.

The North Carolina Board of Nursing has a project underway, based on a determination that continued competence is both an evaluative process carried by the nurse, employer and Board of Nursing and a self-directed and ongoing process by the nurse for purposes of licensure renewal. Their pilot project includes a broad-spectrum sample of nurses from a variety of settings who are expected to complete a self-assessment and action plan. The board has developed a number of tools to support nurses in *reflective practice* – defined as “a process for the assessment of one’s own practice to identify and seek learning opportunities to promote continued competence.” After six months, the nurses will be assessed as to how they have implemented their work plans. The North Carolina Board of Nursing plans to seek legislation in 2005 with implementation in 2006. (NCBN, 2005)

In Ontario, the College of Nurses and other health colleges were mandated to develop and implement continued competence programs in the 1990s. The Ontario College of Nursing developed a reflective practice and portfolio model that began as a voluntary program and is now mandatory as part of the licensure renewal process.

#### *Other Health Professions*

Many health professions continue to require continuing education as the primary continued competence activity. According to the Federation of Chiropractic Licensing Boards (FCLB), doctors of chiropractic are required to have a certain number of hours of continuing education in order to qualify for licensure renewal in most US jurisdictions. (FCLB, 2005) Optometric licensing boards use continuing education to certify the continuing competence of licensed optometrists. The American Association of Regulatory Boards of Optometry (ARBO) found that state boards were duplicating work when many boards approved the same CE courses every year. In response, ARBO created the Council on Optometric Practitioner Education (COPE), a national clearinghouse for all CE courses of a statewide, regional or national scope, to prevent duplicative efforts by state boards. (ARBO, 2001) Similarly, the Association of Social Work Boards (ASWB) created its Approved Continuing Education (ACE) Program to provide a national system to review and approve the providers of continuing education programs for social workers. Approved providers include universities, professional associations and both profit and non-profit organizations. ASWB does not approve individual courses. Most social work boards require social work continuing education. (ASWB, 2002).

One of the first health professions to look for new approaches to continued competence was the Commission on Dietetic Registration who first developed self-assessment modules in 1989. Their first



step was to identify the scope of practice of an experienced dietician and then developed a self-assessment module, using case studies, to evaluate the dietician's performance. An important aspect was establishing a feedback system allowing the dietician to receive an individualized commentary on their performance. The Commission has gone on to develop a variety of modules focusing on key areas of dietary practice. (CDR, 2005).

Continuing competence requirements for physical therapists is most often through continuing education and practice hours. The Federation of State Boards of Physical Therapy passed a motion at its 2004 Annual Meeting to support regulatory boards in the development of standards for measuring continuing competence. FSBPT has also developed standards for competence and some tools to support ongoing competence, including a jurisprudence examination and a self-assessment examination that is being currently being tested in pilot states. (FSBPT, 2002)

Continuing Professional Development (CPD) for pharmacists is an approach to lifelong learning that is being discussed as a possible model for use in the United States. CPD does not replace continuing education, but quality-assured CE is an essential component of CPD. Rouse believes that a quality improvement of the existing system for pharmacist CE can be achieved. (Rouse, 2004)<sup>3</sup> In addition, the National Association of Boards of Pharmacy is developing a self-assessment examination for pharmacists.

The National Certification Board of Occupational Therapists (NCBOT) developed a portfolio approach that requires occupational therapists (OT) to accumulate a set number of professional development activities for each renewal cycle. Half of the activities must be directly related to the delivery of occupational therapy services. NCBOT provides a number of tools and case studies on their web site to assist practitioners in the development of their professional portfolios. (NCBOT, 2005)

The Federation of State Medical Boards established a Special Committee on the Evaluation of Quality of Care and Maintenance of Competence in 1998. This group defined competence as, "Possessing the requisite abilities and qualities (cognitive, non-cognitive and communicative). They also considered the concept of *dyscompetence*, which they defined as "failing to maintain acceptable standards in one or more areas of professional physician practice," and incompetence, defined as "lacking the requisite abilities and qualities ...to perform effectively in the scope of professional physician practice." The committee's recommendations included to develop and implement methods to identify physicians who fail to provide quality care and to identify the dyscompetent physician. In addition to providing opportunities for improving physician practice in problem areas, they recommended that state medical boards develop programs to enhance overall physician practice. (FSMB, 2005)

The members of the American Boards of Medical Specialties (ABMS) have, until recently, concentrated on initial certification. Since 1998, the physician specialty boards have been moving toward periodic recertification to maintain board certification. In 2000, ABMS Member Boards approved the establishment and basic elements of a system for "Maintenance of Certification." This system would eventually replace periodic re-certification. (Brennan, 2004) Member Boards are working on establishing specialty-specific requirements and processes for "Maintenance of Certification" or MOC. There are four components to the MOC: 1) evidence of professional standing (e.g., unrestricted license); 2) Evidence of a commitment to lifelong learning and involvement in periodic self-assessment to guide learning; 3) evidence of cognitive expertise based on an examination; and 4) evidence of evaluation of performance in practice. (ABMS, 2005)

### **III. New Directions**

---

<sup>3</sup> Pharmacy continuing education is approved by the Accreditation Council for Pharmacy Education, which also offers a service to link pharmacist to appropriate CE courses.

#### NCSBN 2005 Midyear Meeting

Continued competence was a major discussion at the 2005 Midyear Meeting. Participants were asked to discuss in small groups three questions. The first question was: *Is it the duty of the board of nursing to assure consumers that competence is maintained throughout the lifetime of the license?* Each table of participants talked about this question, and each table reported out on their discussions. The majority of participants said yes, boards do have a duty or indicated that it was a shared responsibility. There were some attendees who perceived continued competence as an employer responsibility. One person asked, in the face of the nursing shortage, how vigorous the process should be?

The second question for discussion was: *Describe how your Practice Act & Rules address the maintenance of competence.* The identified approaches were: minimum practice hours, mandatory reporting of unsafe practice, standards on the expected knowledge, skills and abilities, continuing education requirements and “pay your fees and stay out of trouble.” The most common approaches in current use were continuing education requirements and minimum practice hours.

The third discussion question was: *What are the essential components of an effective regulatory model for the maintenance of competence?* The most common element reported was some form of assessment (examples included: self assessment, core competency test for practicing nurse, Dorothy Del Bueno’s model, measurement process, measurement tool, core competency measurement by an affective-cognitive-sensory monitor, and regional assessment centers). Other suggested elements were portfolios, demonstration and observation, general guidelines provided by Member Boards, tracking systems, manage or remove the non-competent nurse, evidence based discipline, remediation courses, web based resources, and continuing education.

#### Fiscal Year 2005 Strategic Initiative

The 2004 Delegate Assembly adopted a strategic plan to guide the organization for the next three years. Part of that plan is “*Strategic Initiative #4: Position NCSBN as the premier organization to measure entry and continuing competence of nurses and related healthcare providers.*” Utilizing the Balanced Scorecard strategic management model, a strategic objective was developed by the Board of Directors to accomplish this initiative. The following Strategic Objective was assigned to the Testing Services Department: “*Strategic Objective #2: Develop an assessment instrument to measure continued competence of RNs and LPN/VNs.*”

Based on this directive, the NCSBN Testing Department is developing a practice analysis of post entry-level nurses. In addition, a public opinion survey regarding public perceptions of continued competence for nurses is in the process of being conducted. As part of the usual development process for a job analysis, at least two subject matter expert meetings are expected to occur this summer: One meeting is to develop a comprehensive list of LPN/VN nursing activity statements to assess LPN/VN practice and one meeting to develop a comprehensive list of RN nursing activity statements to assess RN practice. After comprehensive lists of RN and LPN/VN nursing activity statements have been developed, post entry-level RNs and LPN/VNs will be surveyed regarding the frequency and importance of nursing activities. Data collection is scheduled for FY06 with initial reports expected in late Spring/early Summer of 2006. The purpose of the job analysis is to describe the practice of experienced nurses with the idea of developing an assessment instrument for experienced nurses. What is learned from this study may be very useful for devising a continued competence regulatory model.

## **VII. Discussion**

Unlike other health professions who number in the thousands, there are over two million nurses in the United States. Such huge numbers have tremendous impact on the resources needed, and thus the approach used, to assure continued competence of nurses. It is estimated that less than 20% of nurses are professionally certified. Thus, the medical model is not a good fit for nursing.

The NCSBN strategy of analyzing the practice of experienced nurses is a crucial first step toward the development of a regulatory model. It will help us describe the practice of an experienced nurse. That will inform whatever model is eventually developed.

The NCSBN has been looking at continued competence since 1985. The physicians first began to focus on continued competence in 1998. Since then, several member boards of the American Boards of Medical Specialties began to require periodic reexaminations to maintain board certification. Other medical specialties are also moving in this direction. Most physicians are board certified, so that 85-90% of physicians could be assessed by mandatory periodic recertification examinations allowing this approach can be used as the primary continued competence mechanism for doctors. Boards of medicine have to develop continued competence mechanisms for the much smaller number of practitioners who are not board certified.

The CAC Road Map put forward in 2004 is very similar to the steps of the CCAP portfolio approach developed by the NCSBN in the late 1990s.<sup>4</sup> So, one possibility for nursing is for the NCSBN to revisit the CCAP and the portfolio approach. However, the criticisms that were raised in 1998 would still be concerns today: it is a paper trail, it is difficult to quantify and it raises questions of reliability and validity. While developing a portfolio can be an enriching experience, it can also be busy work with little relation to actual practice.

What the Pew Taskforce and the Institute of Medicine and the Citizens Advocacy Center advocated is the periodic demonstration of competence. But there is more than one way to demonstrate competence. There are formal examinations. But there is also self-assessment tests and reflection on one's practice. There are open book tests that look less at what you can recall and more at how you think and synthesize and apply knowledge. In the current healthcare environment, isn't how a nurse problem solves and where she or he goes to find answers more important than just retained facts?

Assessment results do not have to determine "in or out." Results could be used to provide feedback and direction to the nurse. Boards could provide licensees time to study and work on improvement, and then reassess. Boards would have to make challenging policy decisions about how long, number of tries and how to deal with nurses who cannot meet requirements. If the re-qualification requirements are reasonable, substantive and rationally related toward meeting the goal of assuring the currency of nurses, it is the role of the board of nursing to enforce those requirements.

Periodic assessment is not an unrealistic expectation – it is opportunity for quality improvement. Continuous quality improvement is a logical requirement for licensure maintenance.

## **VIII. Conclusions**

We are living in a complex, complicated world. Given a constant onslaught of new knowledge and technology, that an individual was successful in completing nursing education, passing an examination and meeting other requirements at a point in time is not enough. Licensure renewal and staying out of trouble is not enough. Licensees need to demonstrate that they are taking substantive steps to maintain licensure.

Some nurses will ask, "Where is the evidence we aren't competent?" It is true that research is needed to study the practice of experienced nurses. Research is needed to assure that there is evidence to support that a continued competence strategy is effective. But it is disingenuous to suggest that in the current environment and in the face of startling, frightening statistics involving error that assuring the maintenance of continued competence of health professionals, including nurses, is not needed. Patient safety initiatives must address individual competency as well as system redesign and

---

<sup>4</sup> The CAC is taking on even more daunting a challenge than NCSBN, because it is trying to move multiple health professions to implement continued competence requirements.

improvement. IOM has identified five competencies for all health care professionals (*patient centered care, interdisciplinary team, evidence-based practice, quality improvement and informatics*). This may provide a starting place for determining substantive requirements for licensure maintenance.

Boards of nursing cannot go it alone. This has to be a collaborative effort. Nurses, employers, educators, nursing organizations, CE providers, consumers and boards of nursing are all stakeholders and have perspectives to share and expertise to offer. Stakeholder buy-in to any regulatory model is important. But the bottom line is that only governmental licensing boards have the authority to enforce change.

## **Appendices**

Appendix A – NCSBN Timeline – Continued Competence Activities

Appendix B – Discussion of Continued Competence Challenges

Appendix C - Principles and Premises Identified in Previous NCSBN Documents

## **Works Cited**

American Board of Medical Specialties. (2005). Maintenance of Certification (MOC). Retrieved May 18, 2005, from <http://www.abms.org/MOC.asp>

Association of Social Work Boards. (2001). *ACE application guidelines for continuing education providers*. Culpeper, VA: Author.

Association of Regulatory Boards of Optometry. (2001). *Response of the Association of Regulatory Boards of Optometry to the request for comments for the summit on board certification & continued competence*. Bethesda, MD: Author.

Brennan, T.A., Horwitz, R. I., Duffy, R.D., Cassel, C.K., Goode, L.D. & Lipner, R.S. (2004). The role of the physician specialty board certification in the quality movement. *Journal of the American Medical Association*, 292(9), 1038-1043.

Bryant, R. (2005). *Regulation, roles and competency development*. Geneva, Switzerland: International Council of Nurses.

Citizen Advocacy Center.(1996). *Continuing professional competence: Can we assure it?* Washington, DC: Author.

Citizen Advocacy Center. (2004). *Maintaining and improving health professional competence: The Citizen Advocacy Center road map to continuing competency assurance*. Washington, DC: Author.

Commission on Dietary Registration. Professional development resource center. Retrieved May 19, 2005, from <http://www.cdrnet.org/pdrcenter/index.htm>

Faith Fields (personal communication April 15, 2005).

Federation of Chiropractic Licensing Boards. (2005). Continuing Education for CDs. Retrieved May 19, 2005, from <http://www.fclb.org/>

Federation of State Boards of Physical Therapy. (2002). *Standards of competence*. Alexandria, VA: Author.

Federation of State Medical Boards. (1998). *Report of the Special Committee on the Evaluation of Quality of Care and Maintenance of Competence*. Retrieved April 18, 2005, from [http://www.fsmb.org/Policy%20Documents%20and%20White%20Papers/quality\\_of\\_care](http://www.fsmb.org/Policy%20Documents%20and%20White%20Papers/quality_of_care)

- Green, A. & Ogden, B.S. Three state nursing boards examine continued competency. *Nursing World*. Retrieved March 18, 2005, from <http://www.nursingworld.org/tan/99marapr/competen.htm>
- Institute of Medicine. (2001). *Crossing the Quality Chasm*. Washington, DC: National Academies Press.
- Institute of Medicine., (2003). *Keeping patients safe: transforming the work environment of nurses*. Washington, DC: National Academies Press.
- Institute of Medicine. (2003). *The Education of Healthcare Professionals: A Bridge to Quality*. Washington, DC: National Academies Press.
- Institute of Medicine. (1999). *To Err is Human*. Washington, DC: National Academies Press.
- Institute of Medicine. (2002). *Who will keep the public healthy: Educating health professionals for the 21<sup>st</sup> century*. Washington, DC: National Academies Press.
- Karen Brumley (personal communication February 1994).
- North Carolina Board of Nursing. *Continued competence pilot program*. Retrieved March 18, 2005, from <http://www.ncbon.com/ContinuedCompetence/>
- National Council of State Boards of Nursing. (1996). *Assuring competence: A regulatory responsibility*. Chicago: Author.
- National Council of State Boards of Nursing. (1991). *Conceptual framework for continued competence*. Chicago: Author.
- National Council of State Boards of Nursing. (1998). *Continued competence accountability profile*. Chicago: Author.
- National Council of State Boards of Nursing. (2004). *Model nursing practice act and nursing administrative rules*. Chicago: Author.
- National Council of State Boards of Nursing. (2002). *Profiles of Member Boards 2002*. Chicago: Author.
- National Certification Board of Occupational Therapy, (2005). Professional Development Provider Registry accessed May 19, 2005, from <http://www.nbcot.org/registry/index.html>
- Rouse, M.J. (July/August 2004). Continuing professional development in pharmacy (2004). *Journal of the American Pharmacy Association*. 2004;44:517-520.
- Sheets, V. (1999, March). Supporting careers of competence: A regulatory challenge. Paper presented at the American Board of Medical Specialties Competence Conference.
- Smith, J. (2003). *Evaluating the efficacy of continuing education*. Chicago: National Council of State Boards of Nursing.
- Spur, P. (2004). Continuing education/competency – are you exercising all of your options? *Kentucky Nurse*, retrieved March 8, 2005, from [http://www.findarticles.com/p/articles/mi\\_qa4084/is\\_200410/ai\\_n9461021](http://www.findarticles.com/p/articles/mi_qa4084/is_200410/ai_n9461021)
- Swankin, D. (1995). *The role of licensing in assuring the continuing competence of health care professionals*. Washington, DC: Citizen Advocacy Center.

Taskforce on Health Care Workforce Regulation, (1995). *Reforming healthcare workforce regulation: Policy consideration for the 21<sup>st</sup> century*. San Francisco: Pew Health Professions Commission.

Texas Administrative Code, Title 22 Part II, Chapter 216.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Licensing and Examination Agenda Item 5**

**Clinical and Written Examination Statistics**



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Tom Jurach, Administrative Analyst Dental Hygiene Committee of California
<b>SUBJECT</b>	<b>Agenda Item 5: Clinical and Written Examination Statistics</b>

Attached are documents illustrating our Clinical and Written Examination Statistics.



# California Registered Dental Hygiene Clinical Statistics 2011

Attachment I

RDH Clinical Exam Date and Location		Total Candidates Registered (d)	Total Candidates Tested (a)	Pass	Fail	Withdrew	Did Not Appear	Gross Trauma	Exceeded Time Limit	Pass % (b)	Fail % (c)
March 6, 2011 at UCSF	ALL	84	78	68	10	6	0	1	1	87%	13%
	Out-Of-State	4	3	3	0	1	0	1	0	100%	0%
June 12, 2011 at USC	ALL	0	0								
	Out-Of-State	0	0								
July 16-17 and 23-24 at UCSF and USC	ALL	0	0								
	Out-Of-State	0	0								
October 2 and 23, 2010 at UCSF and	ALL	0	0								
	Out-Of-State	0	0								
2011 Overall	ALL	84	78	68	10	6	0	1	1	87%	13%
	Out-Of-State	4	3	3	0	1	0	1	0	100%	0%

( a ) Formula: Total Candidates Pass + Total Candidates Fail = Total Candidates Tested

( b ) Formula: Pass / Total Candidates Tested = Pass Percentage

( c ) Formula: Fail / Total Candidates Tested = Fail Percentage

( d ) Formula: Total Candidates Pass + Total Candidates Fail + Withdrew + Did Not Appear = Total Candidates Registered

**RDH and RDHAP Law and Ethics Examination Statistics**

As of July 1, 2009, the Dental Hygiene Committee of California (DHCC) established a more efficient and accessible method of administering the supplemental Law and Ethics Examination. Psychological Services Incorporated (PSI) is a computer-based testing company with testing locations within California and outside of California. Listed below are the statistics:

**December 01, 2010 – March 31, 2011  
RDH Supplemental Law and Ethics Exam**

<b>Candidates Tested</b> 79	<b>Passed</b> 62 = 79%	<b>Failed</b> 17 = 21%
--------------------------------	---------------------------	---------------------------

**January 1, 2010 – November 18, 2010  
RDHAP Supplemental Law and Ethics Exam**

<b>Candidates Tested</b> 31	<b>Passed</b> 20 = 65%	<b>Failed</b> 11 = 35%
--------------------------------	---------------------------	---------------------------



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Licensing and Examination Agenda Item 6**

Licensure Statistics

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, California 95815  
 P 916.263.1978 F 916.263.2688 www.dhcc.ca.gov



<b>DATE</b>	April 29, 2011
<b>TO</b>	Dental Hygiene Committee of California Licensing and Examination Subcommittee
<b>FROM</b>	Tom Jurach Administrative Analyst
<b>SUBJECT</b>	<b>LIC 6 - Licensure Statistics</b>

The following is a breakdown of licenses by type as of April 03, 2011:

	<b>License Type</b>	<b>Active</b>	<b>Inactive</b>	<b>Delinquent</b>	<b>Deficient*</b>	<b>Total Population</b>
<b>A</b>	Registered Dental Hygienist	17,919	3,614	1,851	107	23,491
<b>B</b>	RDH – Extended Functions	31	4	1		36
<b>C</b>	RDH – Alternative Practice	325	9	13	3	350
<b>D</b>	Fictitious Name Permit	26				26

\*Licensees deficient due to incomplete renewal application. Deficiencies include incomplete conviction question, survey and/or CE declaration/license status.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Licensing and Examination Agenda Item 7**

Update on regulations relating to courses in the administration of nitrous oxide and oxygen, administration of local anesthetic agents and periodontal soft tissue curettage (Title 16, California Code of Regulations §1072.2)



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Lori Hubble, Executive Officer Dental Hygiene Committee of California
<b>SUBJECT</b>	<b>Agenda Item 7: Update on regulations relating to courses in the administration of nitrous oxide and oxygen, administration of local anesthetics agents and periodontal soft tissue curettage (Title 16, California Code of Regulations, § 1072.2)</b>

Subject Matter Experts will meet on May 22, 2011 to finalize the language to bring to the August DHCC meeting for discussion and consideration.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Enforcement Agenda**

Agenda



Notice is hereby given that a public meeting of the Enforcement Subcommittee of the Dental Hygiene Committee of California will be held as follows:

**ENFORCEMENT SUBCOMMITTEE MEETING**

**Friday, April 29, 2011  
Doubletree Hotel LAX  
1985 East Grand Avenue  
El Segundo, CA 90245**

**Upon conclusion of Licensing and Examination Subcommittee**

**Agenda**

- ENF 1** – Roll Call
- ENF 2** – Public Comment
- ENF 3** – Approval of December 5, 2010 Minutes
- ENF 4** – Chairperson's Report
- ENF 5** – Enforcement Statistics
- ENF 6** – Complaint Form Update
- ENF 7** – Department of Consumer Affairs Performance Measures
- ENF 8** – Future Agenda Items

**Enforcement Subcommittee**

Chair – Alex Calero, Public Member  
Miriam DeLaRoi, RDHAP  
Cathy DiFrancesco, RDH

A quorum of the Committee may be present at the subcommittee meeting. However, Committee members who are not on the subcommittee may observe, but may not participate or vote. Public comments will be taken on agenda items at the time the specific item is raised. The subcommittee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers, for convenience, and to maintain a quorum. The meeting may be cancelled without notice. For verification of the meeting, call (916) 263-1978 or access the Committee's Web Site at **[www.dhcc.ca.gov](http://www.dhcc.ca.gov)**.

The meeting facilities are accessible to individuals with physical disabilities. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Tom Jurach at (916) 576-5002 or e-mail [tom.jurach@dca.ca.gov](mailto:tom.jurach@dca.ca.gov) or send a written request to DHCC at 2005 Evergreen Street, Ste. 1050, Sacramento, CA 95815. Providing your request at least five (5) business days before the meeting will help to ensure availability of the requested accommodation.





**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Enforcement Agenda Item 3**

Approval of December 5, 2010 Minutes

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, California 95815  
Phone 916.263.1978 Fax 916.263.2688 | www.dhcc.ca.gov



***Dental Hygiene Committee of California  
Enforcement Subcommittee Meeting***

*Department of Consumer Affairs  
Evergreen Hearing Room  
2005 Evergreen Street  
Sacramento, CA 95815*

**Sunday, December 05, 2010**

**DRAFT MINUTES**

**1. Roll Call/Establishment of Quorum**

Members Present

Alex Calero, Public Member & Chair  
Miriam DeLaRoi, RDHAP  
Cathy DiFrancesco, RDH

Staff Present

Lori Hubble, Executive Officer  
Shirley Moody, Enforcement Coordinator  
Dennis Patzer, Enforcement Analyst

Legal Counsel

Norine Marks

The meeting began at 10:57 a.m. Roll was called and a quorum established.

**2. Public Comment**

There was no public comment.

**3. Approval of September 27, 2010 Minutes**

It was m/s/c (DeLaRoi/DiFrancesco) to approve the September 27, 2010 Enforcement Subcommittee minutes as submitted. Motion passed unanimously.

**4. Chairperson's Report**

There was no Chairperson's report.

**5. Enforcement Statistics**

Shirley Moody, DHCC Enforcement Chief, presented the enforcement report for the month of December 2010. She reported the following:

- 12 Field and 16 Records investigations were open

- 12 licensees were on probation of which seven were active and five were tolling

## **6. Discussion and Consideration of Peer Review**

Dennis Patzer, DHCC Enforcement Officer, reported what peer review was under existing law as well as the definition of what constituted a peer review body. Mr. Patzer reported that all peer review and peer review bodies existed outside the board or committee structure and that some of the outcomes of actions by the peer review were required to be reported by law. During his research Mr. Patzer found that for the practice of dental hygiene, peer review did not exist on the West Coast. He felt the first place to start with peer review would be at the association level.

Ms. Moody stated that if the Dental Hygiene Committee wanted to participate in the 805 reporting process it would have to be accomplished through legislation. Staff recommended that if the association wanted peer review, it should be done by the association through legislation.

Mr. Calero asked if there were any questions from the subcommittee.

Ms. DiFrancesco asked if the Dental Hygiene Committee was listed in Senate Bill 700. Mr. Patzer stated that it was not. Ms. Moody stated that currently a facility or dentist may not report adverse decisions to the Dental Hygiene Committee because they are not required to submit an 805 form. If they filed a complaint with the committee it would be investigated through the normal process.

Ms. DiFrancesco asked if peer review was done just for persons working independently. Ms. Moody stated that generally peer review was done by facilities or the associations when patient safety may have been jeopardized. Ms. Moody stated that the Dental Hygiene Committees enforcement process is somewhat like peer review. Mr. Patzer stated that in regards to expert determinations, two opinions are sought and if the opinions concur, the opinion is accepted. If the opinions do not concur, a third opinion is sought and that opinion would be used along with the other concurring opinion for investigative determination. Mr. Patzer stated that in regards to using expert opinions the process is much like peer review.

Ms. DiFrancesco asked if peer reviews were accepted in the enforcement process. Ms. Moody stated that they would still have to be completely investigated in the enforcement process and expert reviewers would still have to be used.

Ms. Moody stated that because most dental hygienists work under the supervision of a dentist she did not see why peer review would be beneficial.

For clarification purposes Mr. Calero commented that peer review is done by some kind of internal body of a hospital or association and that law mandates reporting to the appropriate board when adverse action occurs and this gives a

regulatory board a heads up. Mr. Calero discussed the 805 participants described in the agenda package.

Kimberly Kirchmeyer, Deputy Director for Board and Bureau Relations stated that because the 805 reporting process is controversial in the medical boards she felt that if a registered dental hygienist was disciplined by a peer review, the committee probably would not send one to the Dental Hygiene Committee. Ms. Kirchmeyer stated that if there are instances where peer review for dental hygienists is occurring, the committee should look into legislation for reporting outcomes.

Ellen Standley, California Dental Hygienists' Association President (CDHA), stated that the association would like to monitor the peer review action by the Dental Hygiene Committee of California and would be willing to provide input at a later date.

JoAnn Galliano, Educator, stated the California Dental Hygienists' Association would have to set up the peer review structure in accordance with existing requirements and submit it for legislation. Ms. Galliano stated the one question that would be asked is, is the Dental Hygiene Committee in support of it.

Mr. Calero asked legal counsel if it was appropriate for the subcommittee to provide a consensus on peer review instead of taking a formal vote.

Ms. Marks stated that the subcommittee could provide consensus if it wanted to.

Mr. Calero stated that if it helps to protect consumers of dental hygiene services, the subcommittee would definitely like to look into it further and would be interested in hearing back from any interested organization.

## **7. *Review of DHCC's Consumer Complaint Form***

Mr. Calero commended committee staff for their work on the Consumer Complaint form, especially the brief summary of the complaint process. Mr. Calero said he had a few non- substantive changes that he would share with staff later.

Ms. Kirchmeyer stated that under the BreEZe Project the Department of Consumer Affairs had developed a standardized complaint form and encouraged the committee to use it now. She stated that when BreEZe is operational, the department will push all the boards to use it.

Ms. Standley commended the committee for its work in the development of a complaint form to meet the needs of the consuming public as well as dental practitioners.

**8. *Proposed regulations to implement DCA recommendation to strengthen DHCC's enforcement program pursuant to Consumer Protection Initiative (CEPI)***

Mr. Calero stated that he was under the impression that not only was the Enforcement Subcommittee going to look at this agenda item but the Legislation and Regulation Subcommittee would also be addressing the issue. Mr. Calero stated that any substantive and non-substantive changes coming from the Enforcement Subcommittee should be given to the Legislation and Regulation Subcommittee.

Ms. DiFrancesco questioned language in section 1138.2(a)(2) regarding the word "revoked" and "Promptly." It was determined that the word "revoked" be changed to "revoke." Ms. DiFrancesco questioned whether the word "Promptly" in the section was definitive enough. Ms. Marks stated the word "Promptly" would provided by prior counsel was probably from model language.

Ms. Kirchmeyer stated that the word "Promptly" was used because of the Administrative Procedure Act requirements regarding time line issues.

Mr. Calero directed the subcommittee to section 1138 Delegation of Functions. He stated that this section gave authority to the Executive Officer to perform all functions necessary to do the business of the committee in connection with investigative and administrative proceedings as well as being able the approve settlement agreement for the revocation, surrender, or interim suspension of a license. Mr. Calero stated that there had been concerns that there may be a conflict of interest as the Executive Officer makes the initial decision to proceed with disciplinary action. He stated that prior legal counsel stated that there would not be a conflict of interest. Ms. Marks agreed that there would not be a conflict of interest.

Ms. Kirchmeyer encouraged the committee to take out the verbiage "including but not limited to" because it was too broad. She stated that language had been an issue with another board in their proposed regulation. Mr. Calero stated that there was not a motion to change the verbiage on the floor.

Mr. Calero stated that he had noticed while reviewing the statutory cleanup language under tab 8 of the Legislation and Regulatory Subcommittee agenda items, that in section 1958.1(the sex offender language) is the same as the sex offender language of the proposed regulation. He said he wanted clarification of what was the purpose of having the same language in the statute as the regulation.

Ms. Napper stated that the committee may not need the language referred to in the statute in its proposed regulation. She stated that the language cleanup was acceptable at the time it was submitted.

Ms. Marks stated the statute always trumps the regulation.

Ms. Galliano stated that the language in the legislation had inadvertently left out what the California Dental Hygienist Association had submitted, including the sex offender language, and that is why it is now in the cleanup language.

Ms. Kirchmeyer stated that if the committee has the authority to strike language from the legislation cleanup and put it in proposed legislation, then it should consider doing it. She said that leaving the language in both legislation cleanup and proposed regulation could be problematic.

Erica Eisenlauer, Legislative Analyst, Department of Consumer Affairs, stated that having the language in both the statutory cleanup and regulation proposals could raise issues. She said it would probably be easier to do it through regulation.

Mr. Calero stated that the subcommittee was asked to determine whether it was a good idea to have the legislative language placed in legislation or regulation. He thought the subcommittee should make a recommendation to the full committee as to where the language should be placed.

Mr. Calero stated that he wanted to explore whether the subcommittee wanted to make all four categories addressed in section 1138.3(e)(2), unprofessional conduct. The subcommittee agreed that all four categories were unprofessional conduct.

It was m/s/c (DiFrancesco/DeLaRoi) that the Enforcement Subcommittee recommend to the Full Committee that the Full Committee begin the regulatory process with respect to 1138, 1138.2, and 1138.3 including all substantive (deleting the language "including but not limited to") and non-substantive changes. The motion passed unanimously.

### ***Agenda Item 9 – Future Agenda Items***

There were no suggestions for future agenda items.

### ***Agenda Item 10 – Adjournment***

The subcommittee meeting adjourned at 12.22 p.m.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Enforcement Agenda Item 4**

Chairperson's Report



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Alex Calero, Chair Enforcement Subcommittee, Dental Hygiene Committee of California
<b>SUBJECT</b>	<b>Agenda Item 4: Chairperson's Report</b>

A verbal report will be provided.





**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Enforcement Agenda Item 5**

Enforcement Statistics

## **INVESTIGATION STATISTICS MARCH 2011**

### Open Investigations (7)

Drugs & Alcohol	3
Negligence	1
Mental Illness	2
Unlicensed Practice	1

### **Records Requests (17)**

Drugs & Alcohol	10
Domestic Violence	2
Assault	1
Disobeying Court Order	2
Vandalism	1
Continuing Education Audit	1

### **Probationers (12)**

#### Active Probationers (7)

Drugs & Alcohol	2
Petty Theft	1
Grand Theft	1

#### Tolling Probationers (4)

Drugs & Alcohol	2
Negligence	1
Unlicensed Practice	1



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Enforcement Agenda Item 6**

Complaint Form Update



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Dennis Patzer, Enforcement Coordinator
<b>SUBJECT</b>	<b>Agenda Item 6: Complaint Form Update</b>

Staff has incorporated changes in the complaint form as directed by the Committee. The new complaint form has been placed online.

Attached is a copy of the DHCC's complaint form as it appears online.



## CONSUMER COMPLAINT FORM

PLEASE PRINT OR TYPE

### COMPLAINT REGISTERED AGAINST

Name:			Name of Dental Office:
Address:			
City:	State:	Zip Code:	Office Phone Number:

### PERSON REGISTERING COMPLAINT

Mr. <input type="checkbox"/> Mrs. <input type="checkbox"/> Ms. <input type="checkbox"/>	Name:	Relationship to Patient:
Address:		Home Phone Number:
City:	State:	Zip Code:
Patient Name:		Patient's Date of Birth:
<input type="checkbox"/> Male <input type="checkbox"/> Female		
Legal authority to act on patient's behalf? If yes, must attach legal documentation.		
Has patient been examined or treated by another hygienist for this same complaint? YES <input type="checkbox"/> NO <input type="checkbox"/> If yes, please provide full names and addresses on the back of this form.		

### DETAILS OF COMPLAINT

Dates of Visits:

State your complaint in detail:

---



---



---



---



---



---



---

NOTICE: As much information as possible should be provided, in addition to any supporting documents pertaining to your specific complaint. Failure to provide sufficient information or documentation may prevent or delay the review of your complaint. The information will be used to determine whether a violation of law has occurred. If a violation is substantiated, the information may be transmitted to other governmental agencies, including the Attorney General's Office. The Dental Hygiene Committee of California does not have jurisdiction over fee disputes or office business procedures.

DO NOT WRITE IN  
THIS SPACE

Signature \_\_\_\_\_ Date \_\_\_\_\_



## SUPPLEMENTAL COMPLAINT INFORMATION

PLEASE PROVIDE THE NAME, ADDRESS, TELEPHONE NUMBER AND DATE OF VISIT TO ANY OTHER HYGIENIST OR HYGIENIST IN ALTERNATIVE PRACTICE YOU HAVE SEEN SINCE BEING TREATED BY THE SUBJECT OF YOUR COMPLAINT.

1.		
		SUITE #
	PHONE #	DATE(S)
2.		
		SUITE #
	PHONE #	DATE(S)
3.		
		SUITE #
	PHONE #	DATE(S)
4.		
		SUITE #
	PHONE #	DATE(S)



## Authorization for Release of Dental/Medical Patient Records

Patient Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

AUTHORIZATION TO RELEASE INFORMATION: I, the undersigned, authorize any physician, dentist, medical practitioner, hospital, clinic or other dental or dental related facility having records (original and/or electronic) available as to diagnosis, treatment and prognosis with respect to any dental or medical condition and/or treatment of me (or the patient) to release to the Dental Hygiene Committee of California or any Committee representative, related local, state and federal governmental agencies, including but not limited to, investigators and legal staff.

I understand that this information will be maintained in confidence and will be used solely in conjunction with any investigation and possible legal proceeding regarding any violations of California laws and regulations. I further agree to allow the Committee, Committee representatives and related governmental agencies, to process and possibly file other charges based on my complaint.

I also understand that the subject of my complaint may receive a copy of my complaint and records pursuant to the Administrative Procedures Act and the Information Practices Act.

I agree that a photocopy of this Authorization shall be as valid as the original. This Authorization shall remain valid until the Dental Hygiene Committee of California or other authorized government agency completes its review and the proceedings arising out of the investigation.

I understand that I have a right to receive a copy of this authorization if requested by me.

Patient/Guardian

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Attach written proof of authorization to act on patient's behalf.

**NOTE TO THE PROVIDER: This release is compliant with the requirements of HIPPA and Civil Code Section 56.11.**

## THE COMPLAINT AND DISCIPLINARY PROCESS:

The Dental Hygiene Committee of California has authority over licensed registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions in California and has the authority to enforce the provisions of the laws and regulations related to the practice of dental hygiene (within the California Business and Professions Code and the California Code of Regulations). The Committee also handles complaints for the unlicensed practice of dental hygiene.

Complaints involving allegations that are not within the jurisdiction of the Committee will be returned to the complainant with information about other agencies or organizations that may be better able to assist the complainant. Allegations that are not within the authority of the Committee include fee/billing disputes, general business practices, personality conflicts, and providers who are licensed by other boards/bureaus such as dentists, and registered dental assistants.

You may file a complaint with the Dental Hygiene Committee of California by using the attached Consumer Complaint Form or by submitting it electronically from the Committee's website:

[www.dhcc.ca.gov](http://www.dhcc.ca.gov)

Anonymous complaints will be reviewed by the Committee. It may not be possible to pursue an anonymous complaint unless it contains documented evidence of the allegations made.

Allegations of unlicensed practice will be investigated by the Committee and if sufficient evidence is found, will be forwarded to the local District Attorney's Office for criminal prosecution. Please submit proof of the unlicensed practice with your complaint (i.e. appointment card, invoices, website information, advertisements, business letterhead etc.).

Upon receipt, your complaint will be assigned to Committee Enforcement Unit personnel for review. Within 10 days of receipt of the complaint by the Committee, you will be notified of receipt. A staff person from the Enforcement Unit will gather the information necessary to review and evaluate your complaint. The information necessary may include patient records or written reports, a written response from the subject of the complaint, an opinion from a Committee consultant, or possibly, a legal opinion. If the complaint file is sent for consultant review, the complainant will be notified.

If the review determines that the actions of the registered dental hygienist were not below the standard of care for dental hygienists, the Committee has no authority to proceed, and the complaint will be closed. If the Committee finds that the care fell below the standard of care, but does not represent gross negligence, generally the complaint will be closed and will be maintained on file for the Committee's further reference. Often complaints are dealt with through a variety of non-disciplinary methods which may include but are not limited to mediation between the parties involved, educational letters, cease and desist letters, warning letters or face-to-face educational interventions between the licensee and a Committee consultant.

If a complaint warrants formal investigation, the complainant can expect to be interviewed by investigator assigned to the case. Details of the complaint and investigation remain confidential and are not public record; details may be disclosed to the subject of the complaint at some point. The complainant is notified when a complaint is referred for investigation.

If a complaint is referred to investigation and a violation is confirmed, the case may be submitted to the Office of the California Attorney General for disciplinary action against the dental hygienist's license. Once a case has been accepted by the Office of the Attorney General, an Accusation is then drafted. The accusation is the first public document in the disciplinary process. Once the Accusation is filed, the licensee may request a hearing to contest the charges. At the hearing, the Committee must demonstrate by "clear and convincing evidence to a reasonable certainty" that the allegations are true. For that reason, it is generally necessary for the person who made the original complaint to testify in person at the administrative hearing.



In many cases, the defense counsel and the Deputy Attorney General representing the Committee may engage in discussions of proposals for stipulated agreements prior to hearing. Stipulated agreements generally include admission to one or more of the allegations and a proposal for appropriate discipline. The Committee encourages negotiated settlements because they eliminate the need for costly administrative hearing and protect consumers by imposing disciplinary action sooner. To this end the Committee has adopted Disciplinary Guidelines that are designed to set forth the Committee's penalty standards. You may obtain a copy of the guidelines by contacting the Committee's office, or by downloading it from the Committee's website. When a case does go to hearing, the hearing is presided over by an Administrative Law Judge (ALJ). After the hearing is completed the (ALJ) will issue a "Proposed Decision" stating the ALJ's findings (facts proven in the hearing) and offering a recommendation for resolution of the case (i.e. revocation, suspension, probation, dismissal). The ALJ utilizes the Committee's Disciplinary Guidelines in formulating his or her recommendations. The Proposed Decision is distributed to the Committee members for vote. If the Committee votes in favor of the Proposed Decision, it becomes the Final Decision. If the Committee votes to non-adopt the Proposed Decision, the hearing transcript is reviewed by the Committee members, written arguments are solicited from the defense counsel and the Attorney General, and the Committee subsequently issues its own Final Decision. Final Decisions are matters of public record. Disciplinary documents (i.e. Accusations and Final Decisions) will be automatically provided to the complainant in the case and available to the public through the Committee's website. The Committee's goal is that its disciplinary process should take no longer than 520 days.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Enforcement Agenda Item 7**

Department of Consumer Affairs Performance Measures



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Dennis Patzer, Enforcement Coordinator
<b>SUBJECT</b>	<b>Agenda Item 7: Department of Consumer Affairs Performance Measures</b>

The Performance Measures Q 2 Report (October-December 2010) and the Q 1 Report (July-September 2010) are included in the Committee package. There is no information to present for calendar year 2011.

## Performance Measures

### Q2 Report (October - December 2010)

To ensure stakeholders can review the Committee's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

In future reports, the Department will request additional measures, such as consumer satisfaction. These additional measures are being collected internally at this time and will be released once sufficient data is available.

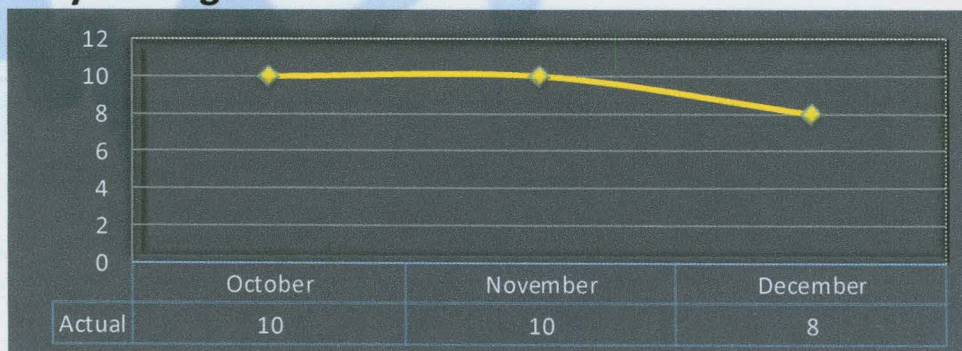
#### Volume

Number of complaints and convictions received.

**Q2 Total: 28**

**Complaints: 9 Convictions: 19**

**Q2 Monthly Average: 9**

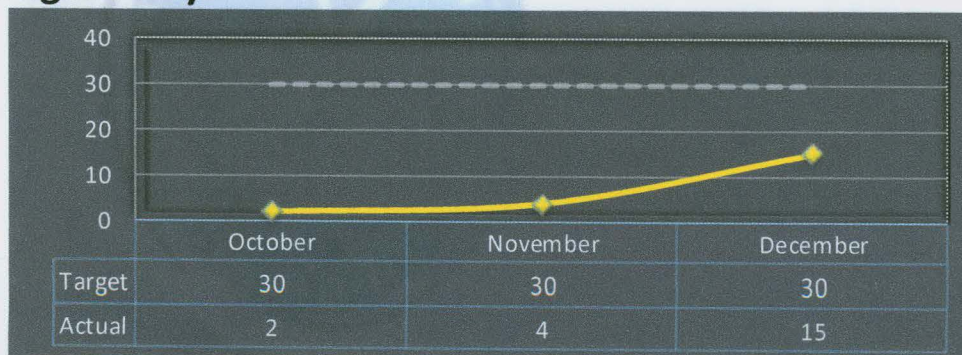


#### Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

**Target: 30 Days**

**Q2 Average: 6 Days**



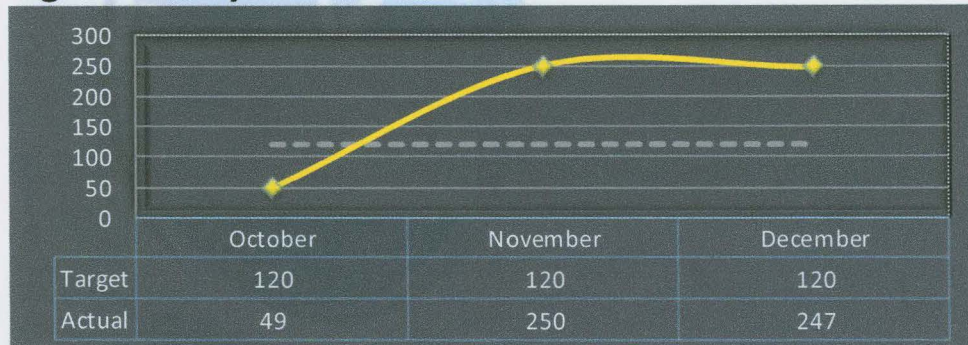


## Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

**Target: 120 Days**

**Q2 Average: 204 Days\***

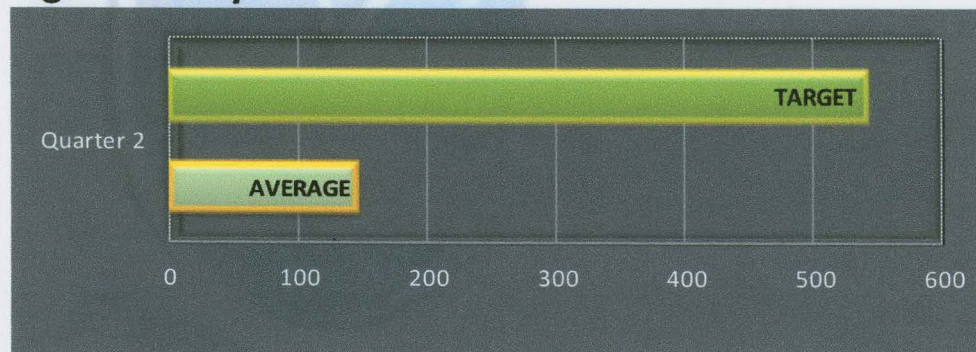


## Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Committee, and prosecution by the AG)

**Target: 540 Days**

**Q2 Average: 143 Days**



## Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

**Target: 10 Days**

**Q2 Average: N/A**

*The Committee did not contact any new probationers this quarter.*

\*DHCC was not established until July of 2009. Data in PM3 includes several cases which were submitted to the Department prior to DHCC's existence.

## **Probation Violation Response**

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

**Target: 10 Days**

**Q2 Average: N/A**

*The Committee did not handle any probation violations this quarter.*



## Performance Measures

### Q1 Report (July - Sept 2010)

To ensure stakeholders can review the Committee's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement.

These measures will be posted publicly on a quarterly basis. In future reports, additional measures, such as consumer satisfaction and complaint efficiency, will also be added. These additional measures are being collected internally at this time and will be released once sufficient data is available.

#### Volume

Number of complaints received.\*

**Q1 Total: 19** (Complaints: 2    Convictions: 17)

**Q1 Monthly Average: 6**

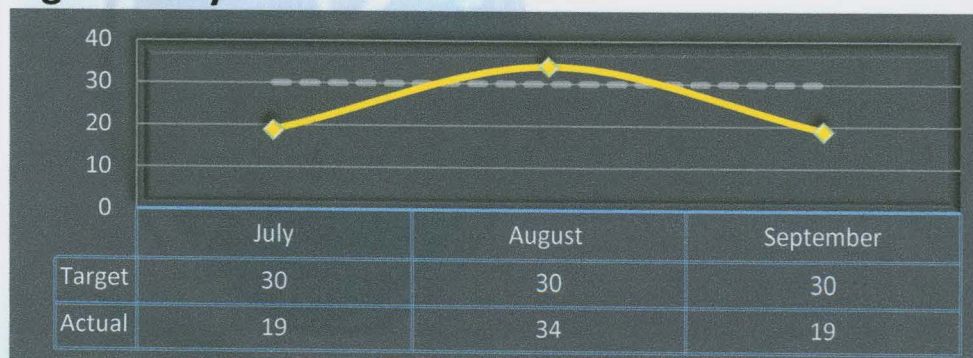


#### Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

**Target: 30 Days**

**Q1 Average: 26 Days**



\*"Complaints" in these measures include complaints, convictions, and arrest reports.

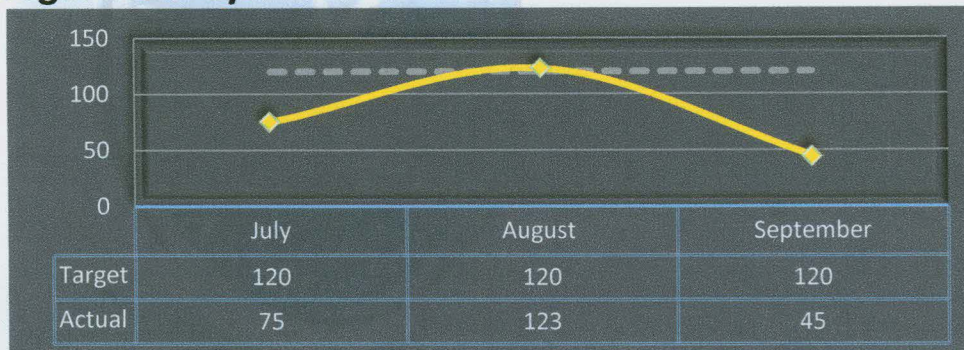


## Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

**Target: 120 Days**

**Q1 Average: 102 Days**



## Formal Discipline

Average cycle time from complaint receipt to closure, for cases sent to the Attorney General or other forms of formal discipline.

**Target: 540 Days**

**Q1 Average: 1,033 Days\*** (Note: Only one data point available.)



## Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

**Target: 10 Days**

**Q1 Average: N/A**

*The Board did not receive any new probationers this quarter.*

\*DHCC was not established until July of 2009. Data in PM4 represents a case which was submitted to the Department prior to DHCC's existence.



## **Probation Violation Response**

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

**Target: 10 Days**

**Q1 Average: N/A**

*The Board did not receive any probation violations this quarter.*



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 6**

President's Report



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Rhona Lee, DHCC President
<b>SUBJECT</b>	<b>Agenda Item 6: President's Report</b>

A verbal report will be provided.

# MEMORANDUM

<b>DATE</b>	4-29-2011
<b>TO</b>	Dental Hygiene Committee of California
<b>FROM</b>	Rhona Lee
<b>SUBJECT</b>	Agenda Item #3 - President's Report

## **Announcements:**

- Voluntary sign-in sheet located at back of the room.
- Public comments will be heard for each issue utilizing the microphone placed in front of the dias.
- For the record when speaking, public members shall identify themselves and, if appropriate, who they represent.
- The public shall limit their comments to three minutes unless it is the Committee's consensus to extend the time.
- Agenda items may be heard out of order in order to accommodate speakers.
- Please refrain from the use of cell phones and any other distracting media.
- Webcast will be on except during announced breaks and during closed session.

During the past year, the DCA Hearing Room was equipped with state-of the-art equipment to provide quality webcasting and archiving services. Beginning December 2010 DHCC began webcasting its full committee meetings. This will allow for greater public access, archiving and information sharing between the boards and bureaus, as well as providing consumers with the ability to view events via the Internet.

## **President's Report:**

### **1. DHCC extends a welcome to our newest member, William Langstaff, DDS/DMD**

Presented short biography

#### **A. William Langstaff - North Tustin – Dentist**

Enlisted in the U.S. Navy from 1973 to 1975.

Since 1975, Dr. Langstaff owned and operated a private practice in Villa Park, California.

Currently a member of the American Dental Association

California Dental Association

Orange County Dental Association

Southern California Academy of General Dentistry

In 2010 he was president of the California Academy of General Dentistry.

### **2. Dental Board Meeting Activities Update**

- A. On February 25<sup>th</sup> 2011 I attended the Dental Board meeting with DHCC Executive Officer, Lori Hubble in Los Angeles. At the invitation of the Dental Board, we provided a DHCC activities update. (See attachment).
- B. CD Presentation of DHCC's Inaugural 2010 Year
- C. The next Dental Board meetings are scheduled for:
  - May 19, 20 (San Francisco)
  - August 11, 12 (Sacramento)
  - November 7, 8 (Los Angeles)

### **3. Central Regional Dental Testing Service (CRDTS) Activities Update from Kim Laudenslager, RDH, MPA, CRDTS Director of Dental Hygiene**

- a. Dr. Tom Haladyna, Independent Testing Specialists and Professor Emeritus Arizona State University, completed a comprehensive and thorough analysis of the CRDTS Dental Hygiene Examination. Dr. Haladyna's "Technical Report" is posted on the CRDTS website. The direct link is:  
<http://crdts.org/uploads/2010%20CRDTS%20DH%20Technical%20Report.pdf>
- b. CRDTS has contracted with Dr. Gene Kramer ( a nationally recognized testing and measurement specialist who just retired last May from the ADA after 27 years of service in their National Boards and Testing Division) to direct an occupational analysis for both the dental and dental hygiene examinations.
- c. The invitation to observe (at CRDTS expense) a CRDTS hygiene exam is still open. Due California's budget crisis all out of state travel has been placed on hold.
- d. CRDTS will present an activities update at the DHCC August 2011 meeting.

#### **4. Sunset Review**

- a. On March 14, 2011 I observed the Oversight Hearing (Sunset Review) for the Board of Nursing and the Dental Board via Webcast. The Oversight Hearing for the Dental Board is available on its website and I encourage DHCC members to view it. Note that during the hearings, the Dental Board's President, Dr. John Bettinger stated the following:
  1. DHCC is autonomous;
  2. DHCC is its own entity;
  3. DB supports the original intent of bill's author, Perata;
  4. DB acknowledges the conflict in existing statute.
- b. My perception after being involved with two previous sunset reviews includes that legislators appear to be more empathetic to the workload of all the boards considering the state's budget crisis and hiring freeze; however, there remains a strong focus on timely enforcement and licensure issues.

#### **5. DCA Director's Teleconferences Update - Alex Calero, DHCC Vice President, and Lori Hubble, DHCC Executive Officer, in attendance**

In July 2010 DCA Director Brian Stiger began monthly conference calls with the Board presidents to reach out and provide an opportunity to address questions, comments, and concerns to the Director. During these calls the Director provides updates on department matters. Attached are minutes and resource information from several of the last meetings.

- Tuesday, January 11, 2011
  - Tuesday, February 8, 2011
  - Tuesday, April 12, 2011
- Continued Competency. Excerpt from FSMB article Board Report 11-3, April 2011: "Maintenance of Licensure is a system of continuous professional development that requires all licensed physicians to demonstrate, as a condition of license renewal, their involvement in lifelong learning that is objective, relevant to practice and improves care. FSMB believe SMBs should require, as a condition of license renewal, that all licensed physicians periodically demonstrate their engagement in an ongoing culture of professional assessment and continuous improvement throughout their careers."

#### **6. DCA Budget Freeze Ramifications**

- a. Due to the impact of the state's budget crisis, DCA's hiring freeze and our immediate staffing shortages, we must look realistically at our responsibilities, goals and objectives in regards to resource and budget allocations. With each remaining staff member assuming additional tasks, we as members and stakeholders must be observant of our requests and demands.

- b. Before December 31<sup>st</sup> 2011 at our term's end, we should review and revise our strategic business plan to ensure DHCC's long term forecast is positive and viable.

**7. Future DHCC Meeting Dates**

- August 29 and 30 (San Diego)
- December 11-13 (Sacramento)

# MEMORANDUM

<b>DATE</b>	02-13-11
<b>TO</b>	Dental Board of California
<b>FROM</b>	Rhona Lee, DHCC President Lori Hubble, DHCC Executive Officer
<b>SUBJECT</b>	Agenda Item # 4 - DHCC Activities Update

The following outline was provided to the Dental Board members at the February 18, 2011 meeting held in San Diego.

## 1. Salutation & Thank You

## 2. Announced DHCC's newest member, William Langstaff, DDS/DMD

Enlisted in the U.S. Navy from 1973 to 1975.

Since 1975, he owned and operated a private practice in Villa Park, California.

Currently a member of the American Dental Association

California Dental Association

Orange County Dental Association

Southern California Academy of General Dentistry

In 2010 he was president of the California Academy of General Dentistry.

## 3. Highlights of DHCC's December 6, 2010 meeting

### a. Statutes and Regulations

Continued its efforts to build its infrastructure by focusing on reviewing, editing and adopting statutes and promulgating regulations specifically focused on Enforcement, Licensing/Exams and Education.

This will remain our focus for 2011.

### b. 2010 License & Exam Statistics ( Posted on DHCC website- meeting materials)

2010	682	550 = 81%	132 = 19%
------	-----	-----------	-----------

(This is consistent with the last 5 yrs. where the failure rate ranged 14-21%)

The following is a breakdown of licenses by type as of November 7, 2010:

License Type	Active	Inactive	Delinquent	Deficient*	Total Population
Registered Dental Hygienist	17,870	3,585	1,815	123	23,393
RDH – Extended Functions	31	4	1		36
RDH – Alternative Practice	304	8	15	1	328
Fictitious Name Permit	20				20

\*Licensees deficient due to incomplete renewal application. Deficiencies include incomplete conviction question, survey and/or CE declaration/license status.

## **RDH Clinical Examination Overall Statistics History**

<b>Year</b>	<b>Candidates Tested</b>	<b>Passed</b>	<b>Failed</b>
2010	682	550 = 81%	132 = 19%
2009	783	652 = 83%	131 = 17%
2008	801	657 = 82%	144 = 18%
2007	797	627 = 79%	170 = 21%
2006	650	557 = 86%	90 = 14%

### **c. Officer Elections**

- a. President, Rhona Lee, RDH, RDHEF, MS
- b. Vice President, Alex Calero, Public Member
- c. Secretary, Cathy DiFrancesco, RDH

### **d. 2010 Accomplishments**

- a. CD Presentation highlighting DHCC's Inaugural 2010 Year

## **4. Standing Offer of Collaboration to Dental Board**

DHCC's standing invitation is to help forge a constructive, collaborative relationship in addressing overlapping and/or common issues.

## **5. Scheduled Meeting**

Our 2011 meetings are tentatively scheduled for:

- April 28 and 29 (Los Angeles)
- August 29 and 30 (San Diego)
- December 11-13 (Sacramento)

DHCC invites all dental board members, staff and the public to attend. All of our full committee meeting agendas and packets will be available via our website and will be webcast.



**DCA Director and Board/Committee  
Communication Session**

**NOTES**

**Tuesday, January 11, 2011  
9:00 a.m. – 10:00 a.m.  
Conference Call**



**DCA Attendees:** Brian Stiger, Kimberly Kirchmeyer, Paul Riches, Cindy Kanemoto, Debbie Balaam, & Bev Augustine

**Boards and Committees (Board/Committee President/Chair) attendees:** Elise Froistad, Dr. Bruce Witcher, Alex Calero, Barbara Yaroslavsky, Dr. Lee Goldstein, Stan Weissner, Dr. Geraldine O'Shea, Dr. Sara Takii, Dr. Karen Wrubel, Dr. Richard Sherman, Jeannine Graves, Lisa O'Connor, Todd D'Braunstein, & Dr. Stephanie Ferguson

Transition – Brian Stiger

- Brian Stiger stated that Bill Young had retired and that he has asked Kimberly Kirchmeyer to fill in as Acting Chief Deputy Director
- DCA continues to comply with the hiring freeze directive. However Director Stiger stated that he is going to suggest that Agencies be able to perform promotions in place for current employees.
- DCA was not mentioned in the Governor's Budget specifically but it will have to address the Governor's directive to cut the number of cell phones by 50% and justify the vehicles currently in DCA's fleet.

Continuing Competency – Brian Stiger, Kimberly Kirchmeyer, Dr. Wrubel, and Jim Rathlesberger

- Brian Stiger indicated the importance of continuing competency and Kimberly Kirchmeyer stated that the Podiatric Medical Board had legislation that became effective in 1998 that provided for continuing competency for podiatrists.
- Section 2496 of the Business and Professions Code identifies the manner in which a podiatrist has to comply with continuing competency.
- The number of complaints has drastically decreased since continuing competency was implemented.
- The Board identified multiple pathways which assisted with encouraging compliance from the licensee.
- The profession has accepted the continuing competency because it is a professional standard.
- There should be more outreach to the public letting them know that the professions do perform continuing education.
- DCA will hold a separate meeting focused solely on continuing competency.

Performance Measures – Bev Augustine

- The 2<sup>nd</sup> quarter statistics for the performance measures are due January 19<sup>th</sup>.
- DCA will provide a draft by January 26<sup>th</sup> and hope to have them placed on the DCA Internet by February 1<sup>st</sup>.
- DCA will send the link to all Board Presidents.

## Interim Credit Card Solution – Debbie Balaam

- Debbie Balaam explained that the DCA has identified a way to allow online renewals until the BreEZe project is implemented.
- The Physical Therapy Board was the pilot project and is now using this interim solution.
- This new process is available to those who do not currently allow online renewals, however, there are about 6 Boards waiting for this program.
- This process requires at least a 3-month time frame for implementation once it begins because of the timing for the credit card company.
- DCA will send out materials to the Board Presidents regarding this solution.

## SB 1441 Uniform Standards – Brian Stiger

- Director Stiger strongly encouraged all the Boards to comply with the Uniform Standards.
- This may be an item that comes up during the Sunset Review Hearings.

## Miscellaneous

- DCA received a public records act request from KCRA requesting how much money was spent by DCA Boards and Bureaus on promotional materials over the last 3 years.
- Director Stiger encouraged Boards to move forward with getting contracts in place for their expert consultants.

Next call is February 8<sup>th</sup>

## DCA List:

- Send out the information on continuing competency from the Board of Podiatric Medicine
- Set up a meeting solely for continuing competency
- Send out information on the interim credit card solution
- Send link for the Performance Measurements

**DCA Director and Board/Committee  
Communication Session**

**NOTES**

**Tuesday, February 8, 2011  
9:00 p.m. – 10:00 p.m.**

Conference Call



**DCA Attendees:** Brian Stiger, Kimberly Kirchmeyer, Paul Riches, Cindy Kanemoto, Doreathea Johnson, & Pamela Wortman

**Boards and Committees (Board/Committee President/Chair) attendees:** Robert Brewer, Janelle Wedge, Kim Madsen, Richard DeCuir, Alex Calero, Lori Hubble, Barbara Yaroslavsky, Curt Worden, Dr. Field, Mary Evert, Heather Martin, Dr. Goldstein, Stan Weissner, Virginia Herold, Steve Hartzell, Dr. Wrubel, Jim Rathlesberger, Dr. Sherman, Jeannine Graves, Louise Bailey, Christine Molina, Lisa O'Connor, John Vertido, Teresa Bello-Jones, Dr. Ferguson, Susan Geranen

Transition – Brian Stiger

- Director Stiger will be meeting with the Governor's office to discuss appointments and Senate confirmation
- The Department will continue to monitor Board membership to assist the Boards in maintaining a quorum of members
- Nettie Sabelhaus, who previously worked for Senate Rules and was involved with Senate confirmation and Senate appointments, was appointed by the Governor as the special advisor to the Governor on appointments

Hiring Freeze – Brian Stiger / Pamela Wortman

- The DCA is expecting an Executive Order to be issued regarding the hiring freeze
- The DCA has submitted freeze exemptions for CPEI, BPPE, and Licensing and will provide organization charts to the Governor's Office for these positions
- SCSA also asked for updated licensing information showing the impact to licenses issued and applications reviewed if the licensing positions were filled

Cellular Phone Reduction – Kimberly Kirchmeyer

- At this point in time all boards have submitted plans for cell phone reduction and the DCA is very close to achieving its goal of 50%
- Taking a close look at air cards
- Every cell phone not reduced will need a written justification

Vehicles Executive Order – Pamela Wortman

- The DCA has developed plans to reduce non-essential vehicles and home storage permits; currently DCA has 626 vehicles and 242 home storage permits, so DCA is seeking reductions to those numbers

- Looking at underutilized vehicles

#### Performance Measures and Targets – Paul Riches

- Quarter 2 measures have been released – Boards may now need to adjust/refine their targets

#### Lunch Break during Board Meetings – Kimberly Kirchmeyer

- In order to comply with labor contracts, Boards should consider taking a lunch break during their Board meetings
- The break does not need to be on the agenda

#### Attorney General Liaison at Board Meetings – Kimberly Kirchmeyer

- Due to the time commitment for the DAG and the expense to the Board, DCA recommended that the President/Chair discuss with the Executive Officer the need for having a liaison DAG at every Board Meeting
- The President/Chair and the EO may wish to review the items on the agenda to determine whether the liaison DAG is needed at that particular meeting

#### SB1441 Uniform Standards – Brian Stiger

- The Committee has approved the current standards
- The Sunset Review Hearings will have the implementation of these standards as a part of their questioning
- The DCA encourages all boards to move forward with the implementation of these standards
- The Subcommittee established to look at Uniform Standard #4 (biological fluid testing requirements) will meet again to discuss the frequency of testing
- One Board President/Chair asked for the frequency of testing to be evidenced based

#### Travel – Kimberly Kirchmeyer

- A justification will need to be provided for any transportation which is not the most cost-effective for the State
- No out of state travel has been approved that is not related to a mandated function; not even zero cost travel
- Travelers should be using the most cost-effective means of travel, for example it is more cost-effective to rent a car to drive to Fresno instead of taking a personal vehicle because the mileage reimbursements exceed the cost of the rental car plus gasoline
- One Board President/Chair asked about the comparison between SWABIZ and a travel agent
- DCA will be working on a memo to provide guidance to all staff and members regarding travel and how to identify which mode of transportation is the most cost-effective

## Enforcement Committee Poll

- Acupuncture – no enforcement committee
- Behavioral Sciences – has an enforcement committee
- Dental Board – has an enforcement committee
- Dental Hygiene Committee – has an enforcement committee
- Medical Board – has an enforcement committee
- Naturopathic Medicine – no enforcement committee
- Occupational Therapy – has an enforcement committee
- Optometry – no enforcement committee
- Pharmacy – has an enforcement committee
- Physical Therapy – no enforcement committee
- Physician Assistant – no enforcement committee
- Podiatry – has an enforcement committee
- Psychology – has an enforcement committee
- Registered Nursing – has an enforcement committee
- Respiratory care – has an enforcement committee
- Vocational Nursing and Psychiatric Technicians – has an enforcement committee
- Veterinary Medicine – has an enforcement committee

## Enforcement Presentations – Brian Stiger/Paul Riches

- Based on the members' consensus, DCA will be providing a report to the Boards twice a year regarding their enforcement programs during the Director's report
- The report will discuss enforcement statistics and also provide information department-wide regarding enforcement
- Determined this presentation would be provided to all Board members during the Board meeting and would be made during the Director's Report

Next call will be on March 8<sup>th</sup>, 2011



Assisting public members and the health professional oversight bodies on which they serve

## CONTINUING COMPETENCE

---

- ABOUT CAC
- BOARD OF DIRECTORS
- CONSULTANT SERVICES
- CONTACT CAC
- DONATIONS
- HOME
- LOG IN
- MEETINGS
- MEMBERSHIP
- PUBLICATIONS
- CONTINUING COMPETENCE
- NEWSLETTERS
- REPORTS
- SCOPE OF PRACTICE
- SPEECHES
- TRAINING MATERIAL
- RESOURCES
- WEBINARS
- PAST WEBINARS
- UPCOMING WEBINARS

### Upcoming events

---

- WEBINAR: Criteria for Selecting Public Members for Health Care Oversight Boards(Mon Apr 25, 2011)
- WEBINAR: Outreach to the Public: Part One – Overview (Tue Apr 26, 2011)
- WEBINAR: Outreach to the public: Part Two - Building a Broadly-Based Rulemaking Record(Wed May 11, 2011)
- WEBINAR: Strengthening Discipline Programs by Incorporating Vertical Enforcement(Tue May 24, 2011)
- WEBINAR: Proactive Regulation: Implementing an Early-Intervention Practitioner Remediation Program(Thu Jun 2, 2011)
- WEBINAR: Continuing Competence: An Assessment of Self-Assessment(Tue Jun 28, 2011)



[more](#)



Citizen Advocacy Center is not affiliated with the Computer Access Center (now known as [EmpowerTech](#)), of Los Angeles, California.

Home » Publications

Proceedings from the Continuing Competence sessions at CAC's annual meeting, held on Thursday and Friday, November 11 - 12, 2010, in Washington, DC.

---

Implementing Continuing Competency Requirements for Health Care Practitioners - 2006

Maintaining and Improving Health Professional Competence: The Citizen Advocacy Center Road Map to Continuing Competency Assurance - 2004

Measuring Continuing Competence of Health Care Practitioners - 2001

Citizen Advocacy Center  
1400 16th St. NW - Suite #101  
Washington, DC 20036  
Voice: (202) 462-1174 • Fax: (202) 354-5372

Two links that have information regarding continuing competency are as follows: Note that the links are from the organizations of the April 12<sup>th</sup>, 2011 presenters.

The FSMB summarizes their reports on this site: [http://www.fsmb.org/m\\_mol\\_reports.html#2](http://www.fsmb.org/m_mol_reports.html#2)

The CAC publications on continuing competence are on this site:  
[http://www.cacenter.org/cac/continuing\\_competence](http://www.cacenter.org/cac/continuing_competence)



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 7**

**Executive Officer's Report**



**Dental Hygiene Committee of California  
Executive Officer's Report**

**Date:** April 29, 2011

Agenda Item 7

**DHCC Office Information**

**Personnel**

<b>Name</b>	<b>Classification</b>	<b>DHCC Program</b>
<b>Traci Napper</b>	Associate Governmental Program Analyst (AGPA)	Budget, Legislation, Regulations, Fictitious Name Permits
<b>Nichole Johnston</b> <b>VACANT</b> on leave till 12-1-11	Staff Services Analyst (SSA)	Exam Coordinator, Registered Dental Hygienist in Alternative Practice, Licensure by Credential,
<b>VACANT</b>	Office Technician	Receptionist, Cashier, survey data entry
<b>Tom Jurach</b>	Associate Governmental Program Analyst (AGPA)	Administrative Analyst, Retroactive Fingerprinting, Outreach Coordinator, Software Management, website manager
<b>Dennis Patzer</b>	Associate Governmental Program Analyst (AGPA)	Probation Monitor, investigations, oversee and maintain disciplinary matters
<b>Shirley Moody</b> (2 days per week)	Associate Governmental Program Analyst (AGPA) Retired Annuitant (RA)	Enforcement Coordinator, Office support

**Hiring Freeze**

The Governors Executive Order (EO) B-3-11 prohibits state agencies and department from filling vacant positions regardless of funding sources. There is a provision in the EO allowing possible exemption requests for appointments that are essential to carry out responsibilities if the core functions cannot be fulfilled by existing staffing levels. Staff submitted the exemption requests for the vacant positions on March 15, 2011.

### **Personal Leave Program**

The Governor's Executive Order S-15-10 requires employees to be subject to a 12-month Personal Leave Program (PLP) where salaries will be reduced equal to one day of pay per month. Under this program, employees will receive eight hours of personal leave each month. The leave will have no cash-out value and will not adversely affect any health or retirement benefits. Also during the 12-month PLP period, no furloughs will be imposed.

### **Executive Officer Salary Study**

The Department of Consumer Affairs has an approved contract in place to conduct a comprehensive review of the salary levels of the department's Executive Officers. The contracted vendor, Cooperative Personnel Services (CPS) will review each programs complexity and scope of work to determine if the level of work being performed warrants a salary augmentation. CPS will send an on-line questionnaire in the form of a survey to all Executive Officers sometime in mid-May. CPS expects to have a finalized report some time in August.

### **Cell Phone Reduction**

Pursuant to Executive Order B 1-11, the DHCC was required to reduce the number of cell phones issued to staff by 50%. The DHCC issued four cell phones between 2009 and 2010. At this time, the DHCC has two cell phones utilized by the Executive Officer and a phone shared by enforcement staff.

### **Contract Delegation for Expert Consultant Services**

The Department of Consumer Affairs, Contracting Unit recently notified staff that all services for Expert Consultants shall enter into a formal services contract. The contract developed shall follow all guidelines, procedures, and rules governed by the State Contracting Manual and the California Public Contract Code. Currently, the DHCC utilizes approximately 90 Expert Consultants. Expert Consultants are hired to develop the RDH/RDHAP written law and ethics examinations and administer the RDH clinical examinations conducted in March, June, July and October. Therefore, staff will need to write 90 individual contracts for services.

## **Activities Attended - 2011**

January 28-Directors meeting at California Dental Hygiene Educators' Association (CDHEA)

January 29 – Participated in panel discussion regarding RDH clinical examination

February 24 and 25 – Attended Dental Board Meeting held in San Diego

March 5 – Attended RDH Examiner Orientation held at UCSF

March 6 – Administered DH Clinical exam at UCSF

March 14 – Attended Dental Board's Sunset Hearing

### **Upcoming Activities - 2011**

May 13 – CHDA Scientific Session – Anaheim

May 12-14 – CDA Convention - Anaheim

June 3 – CHDA - Anaheim

June 11 – RDH Examiner Orientation

June 12 – RDH Exam at USC

July 16 and 17 – RDH Exam at UCSF

July 23 And 24 – RDH Exam at USC

### **Sunset Review Cycle**

The DHCC is scheduled to begin the sunset review cycle 2013/2014. It is anticipated that once we are scheduled for review, the Joint Sunset Committee will send a questionnaire around January 2013.

## **iPads for Board Member Committee Meeting Information**

In an ongoing effort to conserve resources and increase efficiency during our normal course of business, the DHCC is exploring the inclusion of iPads into our workflow. iPads would be used by Committee members and support staff. Currently, Committee Meeting information preparation and distribution is a time, labor, and resource-intensive task. The DHCC aims to incorporate iPads to streamline the labor and material-intensive process of creating *one* nearly twenty 3-400 page binders for *each* committee member, legal counsel, and staff member, plus two additional binders for public reference. (20 binders @400 pages is roughly 8,000 sheets of printed paper. A ream box of copy paper only holds 5,000 sheets.)

Incorporating iPads into our work flow supports the overarching DCA directive promoting environmental stewardship. By creating and distributing digital documents, electricity is conserved, printing resources such as ink and toner are saved, and excessive wear and tear on office equipment will be minimized. Additionally, live Internet links, sound, and video can be incorporated into each committee meeting to enhance the users' experience, perceived value, and information comprehension and retention.

## **Department of Consumer Affairs (DCA) Update**

### **DCA Personnel**

**Paul Riches**, Deputy Director of Enforcement and Compliance took a position at the Bureau of State Audits. Mr. Riches assisted the Boards and Bureaus with enforcement issues.

**Kim Kirchmeyer** is the Deputy Director of Boards and Bureau Relations and is also the Acting Chief Deputy Director.

**LaVonne Powell** is serving as the Senior Advisor to the Director.

**Anna Caballero** has been appointed by Governor Brown as Secretary of the State and Consumer Services Agency.

### **BreEZe - Consumer Affairs System and Applicant Tracking System Replacement Project**

The BreEZe is the new system that will replace the Consumer Affairs System (CAS) and Applicant Tracking System (ATS) with a modern integrated enforcement and licensing system.


Phase II of the BreEZe workshops began in March. Phase II of the workgroup will be concentrating on reviewing the high level list of reports and refining them at a more detailed level. The workgroups are scheduled to meet every other week for at least 2 hours per meeting through the end of June. Tom Jurach will represent the DHCC by attending these workshops.

### **Policy Number OPES 11-01**

It is the policy of the Department of Consumer Affairs (DCA) that board members, committee members, and instructors not serve as expert consultants in the licensure examination development process. Due to the potential conflict of interest, board members shall not participate in any aspect of the development or administration. A copy of the policy is attached.

# DEPARTMENTAL POLICY



<b>TITLE</b>	Information Technology Projects		
<b>POLICY OWNER</b>	Office of Information Services		
<b>POLICY NUMBER</b>	OIS 10-01	<b>SUPERSEDES</b>	OIS 05-02
<b>ISSUE DATE</b>	April 8, 2010	<b>EFFECTIVE</b>	Immediately
<b>DISTRIBUTED TO</b>	Department Executive Directors Department Chief Information Officer Board and Bureaus Executive Officers OIS Client Notification Group All Supervisors and Managers		
<b>ORIGINAL APPROVED BY</b>	 Brian Stiger, Director Department of Consumer Affairs		
<b>PAGE</b>	1 of 4	<b>ATTACHMENT</b>	None

## POLICY

In support of the Office of the Chief Information Officer's (OCIO) directive, it is the policy of the Department of Consumer Affairs (DCA) that projects containing an Information Technology (IT) component (see *Definitions*) be submitted to the Office of Information Services (OIS) Project Management Office (PMO) for review and the DCA Chief Information Officer (CIO) for approval **before commencing any project activities including procurement**. All IT projects must be included in the DCA Project Portfolio.

In addition, pursuant to OCIO's goals, this policy establishes the California Project Management Methodology (CA-PMM) as the DCA standard for managing IT projects.

## APPLICABILITY

This policy applies to all DCA employees, consultants, and contractors involved in the initiation of projects, acquisition of IT services and IT goods by any of the DCA Divisions, Bureaus, Boards and Commissions. All projects with an IT component shall be subject to this policy.

## PURPOSE

The purpose of this policy is to ensure successful management and implementation of IT projects within the DCA by using the California Project Management Methodology (CA-PMM) as the DCA's standard for managing IT projects.

## AUTHORITY

Office of the State Chief Information Officer (OCIO) ITPL 09-01  
Statewide Information Management Manual (SIMM) Section 17  
State Administrative Manual (SAM) Section 4819.31

## DEFINITIONS

Following are the definitions of Information Technology (IT), IT Project, and the Project Management Office:

Term	Definition
Information Technology (IT)	<p>Information Technology encompasses computerized and auxiliary automated information handling that may include the following activities:</p> <ul style="list-style-type: none"><li>• Systems design</li><li>• Systems analysis</li><li>• Conversion of data</li><li>• Computer programming</li><li>• Information storage</li><li>• Information retrieval</li><li>• Voice, video, and data communications</li><li>• Requisite system controls</li><li>• Simulation</li></ul> <p>(State Administrative Manual, Section 4819.2)</p>
IT Project	<p>IT activities will be considered IT projects when they meet the following minimum requirements :</p> <ul style="list-style-type: none"><li>• Consumes at least 500 hours of effort*</li><li>• Provides an IT solution to a business problem/opportunity or contains an IT component requiring more than 500 hours of IT effort</li><li>• Is a unique effort</li><li>• Has a start date</li><li>• Has a target finish date</li><li>• Has defined objectives</li></ul>



	<ul style="list-style-type: none"> <li>• Has named deliverables</li> <li>• Has a defined budget and resources</li> </ul> <p>In addition, any IT effort involving consolidation, shared services or green initiatives may be deemed an IT Project by the DCA CIO or Agency CIO.</p> <p>*Effort is the amount time spent by staff in the business, IT and/or vendor areas.</p>
Project Management Office (PMO)	<p>The DCA PMO is a centralized organizational structure that assists DCA's Boards, Bureaus, and Commissions with successful implementation of IT projects, using the CA PMM as the primary methodology for project management.</p> <p>The PMO provides assistance in filling the CA PMM toolkits, as well as guidance, best practices, and procedures for the business project managers directly responsible for their respective projects.</p> <p>The PMO can be contacted at <a href="mailto:PMO@dca.ca.gov">PMO@dca.ca.gov</a>.</p>

## PROVISIONS

Given the increasing complexity of IT projects, the state has a need for a standardized enterprise project management processes to maximize the quality and productivity of IT efforts while minimizing risk. The OCIO delegates to the Department Chief Information Officer (CIO) the responsibility to establish the PMO which will promote and implement the CA-PMM for IT project management and oversight.

In addition, ITPL 09-06 defines the role of the OCIO, Agency CIO, Department CIO, and PMO in the review and approval of IT project documents, project management and oversight, and reporting of IT projects. It also requires the use of CA-PMM as the statewide standard.

This directive requires adherence to the CA-PMM as outlined in the following sections of the SIMM 17:

- The CA-PMM Toolkit Implementation
- IT Project Complexity
- Status Reporting
- CA-PMM Training Requirements
- Scheduling Software (MS Project)
- Use of Additional Supplemental Project Management Tools.

The procedures concerning IT project approval, project management and oversight will be issued via Departmental Procedures Memorandums. In addition, customers can contact the PMO if they need assistance determining if a project is an **IT project**.

## **VIOLATIONS**

Failure to follow any of the provisions of this policy may result in project delays or denial.

## **REVISIONS**

Revisions to this policy are the responsibility of the DCA PMO. Requests can be submitted by e-mail to [PMO@dca.ca.gov](mailto:PMO@dca.ca.gov).

## **ATTACHMENTS**

None

## **RECOMMENDED IMPLEMENTATION STRATEGY**

This policy must be implemented immediately for all new IT projects. Use of the CA-PMM Toolkit is optional for IT Projects approved prior to January 1, 2009. However, the Status Reports in the CA-PMM Toolkit are required for all IT projects.





**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 8**

Approval of the December 06, 2010 Meeting Minutes

**Dental Hygiene Committee of California**

2005 Evergreen Street, Suite 1050, Sacramento, California 95815  
Phone 916.263.1978 Fax 916.263.2688 | www.dhcc.ca.gov



***Dental Hygiene Committee of California***

***Full Committee Meeting***

*Department of Consumer Affairs  
2005 Evergreen Street  
Sacramento, CA 95815*

**Monday, December 6, 2010**

**DRAFT MINUTES**

**1. Roll Call/Establishment of Quorum**

Members Present

Rhona Lee, RDH, RDHEF- President  
Michelle Hurlbutt, RDH - Vice President  
Alex Calero, Secretary  
Miriam DeLaRoi, RDH, RDHAP  
Coordinator  
Cathy DiFrancesco, RDH  
Rita Chen Fujisawa, Public Member

Services Technician

Members Not Present

General

Andrew Wong, Public Member

Staff Present

Lori Hubble, Executive Officer  
Tom Jurach, Administrative Analyst  
Norine Marks, Legal Counsel  
Shirley Moody, Enforcement

Traci Napper, Associate Government  
Program Analyst

Dennis Patzer, Enforcement Analyst  
Liz Roberts, Management

Greg Salute, Deputy Attorney

The meeting was called to order at 9:08 a.m. Members introduced themselves for roll call and a quorum was established. Ms. Lee instructed the audience about the presentation microphones and invited voluntary sign- in on the sheet in the back of the room. Due to scheduling difficulties, the webcast was not yet ready to broadcast. When the webcast became operational, staff would signal that our broadcast would be "live".

**2. Public Comment**

There was no public comment.

### **3. *Approval of September 28, 2010 Meeting Minutes***

It was m/s/c (Calero/DiFrancesco) to approve the September 27, 2010 full committee meeting minutes as submitted. The motion passed unanimously.

### **4. *President's Report***

Ms. Lee shared the DHCC's recent change in legal counsel and presented a verbal appreciation of the previous legal counsel, LaVonne Powell, as well as highlighting her accomplishments made as a team under her lead. Ms. Lee expressed that Ms. Powell's presence and legal counsel would be missed. She then introduced the DHCC's new legal counsel, Norine Marks, and provided a short biography for her. On behalf of DHCC Ms. Lee welcomed legal counsel, Norine Marks.

Ms. Lee identified the events she attended since the previous DHCC meeting and mentioned that a process is underway to reformat the DHCC application and clinical exam materials to be more user friendly, current and complete. That reformatting will be completed in 2011.

Ms. Lee deferred to Ms. Hurlbutt to explain that HWPP #172 has been approved.

Ms. Lee wrapped up her President's Report by explaining the DHCC's inaugural year has been a success and those that came together as strangers, a year ago, are now working together as a tight and professional team.

### **5. *Executive Officer's Report***

Ms. Hubble provided a brief staff update highlighting Ms. Nichole Johnston's maternity leave and two additional hires made. Ms. Johnston's contributions will be sorely missed during her absence. New hires are Dennis Patzer, Enforcement, and Tom Jurach, Administrative Analyst. Ms. Hubble also reiterated the challenges provided to us by the State of California's hiring freeze which prevents the DHCC and all other boards from maintaining necessary staffing levels. In addition to the hiring freeze, Ms. Hubble provided an update on employee furloughs which are no longer three days a month; they have been reduced to one.

Ms. Hubble then touched on meetings attended by DHCC. One of which was the most recent Dental Board of California (DBC) meeting on November 5, 2010, which took place in Los Angeles, CA. Ms. DiFrancesco attended this event with Ms. Hubble and Ms. DiFrancesco added that the DHCC infection control regulations worked on in partnership with the DBC were accepted by the DBC. Ms. Hubble applauded the cooperation between the DHCC and the DBC and looks forward to similar cooperation in the future.

Ms. Hubble recognized the efforts of her staff and reported on the collaboration between the committee and staff and how rare it is for such a partnership to ensue. She is proud to be at the helm.

To highlight DHCC's 2010 accomplishments Ms. Hubble and Mr. Jurach gave a ten minute Power Point musical presentation of DHCC's inaugural year in perspective.

**6. *Presentation by Debbie Balaam regarding DCA's proposed new automated enterprise online licensing and enforcement system (BreEZe project)***

Brandon Rutschmann, BreEZe Project Manager, and Kim Kirchmeyer, DCA Deputy Director for Board and Bureau Relations, presented on BreEZe, the new licensing software scheduled to begin implementation in 2013. It will replace the currently used CAS and ATS.

**7. *Bureau for Private Postsecondary Education – Overview by Joanne Wenzel***

Joanne Wenzel, Deputy Bureau Chief for the Bureau for Private Postsecondary Education, presented on postsecondary education relative to dental hygiene on both a federal and state level. She stated she did floss this morning. On January 1, 2010 the Bureau for Private Postsecondary Education was created. Ms. Wenzel has been asked to review professional placement statistics currently publicized by the news media. New regulations have been put into place requiring the reporting of additional data for public and private institutions. The law requires a performance fact sheet to be provided to any student seeking enrollment into that institution. It must talk about placement and completion of the students enrolled in the program. It must include license exam passage rates and placement of any student that is placed out of that program - as long as it can be tracked. Institutions must document how they come up with these numbers. There are no placement and/or completion requirements in the current law.

There are many reasons students do not complete programs or get jobs when they are finished. A lower pass rate disclosure may force institutions to raise the bar for admission requirements.

**8. *Department of Consumer Affairs (DCA) Director's Report (DCA Representatives)***

Kimberly Kirchmeyer, Deputy Director for Board and Bureau Relations, DCA, spoke on behalf of Director Brian Stiger. Ms. Kirchmeyer provided an update on the hiring freeze. Exceptions are still being granted on a very stringent basis. There is also a freeze on overtime and DCA is still moving forward with an exception to allow overtime to be worked. A decision has not yet been made.

Ms. Hurlbutt inquired about hiring temporary help.

Ms. Kirchmeyer responded that temporary help is still hired help and the hiring freeze does not allow hiring.

Ms. Hurlbutt asked why healing arts boards are not exempt from hiring freezes – in the name of public protection – and why healing arts boards do not pass legislation to exempt themselves from hiring freezes?

Ms. Kirchmeyer responded that the legislation would need to pass the governor's desk and the governor uses this avenue to cut costs in many departments.

In regards to CPEI Ms. Kirchmeyer applauded the DHCC for moving forward with their regulations to improve the enforcement process. She mentioned that performance measurements are in and they would be posted on the DCA's

website. She suggested that the performance statistics might be included in future board member packets.

Regarding SB 1441, she thanked DHCC for revising disciplinary guidelines and regulations. She encouraged DHCC to approve those this afternoon.

Lastly, Ms. Kirchmeyer acknowledged and apologized for the miscommunication at the departmental level causing the scheduling inaccuracy which prevented the webcast from beginning at the beginning of the meeting.

Richard Woonacott, Deputy Director, Legislative and Policy Review (LPR), presented about AB 2699 (Bass) regarding temporary out-of-state licensure for healing arts board practitioners to come into the state and participate in low income or indigent care at voluntary health fairs.

Ms. Hurlbutt inquired about deadlines for proposed language and Mr. Woonacott acknowledged that it may be difficult to make the deadlines with the next committee meeting scheduled in April.

## **9. *Update on pending regulations***

Traci Napper, DHCC Legislative Analyst, presented an update on pending regulations. They are as follows:

- The retroactive fingerprint regulations are currently at DCA for review for the final statement of reasons. DCA has the complete package. DHCC anticipates its return next week.
- Disciplinary Guidelines has gone to OAL for the process of getting the regulations implemented. The document has gone to DCA for review of the initial statement of reasons and it will be returned for minor formatting changes. It can then be submitted before December 28 to be published for January 7, 2011, and a hearing can be held February 21. The latest projection for submission is submitting on Jan 4th, publishing on Jan 14th, and holding a hearing on Feb 28th.

## **10. *Newly Proposed Cite and Fine Regulations***

Ms. Hubble reviewed the status of the newly proposed cite and fine regulations. The language contained within the committee packet has been approved by the Enforcement Subcommittee as well as the full Committee. A portion added by legal counsel to accept or modify would be discussed today.

Discussion ensued:

The issuance and disposition of a citation shall be public for a period of five years from the date of issuance. Ms. Kirchmeyer added that the clock usually begins on the date of resolution.

Mr. Calero amended his motion to include in section 1139 (a) the language “or regulations” after the words “business and professions code or any laws or regulations governing...” With respect to 1144, strike existing language and include the following. “The issuance and disposition of a citation shall be public.”

Legal counsel Marks clarified that Mr. Calero recommended that there be no limitation on the disclosure of citations.

Ms. DiFrancesco stated that she seconded the motion to support transparency to the consumer as a priority of the committee.

Mr. Patzer added that disciplinary actions are posted on the DHCC web site and do not have an expiration date, but the citations are only posted on the Internet for three years.

Ms. Hurlbutt asked Mr. Calero what he wanted from this regulation by asking if it was his intention to go back into our regulations to insure that all disciplinary actions were public and/or all the documents were posted. Ms. Hurlbutt did not recall any of our regulations that mandated posting all documentation or disciplinary events. She asked the following:

- What is your intent with this amendment?
- Do you want it posted, or do you just want it public?
- We have an opportunity with regulations to do it either or both ways.
- If we do not put something about what we want to do in the regulations, can we make that decision without it being a regulation? Can that be a policy decision or does it need to be in the regulations?
- Which way we are going to go?

Legal counsel, Marks added that it could possibly be done by policy. What is gained for your licensees is you give notice about how it is going to be handled. You might want to strike a balance between posting time and making public information available through contact with the department.

Mr. Calero answered that he was comfortable with the language of the motion as is. There are sections of the Business and Professions Code which requires that certain things be posted.

Legal counsel mentioned there is a broad range with regard to fines. Often, she has seen categories that define structured violation amounts. In 1143(c) DHCC may wish to “add in addition to other remedies, that the failure to comply may result in disciplinary actions.” There are general provisions in the B&P code that allow the agency to hold the renewal of a license in the event that a fine is not paid. 1142(c) at the end of the paragraph, add “,unless continued for good cause.”

It was m/s/c (Calero/DiFrancesco) to approve the draft revised language for citations and fines for noticing. The motion passed unanimously.

## **11. Budget Report**

Traci Napper, DHCC Legislative Analyst, provided a copy of the budget projections for 2010-2011. She stated that the DHCC budget is solvent.

## **15. Legislation and Regulation Subcommittee Report**

Ms. Lee introduced Mr. Calero and Ms. Hurlbutt as the members of the ad hoc committee appointed to address the cleanup statutory language and promulgate the statutes and regulations necessary for DHCC to become autonomous.

Mr. Calero chaired the Legislation and Regulation Subcommittee in public member Andrew Wong’s absence. Because Ms. Hurlbutt participated as the third subcommittee member, the subcommittee was able to have a quorum and conduct business.

Ms. Lee requested and received the full committee’s approval of the September 27, 2010 Legislation and Regulation subcommittee minutes.

Ms. Lee then turned the meeting over to Mr. Calero to present the Legislation and Regulation Subcommittee's recommendations.

Mr. Calero directed readers to materials in the board packet. Staff had provided an overview of the legislative and regulatory calendars in light of the statutory clean-up language currently being revised as well as other proposed regulations. Staff presented an overview of bills effecting DHCC or otherwise related covering the last 2-year legislative session.

Mr. Calero reviewed the subcommittee's actions from the previous day, including the following:

- The subcommittee had reviewed and revised the statutory clean up language and had voted to recommend that the full committee continue with the regulatory process and find a sponsor for the language.
- The subcommittee had accepted the language with the changes discussed yesterday.
- It was recommended that this language be accepted by the full committee as amended to allow the regulatory process to continue. Mr. Calero requested that the full committee review the language.

It was m/s/c (Calero/DiFrancesco) that the committee recommends to staff that the language for B&P Code Sections 1900 – 1966.6 as proposed, with the additional amendments proposed today, be put forward to seek an author(s) for the legislative process. The motion passed unanimously.

Mr. Calero took the lead on the discussion with the full Committee and public comment. He invited the public to comment at the appropriate time during the discussion. There were no comments on page 01.

Ms. Lee suggested that the language from B&P 1603 be revised to specify staggered and overlapping appointment terms for all the DHCC members, similar to all other DCA boards and committees, in order to provide a thread of continuity. Staggered terms would avoid the simultaneous appointment of all new members, resulting in a lack and depth of group experience. To do so Ms. Lee proposed the following verbiage:

“Except for the initial term... (to Insert this language after 1903(2)(D)(b)) Of the following appointments for the second year only, two of the RDHs and two of the public members shall serve for a term of two years. Two of the RDHs and two of the public members and dentist shall serve a term of 4 years.” This suggestion follows the precedent set in B&P 1603 and will help stagger concurrent terms.

Mr. Calero asked the committee if there was a consensus about the verbiage adjustments proposed by Ms. Lee.

It was advised by legal counsel that adjustments to verbiage be individually agreed to by consensus by the committee and motion at the end of the adjustments to accept all of the adjustments.

Katie Dawson, CDHA legislative representative, recommended that the initial dentist's term on the committee not be specified as a four-year position but rather be a two-year term. The committee agreed that a two-year term was acceptable.

Ms. Hurlbutt suggested striking 1909.1, as it is the same language as 1905.2 and the author of the bill requested it be that way.

Mr. Calero asked if there was a consensus and there was.

JoAnn Galliano spoke to support former Senator Perata's intent and to keep the proposed language as close to his intent as possible.

Ms. Hurlbutt wanted to go back to page 4 @ 1905 A(8) and asked to reinstitute a line that is current statute. Ms. Hurlbutt asked that 1905 A8 read as follows:

"Make recommendations to the dental board regarding scope of practice issues."

Ms. Dawson asked the justification for reinstating 1905 A(8).

Ms. Hurlbutt responded that it was recommended by the bill's author. Ms. Hurlbutt continued that "In terms of recommendations, the DHCC will only make recommendations to the Board regarding scope of practice issues as they relate to the practice of dental hygiene."

Ms. Dawson supported the original language as proposed by Mr. Perata.

A consensus was reached to amend the language to reflect Ms. Hurlbutt's request. The language would state: "In terms of recommendations, the DHCC will only make recommendations to the Board regarding scope of practice issues as related to the practice of dental hygiene."

Ms. Lee proposed an addition to Section 1917.1 A(5) to read as follows: "Proof that the applicant has not been subject to disciplinary action or monitoring of any kind by any state in which he or she is or has been previously licensed as a registered dental hygienist or other healthcare personnel".

Ms. Kirchmeyer inquired about the addition of "healthcare personnel." She asked, "Why limit it to only healthcare? Can it read "professional" to broaden the enforcement potential?"

Legal counsel advised that the verbiage not be too broad. Discussion ensued and the verbiage was agreed to read, "Proof that the applicant has not been subject to disciplinary action or monitoring of any kind by any state in which he or she is or has previously received professional or vocational licenses."

Ms. DiFrancesco suggested revising Section 1917(f) to strike ~~"administration of"~~ prior to "nitrous oxide and administration of..."

Section 1922 shall read, "The committee shall license as a registered dental hygienist in alternative practice a person who demonstrates satisfactory performance on an examination in California law and ethics required by the committee, completes an application form and pays all fees required by the committee, and who meets either of the two of the following:

- 1922 (c) is struck as the verbiage was included in 1922, above.
- 1922 (2) add "or regional" after "national" and strike ~~"council on postsecondary accreditation or the"~~ so it would read, "...that is accredited



by a national or regional accrediting agency recognized by the United States Department of Education, and a..."

Ms. DiFrancesco proposed adjusting Section 1926.3 after "facility." to read, "The owner or operator of the mobile dental hygiene clinic or unit shall be registered, operated in accordance with regulations established by the committee, provided these regulations are not designed to prevent or lessen competition in service areas, and shall pay the fees established by the committee."

Ms. Lee suggested amending Section 1930 to read, "A registered dental hygienist in alternative practice shall provide to the committee documentation of an existing relationship with at least one California licensed dentist, physician, or surgeon for referral, consultation, or emergency services. Ms. Hurlbutt objected and reported that she believes that this language should remain as is. No changes were adopted.

Ms. Lee asked that staff review 1927 (b) and 1929 (a) and insure that there is no conflict in language.

The following changes were suggested:

Section 1950.5(m) ...requirements, of Section 1656 as determined by the committee.

Section 1950(z) thereby risking transmission of ~~bloodborne~~ infectious diseases..."

Section 1944 (a)(6) The biennial renewal fee shall not exceed ~~eighty dollars (\$80):~~ two hundred fifty dollars (\$250).

Section 1944 (a)(1) The application fee for an original license shall not exceed ~~twenty dollars (\$20):~~ two hundred fifty dollars (\$250). ~~On and after January 1, 2010, the application fee for an original license shall not exceed fifty dollars (\$50). Two hundred fifty dollars (\$250).~~

Section 1955 (a)(1) A licensee who fails or refuses to comply with a request for a patient's dental or dental hygiene records that is accompanied by that patient's written authorization for release of the records to the committee, within 15 days of receiving the request and authorization, shall pay to the committee a civil or administrative penalty or fine up to a maximum of two hundred fifty dollars (\$250) per day for each day that the documents have not been produced...

Ms. Lee suggested that Section 1966(a), (b) reflect the option to establish the diversion committee rather than mandating its existence to allow flexibility in resource and time allocation, given the current economic climate and the Sunset review process scheduled for 2013. She suggested the following:

- ~~Section 1966 (a) ...and safety. It is also the intent of the Legislature that the committee establish a diversion program as a voluntary alternative approach to traditional disciplinary actions.~~
- Section 1966 (b) One or more diversion evaluation committees ~~shall~~ may be established by the committee. The committee ~~shall~~ may establish

criteria for the selection of each diversion evaluation committee. Each member of a diversion evaluation committee shall receive per diem and expenses as provided in Section 103.

- Section 1966.1 (a) The committee ~~shall~~ may establish...

It was m/s/n (Lee/DiFrancesco) to accept the modifications to 1966(b) and 1966.1(a). The motion failed 3-3-0.

Ms. Hurlbutt supports leaving all statutes supporting diversion remain as it is and supported it being mandatory and not optional.

Ms. Galliano, CHDA, mentioned that diversion is a hot topic and this cleanup language is “going far beyond” cleanup. An author may look at this bill and have to defend the changes as well as push through the cleanup legislation. She added that her opinion is that diversion should be added in a separate bill.

Maureen Titus, CDHA, believes that diversion is a very important subject for the protection of the public and believes the words “shall” should remain and the “may” substitutions weaken the language.

Ms Dawson, CDHA, feels that diversion is an avenue that the DHCC should work toward as a public safety issue and by supporting diversion, the DHCC would be looking at the best interest of the residents of California.

Ms. Hubble spoke to the diversion language and mentioned that she suggested leaving the diversion portion alone and that having two bills is a better solution as well as a greater challenge. A cleanup bill can move forward and a diversion bill may be proposed in addition to the cleanup language.

Ms. DiFrancesco wanted the “mays” included in the language to give future DHCC committee members more flexibility regarding implementing diversion and they will not be “boxed in” to a legislative path.

Ms. Kirchmeyer lectured on cleanup language and advised much of the information included in the current DHCC proposal is a bill that will be discussed and will not go forward as an omnibus bill. Changes have been made to the entire B&P code and this is simply not simple cleanup language. It is advised to remove any highly controversial additions to the language before pushing the legislation forward.

Mr. Calero recapped that the DHCC will be working with many stakeholders including consumers, professionals, and our colleague in the regulatory field, including the Dental Board. The DHCC looks forward to working with everyone to make this a success and to do what’s best for all parties including the consumers involved.

The meeting recessed for 15 minutes and returned to discuss DHCC Regulations.

## **Regulations**

Mr. Calero motioned to approve the proposed regulatory language and move it through the regulatory process. Discussion ensued.

Ms. Hurlbutt asked that staff create a definition for “Act” to refer to “the act of governance and practice of dental hygiene.”

Ms. DiFrancesco asked to add “is” to 1100(s) “...to the pocket wall, which is not subgingival curettage ~~is~~-referring to the procedure...”

Ms. Hurlbutt reminded committee members that staff will be going through all of these regulations and double checking authorities cited and adding authorities cited where needed. Staff will insure all those areas are covered.

Ms. Lee discussed schools’ accreditation and does not feel that the DHCC is an educational oversight committee for the Commission on Dental Accreditation (CODA) or other commissions. She proposed regarding Section 1104(c) ...A new educational program for registered dental hygienists must submit a feasibility study for a new educational program and apply for approval from this Committee, ~~prior to seeking approval for Initial Accreditation from the Commission on Dental Accreditation.~~ The Committee may approve, provisionally approve, or deny approval to any such new educational program.

Ms. Hurlbutt noted a typo in that the words “blood borne” placed before “Infectious Disease” will be removed throughout the document by staff. She also addressed additional typographical errors and will be adding “soft tissue” to the following: 1107 Approval of RDH Course(s) in Local Anesthesia, Nitrous Oxide-Oxygen Analgesia and Gingival Soft Tissue Curettage.

In regards to Section 1104(c) Ms. Lee and the committee discussed “feasibility study” and whether or not the DHCC should or should not view a feasibility study before or after the CODA evaluation to accredit a new hygiene school.

Mr. Calero asked if the DHCC had ever denied a school.

Ms. Hurlbutt responded that the DHCC has not, but to consider that the DHCC is a very new committee and there are provisions in further regulation to hire staff to evaluate and approve or deny new dental hygiene programs in California.

Mr. Calero stated that the regulations are written to allow the DHCC to review the feasibility study before CODA does.

Ms. Hurlbutt noted that it was up to the state to look at the feasibility study and CODA only required that one be submitted.

Ms. DiFrancesco asked if CODA reads the feasibility study, but the DHCC would evaluate the feasibility study and approve or deny the new school based on that feasibility study.

Ms. Galliano added that the regulations should be left as proposed. She reasoned that in order for a new school to develop, it is important for the committee to look at the feasibility study. She felt that the committee was looking at the feasibility study in a negative light. Ms. Galliano felt that the committee needed to look at it positively and help the program to determine whether or not they meet the needs of the consumer and protecting the public. She stated that

CODA was/is not concerned with consumer protection or the impact of the program on the public. She feels that is the job of the DHCC. CODA looks at the program and evaluates programs to meet the standards of the DHCC. It is the DHCC's job to work with the proposed program and help them assess whether or not that program meets the needs of the consumer in California before the proposed school undergoes the extensive approval process with CODA. Ms. Galliano expressed that she would be very upset if a (her) school went through the entire evaluation process before discovering the DHCC found something in their feasibility study that would cause denial of approval for the proposed program.

Mr. Calero understands the committee's role in program approval is to ensure that the curriculum produces a competent professional. He asked how does the feasibility study ensure that the curriculum ensures a competent professional? He understands the financial benefit of the feasibility study, but how can the committee approve or deny a school when there may be an existing school directly across the street.

Ms. Hurlbutt expressed that the DHCC should be part of the approval process of educational approval in this state. Legal counsel added that there may be some issues with demanding that a proposition and feasibility study comes through DHCC before being forwarded to CODA. Legal counsel suggested that there may be ways to address in regulation that the evaluation by the DHCC is a benefit to the proposed school's process.

Ms. Kirchmeyer discussed 1905 of the B&P code. She thinks the DHCC may be putting the cart before the horse because DHCC is seeking legislation to maybe approve a CODA school. As DHCC regulations move forward to OAL, if our verbiage has not been amended to read "may approve a CODA school" (from "shall") the DHCC will not have the authority to deny a school if approved by CODA.

Ms. Hurlbutt rebutted that the DHCC has the right to look at the feasibility study and is not stopping the approval process.

Legal counsel Marks added that it may cause problems if DHCC requires that a proposed school program proposition must come to DHCC before sending their approval to an approval agency outside of DHCC that is independent of the DHCC – when they have the right (according to the way our regulations are currently written) to apply for approval from an independent agency.

Ms. Galliano stated that CODA will evaluate the regulations, first, to ensure that the proposed educational program meets these requirements. CODA will then read the feasibility study. CODA wants to meet the legal requirements before continuing through the approval process.

Ms. Hubble added that the language needs to be rewritten as suggested by legal counsel. There are administrative issues with the application process:

- What is required to be supplied to DHCC?

- The DHCC requires an application. What needs to be part of the application in regards to the feasibility study?
- Does the program meet curriculum requirements?
- What will be the DHCC's process for approval and denial of the feasibility study?

Ms. Lee mentioned that the criteria and a definition of a feasibility study would need to be specified.

Ms. Hurlbutt rebutted that the feasibility is defined by CODA and the DHCC will not be able to adjust what is included (or not) in the feasibility study. She also posed the questions:

- Should the DHCC review the feasibility study as part of the approval process?
- Should the DHCC review the feasibility study as part of the new DHCC approval process? She then suggested removing lines from our regulation.

Ms. Galliano reiterated that it is the DHCC's job to approve schools. She stated that not approving schools is shirking one of DHCC's jobs, as delegated to the DHCC by the legislature in the bill that created the DHCC. In the past she tried to acquire a feasibility study to evaluate, but there is an expensive CODA cost associated with its acquisition and a feasibility study was not acquired.

Mr. Calero suggested that the first sentence of 1104(c) ends with the word "Committee."

Ms. Hurlbutt asked that an adjective be added before the word "feasibility."

Ms. Lee was comfortable with either her amendment (replacing "prior to" with "after") or Mr. Calero's suggestion of ending the sentence with the word, "Committee."

Ms. Hurlbutt noted that there are two versions and wanted to vote on them, starting with replacing "prior to" with "after."

It was m/s/n (Hurlbutt/DeLaRoi) to replace "prior to" with "after." The motion failed.

It was m/s/c (Calero/DeLaRoi) to end the first sentence of section 1104(c) with "Committee."

The motion passed (3/2/1)

Ms. Hurlbutt recommended that in section 1116(e) and (f) to remove "~~Administration of.~~" In 1106(h) remove "~~Formation of.~~" In section 1106(i) and (j) remove "~~Delivery of.~~" The committee agreed that these changes be made.

Ms. Hurlbutt identified typographical errors in section 1118(a)(1) "soft tissue gingival curettage" will be replaced with "gingival soft tissue curettage" and has recommended that staff edit the entire document for consistency. She also asked

for the removal of “~~local~~ administration anesthesia” in the 1118(a)(2) in the second-to-last line.

Mr. Salute noted to adjust in section 1118(b)(1) to read “...in the amount of \$100,000 for a single occurrence and ~~\$300.00~~ \$300,000.00 for multiple...”

Ms. Hurlbutt asked to edit and add commas in section 1125(e) “...that the examinee, at a minimum, shall provide...” She also mentioned, at the recommendation of legal counsel, it was advised to remove “~~Dental Board or~~” from the entire section of 1134.

Ms. DeLaRoi noticed that section 1135(b)(1)(b) to remove “~~Dental Practice Act~~ [Division...”

Ms. Hurlbutt asked that staff identify areas where act was incorrectly used.

Mr. Salute suggested that in section 1138.3(b) to change “...copies of documents s within...”

Ms. Standley, CDHA, asked if regarding section 1135(b)(1)(B), “Was there any intention of including “domestic abuse” in this section?”

Mr. Salute added that this section is related to mandatory reporting and the committee had reached a consensus that hygienists are required to report domestic abuse.

Ms. Hurlbutt added that the correct terminology will be added/used in this section.

It was m/s/c (Calero/DiFrancesco) that the committee approve the proposed regulatory language as amended with staff making non-substantive changes and to move through the regulatory process. The motion passed unanimously. Ms. Dawson added that as health care providers, dental hygienists are mandated reporters for domestic abuses to local law enforcement and are required to report elder abuse to the Adult Protective Services. Ms. Dawson could not provide a citation for this information.

## **12. Education and Outreach Subcommittee Report**

Ms. Chen Fujisawa, Chair, reported that the subcommittee met on Sunday, December 5, 2010. The subcommittee approved the meeting minutes from the previous meeting on September 27, 2010.

They reviewed the statistical information regarding DHCC website hits, geographical origin, and frequency. Tracking this data will help to identify where people are going to most so that DHCC can provide the most up to date information to them. The outreach calendar for 2011 was presented.

Ellen Standley of CDHA has extended an invitation to the DHCC to attend an event in the fall of 2011 and the invitation will be forwarded to the Ms. Hubble, DHCC's Executive Officer for evaluation.

Also, Ms. Chen Fujisawa reported on a clinical exam that she observed at UCSF. She thanked Ms. DiFrancesco and Hubble for their insights on the exam process and expressed how impressed she was with the exam process and the level of professionalism shown.

It was m/s/c (Chen Fujisawa/Calero) to accept and approve the Education and Outreach Subcommittee report. The motion passed unanimously.

### **13. Licensing and Examination Subcommittee Report**

Ms. Hurlbutt, Chair, reported that the subcommittee met on Saturday, December 4, 2010 and had a fruitful and long day. They reviewed licensure and clinical and written exam statistics.

They looked at alternative methods to administer the Law and Ethics written exam and reviewed the reference materials used for the development of the RDH, RDHAP, Law and Ethics written exams. The subcommittee recommended at this time not to consider sections 1107 and 1108 regarding the administration of nitrous oxide, local anesthesia and soft tissue curettage.

The subcommittee met in closed session with the RDH clinical examiners to discuss and review examination procedures, forms, grading criteria, grade sheets, examiner performance, and examination calibration issues.

It was m/s/c (Hurlbutt/Calero) to accept and approve the Licensing and Examination Subcommittee report. The motion passed unanimously.

### **14. Enforcement Subcommittee Report.**

Mr. Calero, Chair, reported that the Enforcement Subcommittee met on Sunday, December 5, 2010, and approved the September 27, 2010 meeting minutes, reviewed enforcement statistics, discussed consideration of a peer review system, reviewed proposed recommendations with regard to CPEI to improve the enforcement process and recommended that the full committee begin the regulatory process with respect to those regulatory sections to be included in the regulatory package reviewed this afternoon.

It was m/s/c (Calero/DeLaRoi) to accept and approve the Enforcement Subcommittee report. The motion passed unanimously.

### **16. Annual Election of Officers**

Ms. Hubble opened discussion for recommendations regarding the annual election of officers for 2011.

It was m/s/c (Chen Fujisawa/DeLaRoi) for the election of officers as follows:

- President: Rhona Lee
- Vice President: Alex Calero
- Secretary: Cathy DiFrancesco.

The motion passed unanimously.

## **17. *Proposed 2011 Meeting Schedule***

Ms. Hubble proposed the following 2011 meeting dates:

- April 28 and 29                      Los Angeles area
- August 29 and 30                      San Diego
- December 11, 12, 13                      Sacramento.

She noted that scheduling three meeting days in Sacramento, including the evaluation of exam performance issues, made this weekend a long one.

Ms. Chen Fujisawa asked if any training was scheduled for the committee as had been scheduled in July of 2010.

Ms. Hubble replied that she was not aware of any scheduled training.

Ms. Galliano asked why the 2010 December meeting was scheduled a week later this year than in previous years, as it makes educator's schedules complicated, given finals week.

Ms. Hubble responded that there is an extensive amount of work to be completed before a committee meeting and the extra week of preparation after the Thanksgiving holiday relaxes some of the staff's enormous workload relative to the abbreviated Thanksgiving week schedule.

Other weekends were proposed and discussed and the original proposed dates were voted upon as they were originally presented.

Ms. Standley concurred with Ms. Galliano and expressed similar scheduling difficulties.

It was m/s/c (Hurlbutt/ DiFrancesco) to move to accept the dates as presented by staff for the next committee meetings. No discussion ensued. The motion passed unanimously.

## **18. *Future Agenda Items***

Mr. Calero mentioned that the committee evaluates enforcement performance measures relative to enforcement and report back to staff.

Ms. Chen Fujisawa asked if we could use digital documents and make changes in real-time as we discuss them.

Ms. Dawson asked that the Dental Board be invited to our meetings as an agenda item.

Ms. Hubble has extended in the past and will continue to do so in the future, to invite the Dental Board to the DHCC meetings.

Ms. Standley stated she was pleased to watch the progress of the committee and she appreciated the long hours that have been put in. She appreciated the current website updates and the ability to download the current meeting materials



prior to the meetings. She wanted to extend a thank you from the consumers, licentiates, and students.

Ms. Lee thanked all who have contributed over the past year and applauded the successes of the DHCC's first year.

There was no further public comment.

The meeting adjourned at 5:56 p.m.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 9**

Presentation on OSHPD Health Care  
Workforce Clearinghouse



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Senita Robinson, Chief; Research, Policy and Planning Session OSHPD
<b>SUBJECT</b>	<b>Agenda Item 9: Presentation on OSHPD Health Care Workforce Clearinghouse</b>

A verbal report will be provided.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 11**

Adoption of §1139-1144 of Title 16 of the California  
Code of Regulations – Cite and Fine



## MEMORANDUM

DATE	April 29, 2011
TO	DHCC Committee Members
FROM	Lori Hubble Executive Officer
SUBJECT	<b>Agenda Item 11: Adoption of §1139-1144 of Title 16 of the California Code of Regulations – Cite and Fine</b>

### Background

At the December 2010 meeting, the Committee directed staff to initiate the rulemaking process. The hearing was held on March 21, 2011 and no public attended, therefore no comments were received.

### **Committee Action Requested:**

#### Option 1

- ☐ If the Committee adopts §1139-1144 as presented, direct staff to take all necessary steps to complete the rulemaking process, including the final rulemaking package with the Office of Administrative Law and authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process.

#### Option 2

- ☐ If the Committee adopts the §1139-1144 with changes, direct staff to take all necessary steps to complete the rulemaking process including preparing the 2<sup>nd</sup> modified text for a 15 day comment period which includes the amendments accepted by the committee at this meeting. If after the 15 day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process.



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 12**

Adoption of Amendments to §1138 of Title 16 of the  
California Code of Regulations – Disciplinary Guidelines



## MEMORANDUM

DATE	April 29, 2011
TO	DHCC Committee Members
FROM	Lori Hubble, Executive Officer
SUBJECT	<b>Agenda Item 12: Adoption of Amendments to §1138 of Title 16 of the California Code of Regulations – Disciplinary Guidelines</b>

### Background

At the December 2010 meeting, the Committee directed staff to initiate the rulemaking process. The hearing was held on March 14, 2011 and no public attended, therefore no comments were received.

### **Committee Action Requested:**

- ☐ If the Committee accepts the language, direct staff to take all necessary steps to complete the rulemaking process including preparing the 2<sup>nd</sup> modified text for a 15 day comment period which includes the amendments accepted by the committee at this meeting. If after the 15 day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process.

Dental Hygiene Committee of California

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND  
DISCIPLINARY GUIDELINES**

Section 1138 Division 11 of Title 16, Article 6 entitled “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” of the California Code of Regulations is added to read:

Article 10. Uniform Standards Related to Substance Abuse and  
Disciplinary Guidelines

Section 1138. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the Committee shall comply with the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” Dated ~~September 28, 2010~~ April 2011 that are hereby incorporated by reference. Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Committee, in its sole discretion, determines that the facts of the particular case warrant such a deviation. However, neither the Committee nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the consequences that apply to a substance abusing licensee.

(b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or exclusion of a specific standard as a term of probation.

(c) Notwithstanding subsection (b), or where an order is required by statute, deviation from these Uniform Standards and Disciplinary Guidelines and orders, including the standard terms of probation, is appropriate where the Dental Hygiene Committee of California in its sole discretion determines that the facts of the particular case warrant such a deviation; for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary issues.

Note: Authority cited: Sections 315, 1950 and 1950.50 Business and Professions Code; and Sections 11400.20, Government Code. Reference: 1950 of Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.





## Dental Hygiene Committee of California



## Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

(April 2011)

# Table of Contents

---

	Page No.
Introduction	3
Uniform Standards Related to Substance Abuse and Disciplinary Guidelines	4
Worksite Monitor Requirements	6
Major and Minor Violations	7
Drug Testing Standards	8-9
Disciplinary Guidelines	9
Situations in which Revocation Shall be Imposed	9
Recommended Action Violations	10
Probationary Terms and Conditions	11
Model Language for Probation Orders	12
List of Probation Conditions	13
Standard Probation Conditions	14
Additional Probation Conditions	18
Accusations and Decisions	23
Recommended Language for Cost Recovery for Revocations and Surrenders	24
Denial of Licensure	24
Demonstration of Rehabilitation	25
Evidence of Mitigation	26
Petition for Penalty Relief and Reinstatements	26-27
Dental Hygiene Licensure Act	28
Business and Professions Code Provisions	33
Index of Violations	36

# Introduction

---

The Dental Hygiene Committee of California is a consumer protection agency with the primary mission of protecting consumers of dental hygiene services from potentially harmful licensees. In keeping with its obligation to protect the consumer, the Committee has adopted the following Disciplinary Guidelines for disciplinary orders and conditions of probation for violations of the laws governing the practice of dental hygienist as well as Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

The Committee carefully considers all facts and circumstances associated with each case in its efforts to protect consumers. Subsequently, an Administrative Law Judge ("ALJ") shall provide in all proposed decisions a detailed basis of his or her decision in the "Findings of Fact" particularly when there is a deviation from the Disciplinary Guidelines. Justification for the deviation shall be clearly outlined in the decision to enable the Committee to understand the reasons and to evaluate the suitability of the decision. However, an ALJ is prohibited from deviating from the Uniform Standards Related to Substance Abuse.

If at the time of hearing the ALJ finds that the Respondent, for any reason, is not capable of safe practice, the ALJ shall order outright revocation of the license. This is particularly important in cases of patient sexual abuse or bodily harm.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the dental hygienist is suspended in order to correct deficiencies in skills, education or rehabilitation.

Dental Hygiene Committee of California

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND  
DISCIPLINARY GUIDELINES**

Section 1138 Division 11 of Title 16, Article 6 entitled "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" of the California Code of Regulations is added to read:

Article 10. Uniform Standards Related to Substance Abuse and  
Disciplinary Guidelines

Section 1138. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Section 11400 et seq. of the Government Code) the Committee shall comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" Dated ~~September 28, 2010~~ April 2011 that are hereby incorporated by reference. Deviation from the Disciplinary Guidelines, including the standard terms of probation, is appropriate where the Committee, in its sole discretion, determines that the facts of the particular case warrant such a deviation. However, neither the Committee nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse. The Disciplinary Guidelines apply to all disciplinary matters; the Uniform Standards describe the consequences that apply to a substance abusing licensee.

(b) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of section 315 of the Code. If the licensee does not rebut that presumption, the Uniform Standards for a substance abusing licensee shall apply unless the licensee establishes that, in his or her particular case, appropriate public protection can be provided with modification or exclusion of a specific standard as a term of probation.

(c) Notwithstanding subsection (b), or where an order is required by statute, deviation from these Uniform Standards and Disciplinary Guidelines and orders, including the standard terms of probation, is appropriate where the Dental Hygiene Committee of California in its sole discretion determines that the facts of the particular case warrant such a deviation; for example: the presence of mitigating or aggravating factors; the age of the case; or evidentiary issues.

Note: Authority cited: Sections 315, 1950 and 1950.50 Business and Professions Code; and Sections 11400.20, Government Code. Reference: 1950 of Business and Professions Code; and Sections 11400.20 and 11425.50(e), Government Code.

## **UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE**

The following standards shall be adhered to in all cases in which a license is placed on probation due to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Committee may impose more restrictive conditions if necessary to protect the public.

### **Clinical Diagnostic Evaluations:**

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has 3 years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Committee. The evaluations shall be conducted in accordance with accepted professional standards for conducting substance abuse clinical diagnostic evaluations.

### **Clinical Diagnostic Evaluation Report:**

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, familial or business relationship with the licensee within the last 5 years. The evaluator shall provide an objective, unbiased, and independent evaluation.

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

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

The Committee shall review the clinical diagnostic evaluation to determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Committee shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

## Worksite Monitor Requirements:

If a the Committee determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Committee:

The worksite monitor shall not have any current or former financial, personal, familial or business relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Committee. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Committee. However, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available-or be a person in a position of authority who is capable of monitoring the licensee at work.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last 5 years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Committee.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- a) Have face-to-face contact with the licensee at least once per week in the work environment or more frequently if required by the Committee;
- b) Interview other staff in the office regarding the licensee's behavior, if applicable; and
- c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Committee shall be as follows:

Any suspected substance abuse must be orally reported to the Committee and the licensee's employer within 1 business day of occurrence. If occurrence is not during the Committee's normal business hours the oral report must be within the first hour of the next business day. A written report shall be submitted to the Committee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Committee. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; staff interviewed if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Committee to allow the Committee to communicate with the worksite monitor.

If a licensee tests positive for a banned substance, the Committee shall order the licensee to cease practice. The Committee shall also immediately notify the licensee's employer that the licensee has been ordered to cease practice and he or she may not resume work until the suspension is lifted.

## **Major and Minor Violations**

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

1. Failure to complete a Committee ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive for a banned substance; and
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

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

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

1. Failure to submit required documentation as required;
2. Unexcused absence at required meetings;
3. Failure to contact a monitor as required; and
4. Any other violations that do not present an immediate threat to the licensee or to the public.

## Drug Testing Standards

If a licensee commits a minor violation, the Committee shall determine what action is appropriate.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. A committee may order a licensee to drug test at anytime. Additionally, each licensee shall be RANDOMLY in accordance with the schedule below:

<u>Level</u>	<u>Segments of Probation/Diversion</u>	<u>Minimum Range of Number of Random Tests</u>
<u>I</u>	<u>Year 1</u>	<u>52-104 per year</u>
<u>II</u>	<u>Year 2+</u>	<u>36-104 per year</u>

\*The minimum range of 36-104 test identified in level II, is for the second year of probation or diversion, and up to 5 years thereafter.

Nothing precludes a Committee from increasing the number of random tests for any reason. Any Committee who finds or has suspicion that a licensee has committed a violation of a Committees' testing program or who has committed a Major Violation, as identified in Uniform Standard #, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

2. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the Committee. After the first year, licensee shall be randomly drug tested at least 50 times per year, and at any time as directed by the Committee;
3. Drug testing may be required on any day, including weekends and holidays;
4. The scheduling of drug tests shall be done on a random basis, preferably by a computer program; so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.
5. Licensees shall be required to make daily contact to determine if drug testing is required;
6. Licensees shall be drug tested on the date of notification as directed by the Committee;
7. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation;
8. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines;
9. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered;
10. Collection of specimens shall be observed;
11. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Committee; and
12. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.



A collection site must submit a specimen to the laboratory within 1 business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within 7 days of receipt of the specimen. The Committee will be notified of non-negative test results within 1 business day and will be notified of negative test results within 7 business days.

A Committee by use other testing methods in place or, or to supplement biological fluid testing, if the alternate testing method is appropriate.

## **Disciplinary Guidelines**

---

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration;
2. Actual or potential harm to the public;
3. Actual or potential harm to any patient;
4. Prior disciplinary record;
5. Number and/or variety of current violations;
6. Mitigation evidence;
7. Rehabilitation evidence;
8. In case of a criminal conviction, compliance with conditions of sentence or court-ordered probation;
9. Overall criminal record;
10. Time passed since the act(s) or offense(s) occurred; and
11. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

## **Situations in which Revocation Shall Be Imposed**

---

In addition to violation of the laws governing dental hygienist, there are other circumstances that necessitate outright revocation as the recommended penalty:

1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Committee has requested revocation;
2. Violation of the conditions of a Respondent's probation order;

3. Substantiated evidence or convictions of physical or sexual abuse offenses; and
4. Second offenses, unless the Respondent can demonstrate that he or she has been fully rehabilitated.

## **Recommended Action by Violation**

---

The Business and Professions Code Section 1900, and general provision sections of the Business and Professions Code specify the offenses for which the Committee may take disciplinary action. Below are the code sections with the recommended disciplinary actions listed by the degree of the offense.

When filing an Accusation, the Office of the Attorney General may also cite additional related statutes and regulations.

\*Note: Under conditions of probation you will find the applicable numbered conditions to include in a decision and order.

## **Probationary Terms and Conditions**

---

As part of the Committee's mission to protect the consumer, any disciplinary order in which probation is imposed should include conditions that ensure consumer protection.

For purposes of implementation of these conditions of probation, any reference to the Committee also means staff working for the Dental Hygiene Committee of California.

### **Probationary Term**

The Committee generally recommends a minimum probation term of 3 years. The term may be increased depending upon the severity of the violation(s).

### **Probationary Conditions**

Conditions of probation are divided into 2 categories:

1. **Standard** conditions that are included in all probation orders; and
2. **Additional** conditions which are applicable to the nature of the violation(s).

# Model Language for Probation Orders

---

When a stipulated settlement or proposed decision contains probationary terms and conditions, the following language shall be included:

- **Licensees:** Registered Dental Hygiene (RDH), Registered Dental Hygienist in Alternative Practice (RDHAP), Registered Dental Hygienist in Extended Functions (RDHEF) license no. \_\_\_\_\_ issued to Respondent \_\_\_\_\_ is hereby revoked; however, the revocation is stayed and Respondent's license is placed on probation for \_\_\_\_\_ years on the following terms and conditions.
- **Applicants:** The application of Respondent \_\_\_\_\_ for licensure is hereby granted; however, the license shall be immediately revoked, the order of revocation stayed, and Respondent's license placed on probation for a period of \_\_\_\_\_ years on the following conditions:
- **Reinstatements:** The petition of \_\_\_\_\_ for reinstatement of the RDH, RDHAP, RDHEF license is hereby GRANTED, as follows.

RDH, RDHAP, RDHEF number \_\_\_\_\_ is reinstated. The license will be immediately revoked; however, the revocation is stayed for \_\_\_\_\_ years on the following terms and conditions:

In cases in which a petitioner for reinstatement has not practiced dental hygiene for an extended amount of time, he or she must retake the licensing exam before reinstatement. This information must be provided to the Administrative Law Judge so that the following can be included in the purposed decision the condition (number 13): "Upon successful completion of the licensure examination, a license shall be issued to Respondent."

**NOTE:** If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan shall be included in the decision.

# List of Probation Conditions

---

## **STANDARD PROBATION CONDITIONS**

Introductory Language and Conditions 1-14 are required as follows:

- |   |   |
|---|---|
| 1) Severability Clause                              | 8) Notification to Employer                     |
| 2) Obey all Laws                                    | 9) Cost Recovery (Does not apply to Applicants) |
| 3) Quarterly Reports                                | 10) Probation Monitoring Costs                  |
| 4) Probation Program                                | 11) Violation of Probation                      |
| 5) Interview with the Committee                     | 12) License Surrender                           |
| 6) Changes of Name, Address of Record or Employment | 13) Completion of Probation                     |
| 7) Tolling Provisions                               | 14) Law and Ethics Supplemental Exam            |

## **ADDITIONAL PROBATION CONDITIONS**

In addition to the standard conditions (1-14), [additional](#) conditions (15-256) are required if the offense involves one of the following: sexual misconduct, alcohol/drug abuse, mental/physical disabilities, fraudulent conduct, or lack of knowledge or skills. Any of these additional conditions may be included if relevant to the violation:

- |                                     |  |
|-------------------------------------|--|
| 15) Actual Suspension               | 23) RDH Clinical Examination           |
| 16) Psychological Evaluation        | 24) Abstain from Alcohol               |
| 17) Physical Examination            | 25) Abstain from Controlled Substances |
| 18) Billing Monitor                 | <a href="#">26) Restitution</a>        |
| 19) Clinical Diagnostic Evaluation  |  |
| 20) Submit Biological Fluid Samples |  |
| 21) Worksite Monitor                |  |
| 22) Restriction of Practice         |  |

# Standard Probation Conditions

---

## 1. Severability Clause

Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

***Rationale:*** The severability clause is required for all decisions and orders and stipulated agreements where there are conditions of probation, to avoid the possibility of all probation conditions being invalidated upon a successful appeal.

## 2. Obey All Laws

Respondent shall obey all federal, state, US Military and local laws and all regulations. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Committee in writing within 72 hours of occurrence.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

***Rationale:*** If there has been a violation of any law or regulation that is substantially related to the qualifications, functions, or duties of an RDH, RDHAP, and/or RDHEF, this would constitute a violation of Respondent's probation and allow the Committee to carry out the disciplinary order.

## 3. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Committee, stating whether there has been compliance with all the conditions of probation.

***Rationale:*** By the Respondent making declarations under penalty of perjury, this assures the Committee that the Respondent is making true statements to the Committee. Receiving these reports quarterly allows the Committee to track the Respondent's compliance, and provides a process for review in determining whether or not his or her license should be restored at the completion of his or her probation.

#### 4. Probation Program

Respondent shall comply with the Committee's probation program and shall, upon notice, report to the Committee's staff. Respondent shall contact enforcement staff regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with victims or complainants associated with the case or persons serving the Committee as expert consultants.

**Rationale:** *Comply with the probation monitoring program to ensure consumer protection and the Respondent cannot use the excuse they didn't understand. In addition, to protect the victims, complainants and witnesses from harassment by the Respondent.*

#### 5. Interview with the Committee

Respondent shall appear in person for interviews with the Committee upon request at various intervals and with reasonable notice. In addition, Respondent shall participate in telephonic interviews upon request by the Committee.

**Rationale:** *This condition allows the Committee to schedule in-person interviews to monitor Respondent's compliance with the probation order to ensure public protection. In addition, Respondent shall participate in telephone interviews upon the request of the Committee.*

#### 6. Changes of Name, Address of Record or Employment

Respondent shall notify the Committee in writing of any and all changes of [physical address and e-mail](#) address of record or employment including location and address within 30 days of such change. Respondent shall notify Committee of a legal name change within 10 days of such change.

**Rationale:** *This condition allows the Committee to be informed of Respondent's current name, address of record, employment information, including his or her business address, phone number, and employer (if applicable) in the event the Committee needs to locate the Respondent or communicate with his or her employer.*

#### 7. Tolling Provisions

In the event Respondent should leave California to practice outside the state, Respondent must provide written notification to the Committee of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Period of practice outside of California will not apply to the reduction of the probationary period.

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as a dental hygienist or held any health-care related professional license or certificate. Respondent shall further provide information regarding the status of each license and certificate and any changes in the license or certificate status during the term of probation. Respondent shall inform the Committee if he or she applies for or obtains a license outside of California during the term of probation.

For purposes of this condition, non-practice due to Committee ordered suspension or in compliance with any other condition of probation, shall be considered a period of non-practice and the time period will be tolled.

***Rationale:*** Ensures that Respondent may not complete probation without being fully monitored for his or her period of probation in California. This further ensures that the Committee is aware of all licensure outside of California as an RDH, RDHAP, or RDHEF or in any health care related capacity.

## 8. Notification to Employer

If Respondent is currently employed, in the process of applying for employment, or contracted to provide services as a dental hygienist, he or she shall provide a copy of the Committee's Decision to his or her employer, supervisor or contractor no later than the effective date of the Committee's Decision. The Respondent shall notify any future employers, supervisors or contractors of his or her probationary status with the Committee prior to accepting such employment. The Respondent shall provide to the Committee the names, physical addresses, and telephone numbers of all employers, supervisors and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Committee to allow the Committee to communicate with the employer and supervisor or contractor.

Respondent shall cause each employer and supervisor or contractor to submit quarterly written declarations to the Committee. These declarations shall include a performance evaluation.

Respondent shall notify the Committee, in writing, of any change in his or her employment status, within 10 days of such change.

***Rationale:*** Respondent's license being placed on probation shows the Committee that his or her conduct is in need of rehabilitation, subsequently, Respondent's deficiencies should be noted to the employer as to protect the health and welfare of the public.

## 9. Cost Recovery

Respondent shall pay to the Committee its costs of investigation and enforcement in the amount of \$\_\_\_\_\_. Respondent shall be permitted to pay these costs in a payment plan approved by the Committee, with payments to be completed no later than 6 months prior to the end of the probationary term.

***Rationale:*** The Committee incurs costs associated with the investigation and disciplinary process; this condition requires the Respondent to reimburse the Committee for those expenditures.

## 10. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Committee, which may be adjusted on an annual basis. Such costs shall be made payable to the Committee and mailed to the Committee. Failure to pay costs within 30 days of the due date is a violation of probation.

***Rationale:*** Periodically, the Committee incurs expenditures associated with the necessary travel to meet with Respondent in order to monitor his or her probation compliance; this condition requires the Respondent to reimburse the Committee for those costs.

## 11. Violation of Probation

If Respondent violates probation in any respect, the Committee may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against Respondent during probation, the Committee shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

***Rationale:*** This condition allows the Committee to carry out the disciplinary order stated in the decision when a Respondent fails to comply with any of his or her probation conditions.

## 12. License Surrender

During Respondent's term of probation, if he or she wishes to cease practice, Respondent may request in writing to surrender the license(s) to the Committee. The Committee shall evaluate the request and notify Respondent in writing whether to grant the request. Upon formal acceptance of the license surrender, Respondent's license will no longer be subject to the conditions of probation. Respondent shall return the pocket license(s) and wall certificate(s) to Committee within 10 days of the effective date of the surrender.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Committee. A dental hygienist whose license has been surrendered may petition the Committee for reinstatement of his or her license no sooner than 3 years from the effective date of the surrender decision.

***Rationale:*** If Respondent feels he or she cannot follow any one of the conditions of the probation order due to a discontinuance of practice, this condition gives him or her, the option to voluntarily surrender his or her license.

## 13. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

***Rationale:*** When the Respondent has completed his or her term of probation by successfully fulfilling all of the conditions, he or she has demonstrated his or her ability to practice unrestricted.

## 14. Law and Ethics Supplemental Exam

Respondent shall take a continuing education course in California Dental Practice Act [and the laws and regulations governing the practice of dental hygiene](#) (2 Units) approved by the Dental Hygiene Committee of California or Committee and successfully complete the Committee Law and Ethics supplemental exam within 60 days of the effective date of the decision.

***Rationale:*** In cases of fraudulent behavior, improper record keeping, or a deficiency of knowledge or skills, this condition ~~should be included~~ [will help to remedy these deficiencies.](#)



# Additional Probation Conditions

---

## 15. Actual Suspension

Respondent is suspended from the practice of RDH, RDHAP, RDHEF for \_\_\_\_ days beginning with the effective date of this Decision.

***Rationale:*** Restricting Respondent's practice of dental hygiene for a limited amount of time offers an additional penalty and an opportunity for Respondent to satisfy other conditions that are primary.

## 16. Psychological Evaluation

Within 90 days of the effective date of this Decision and on a periodic basis thereafter as may be required by the Committee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Committee appointed California licensed psychologist. Respondent shall execute a release authorizing the evaluator to release all information to the Committee.

If the Committee concludes from the results of the evaluation that Respondent is unable to practice independently and or safely, he or she shall immediately cease practice and shall not resume practice until notified by the Committee. If the Committee concludes from the results of the evaluation that Respondent would benefit from ongoing psychotherapy, Respondent shall comply with the Committee's directives in that regard.

Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a violation of the probation order.

***Rationale:*** Psychological evaluations shall be utilized when an offense calls into question the judgment and/or emotional and/or mental condition of the Respondent or where there has been a history of abuse or dependency of alcohol or controlled substances. When appropriate, Respondent shall be barred from rendering dental hygiene services under the terms of probation until he or she has undergone an evaluation, the evaluator has recommended resumption of practice, and the Committee has accepted and approved the evaluation.

## 17. Physical Examination

Within 90 days of the effective date of this Decision, Respondent shall undergo a physical examination by a California licensed physician and surgeon approved by the Committee. Respondent shall bear all costs of such an examination. Respondent shall comply with any treatment recommendations contained in the evaluation report submitted to the Committee by the physician and surgeon. Respondent shall ensure that the physician and surgeon provides the initial evaluation report and all written progress reports to the Committee on a quarterly basis or as otherwise determined by the Committee.

***Rationale:*** This condition permits the Committee to require the probationer to obtain appropriate treatment for physical problems/disabilities which could affect safe practice of dental hygiene. The physical examination can also be conducted to ensure that there is no physical evidence of alcohol/substance abuse.

## 18. Billing Monitor

Within 30 days of the effective date of this Decision, Respondent shall submit to the Committee for prior approval, billing monitor(s), the name and qualifications of one or more Dental Board or Committee licensees whose license is valid and in good standing. A monitor shall have no prior or current financial, personal, familial or business ~~or personal~~ relationship with the Respondent, or other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Committee, and shall agree to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

The Committee shall provide the approved monitor with copies of the Committee Decision and a proposed monitoring plan. Within 15 days of receipt of the Decision and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 days of the effective date of this Decision, and continuing throughout probation, Respondent's \_\_\_\_\_ billing shall be monitored by the approved monitor. Respondent shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor(s) shall submit a quarterly written report to the Committee that includes an evaluation of Respondent's billing practices indicating whether Respondent's are billing appropriately. It shall be the sole responsibility of Respondent to ensure that the monitor submits the quarterly written reports to the Committee.

If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of such resignation or unavailability, submit to the Committee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 days. If Respondent fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, Respondent shall be suspended from the practice until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Respondent shall cease the practice of RDHAP within 3 days after being so notified by the Committee.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

***Rationale:*** Monitoring shall be utilized when Respondent's ability to appropriately bill, or as a result of questionable judgment in billing.

## 19. Clinical Diagnostic Evaluation

Within 20 days of the effective date of the Decision and at any time upon order of the Committee, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Committee's Decision prior to the clinical diagnostic evaluation being performed.

Respondent is ordered to cease any practice of psychology, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least 2 times per week. At any other time the Respondent is ordered to undergo a clinical diagnostic evaluation, his he or ~~her~~ she license shall be ordered to cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Committee a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Committee. Cost of such evaluation shall be paid by the Respondent.

Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Respondent's ~~license shall remain suspended~~ may not resume practice until the Committee determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

**Rationale:** This provision should be included when a Respondent's license is placed on probation for a substance or alcohol abuse problem so that the Committee has the ability to order at any time during the probation period a Respondent to undergo an evaluation to determine if he or she is currently safe to practice.

## 20. Submit Biological **Fluid** Samples

Respondent shall immediately submit to random and directed biological **fluid** testing paid for by Respondent, at the request of the Committee. The Respondent shall be subject to a minimum of ~~104~~ 52 random tests per year within the first year of probation and at minimum of ~~50~~ 36 random tests per year thereafter for the duration of the probationary term. If Respondent tests positive for a banned substance, Respondent shall cease practice.

Respondent shall make daily contact as directed by the Committee to determine if he or she must submit to drug testing. Respondent shall submit his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Committee prior to the vacation or travel.

**Rationale:** This provision should be included when a Respondent's license is placed on probation for a substance or alcohol abuse problem so that the Committee can monitor whether or not the Respondent is abstaining from the use of banned substances or alcohol.

## 21. Worksite Monitor

Respondent shall submit the name of the proposed worksite monitor within 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Committee regarding the Respondent and the worksite monitor's requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the Committee and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Committee.

***Rationale:*** This provision should be included when a Respondent's license is placed on probation for substance or alcohol abuse so that the Committee becomes aware of potential problems a probationer may have before any patient harm occurs.

## 22. Restriction of Practice

During probation Respondent is prohibited from (insert restriction).

***Rationale:*** In cases wherein some factor of the patient population at large (e.g. age, gender) may put a patient at risk if treatment by the Respondent, this condition should be utilized. Additional language can be added for clarification.

## 23. RDH Clinical Examination

Respondent shall cease practice until he or she successfully passes the Dental Hygiene Clinical Licensing Exam or Western Regional Examination Board (WREB). Respondent shall pay the established examination fees. Failure to pass the exam within 2 years of the effective date of the Decision shall be a violation of probation and be sufficient cause for revoking probation and imposing an order of revocation.

***Rationale:*** In cases involving practice deficiencies, it may be appropriate to require the Respondent to take and pass the clinical hygiene examination or equivalent during the course of the probation period. In some instances, it may be appropriate for practice to be suspended until the examination is passed (condition precedent).

## 24. Abstain from Alcohol

Respondent shall completely abstain from the intake of alcohol during the period of probation.

***Rationale:*** This provision should be included when a Respondent has an alcohol problem so that the Committee can monitor whether the Respondent is in violation of probation.

## 25. Abstain from Controlled Substances

Respondent shall completely abstain from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act and dangerous drugs as defined in

Section 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

***Rationale:*** *This provision should be included when a Respondent has a substance abuse problem so that the Committee can monitor whether the Respondent is in violation of probation.*

26. Respondent shall pay restitution of fees to Respondent's patient(s) or the payer(s) of services, in the amount of \$ \_\_\_\_\_. Respondent shall be permitted to pay these costs in a payment plan approved by the Committee, with payment to be completed no later than 6 months prior to the end of probation.

**Rationale:** Respondent should not be permitted to financially benefit from violation of the law. Respondent should be required to make restitution. This condition should be imposed when Respondent has engaged in fraudulent behavior, including fraudulent billing or improper record keeping, or a deficiency of knowledge or skill resulting in harm to a patient.

# Accusations and Decisions

---

To provide a foundation for consistency and clarity in each disciplinary action, the Committee asks that the below guidelines be followed.

## **ACCUSATIONS**

The Committee has the authority, pursuant to Section 125.3 of the Business and Professions Code, to recover costs of investigation and prosecution of its cases. [Further the Committee has the authority, pursuant to Section 1951\(d\) of the Business and Professions Code, to order restitution in cases.](#) The Committee requests that this fact be included in the pleading and made part of the Accusation.

## **STIPULATED SETTLEMENTS & PROPOSED DECISIONS**

The Committee will consider agreeing to stipulated settlements to promote consumer protection. All stipulations must be accompanied by a memo from the Deputy Attorney General addressed to Committee members explaining the background of the case, defining the allegations, mitigating and aggravating circumstances, admissions and proposed penalty along with a recommendation.

**Proposed Decisions and Stipulation should include, at a minimum, the following:**

1. Names and addresses of the Respondent;
2. Specific code section(s) violated with the definition of the code section(s) in the Determination of Issues;
3. Clear description of the acts or omissions that caused the violation to occur;
4. Explanation of mitigating and aggravating factors;
5. Explanation of discipline imposed from Committee's Disciplinary Guidelines;
6. Detailed explanation if Committee's guidelines not imposed.

# Recommended Language for Cost Recovery for Revocations and Surrenders

---

When the Decision and Order results in revocation or surrender of the license, cost recovery should be included as follows:

“If and when Respondent’s license is reinstated, he or she shall pay to the Committee costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$\_\_\_\_\_. Respondent shall be permitted to pay these costs in a payment plan approved by the Committee. Nothing in this provision shall be construed to prohibit the Committee from reducing the amount of cost recovery upon reinstatement of the license.”

## Denial of Licensure

---

Pursuant to Business and Professions Code 480, the [Committee](#) has authority to protect the public in denying licensure to any applicant whose misconduct or criminal history is substantially related to the qualifications, functions, or duties of a dental hygienist.

The Committee may deny licensure on the basis of:

- Conviction of a crime substantially related to the practice of dental hygiene;
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another;
- Any act which is grounds for revocation of a license;
- Making a false statement on the application

Any person, whose application for a license has been denied by the Committee, may reapply to the Committee for a license after a period of 1 year has elapsed from the date of the denial.

# Demonstrations of Rehabilitation

---

- In evaluating the rehabilitation of an applicant or licensee, the Committee considers the following:
  1. The nature and severity of the crime(s) under consideration;
  2. Evidence of any acts committed subsequent to the crime(s) under consideration as grounds for disciplinary action or denial of license;
  3. The time that has elapsed since the commission of the crime(s);
  4. The extent to which the applicant or licensee has complied with any terms of probation or any other sanctions lawfully imposed against the applicant or licensee;
  5. Evidence, if any, of rehabilitation by the applicant or licensee.
- The following is a list of items the Committee will consider in determining whether or not the applicant or licensee has been rehabilitated:
  1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction;
  2. Letter from applicant or licensee describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems;
  3. Letters of reference from professors or colleagues within the field of dental hygiene;
  4. Letters of reference from past and/or current employers;
  5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse;
  6. A current mental status examination by a clinical psychologist or psychiatrist approved by the Committee. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of the dental hygiene profession for the applicant;
  7. Letters of reference from other knowledgeable professionals, such as probation or parole officers;
  8. Copy of certificate of rehabilitation or evidence of expungement proceedings;
  9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.



# Evidence of Mitigation

---

The Respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the Respondent may submit to demonstrate his or her rehabilitative efforts and competency in dental hygiene:

1. Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the Respondent has attended, the counselor's diagnosis of Respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor;
2. Recent letters describing Respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, etc., where appropriate, and sobriety date;
3. Recent, dated laboratory analyses or drug screen reports, where appropriate;
4. Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant approved by the Committee;
5. Certificates or transcripts of courses related to dental hygiene which Respondent may have completed since the date of the violation.

# Petition for Penalty Relief and Reinstatements

---

Pursuant to Business and Professions Code Section 1957 (a), an individual whose license has been revoked, suspended, or surrendered, or whose license has been placed on probation must wait a specified minimum amount of time before petitioning the Committee for penalty relief or reinstatement.

- A person with a revoked or surrendered license must wait at least 3 years from the effective date of his or her Decision to petition for reinstatement;
- A person with a term of probation of 3 years or more must wait at least 2 years from the effective date of his or her Decision to petition for early termination;
- A person with whose license is placed on probation must wait at least 2 years from the effective date of his or her Decision to petition for modification of a condition;
- A person with a term of probation of less than 3 years must wait at least 1 year from the effective date of his or her Decision to petition for early termination.
- A person that has been revoked is required to live-scan as part of reinstatement petition for penalty relief.

## **PETITION HEARINGS**

The primary concerns of the Committee at reinstatement or penalty relief hearings are that the evidence presented by the Petitioner that demonstrates his or her rehabilitation to ensure consumer protection.

The Committee will consider the following criteria:

1. Nature and severity of the act(s) or offense(s);
2. Total criminal record;
3. The time that has elapsed since commission of the act(s) or offense(s);
4. Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person;
5. If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code;
6. Evidence, if any, of rehabilitation submitted by the licensee or registration holder.

The Petition Decision should include a summary of the offense and the specific codes violated which resulted in the revocation, surrender or probation of the license.

The Committee requires that comprehensive information be elicited from the Petitioner regarding his/her rehabilitation. The Petitioner should provide details that include:

- A. Continuing education pertaining to the offense and its effect on the practice of dental hygiene;
- B. Specifics of rehabilitative efforts and results which should include programs, psychotherapy, medical treatment, etc., and the duration of such efforts;
- C. If applicable, copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanctions;
- D. If applicable, copy of Certificate of Rehabilitation or evidence of expungement proceedings;
- E. If applicable, evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions;
- F. A culpability or non-culpability statement.

If the Committee should deny a request for reinstatement of licensure or penalty relief, the Committee requests that the ALJ-provide technical assistance in the formulation of language clearly setting forth the reasons for denial. Such language would include methodologies or approaches which would demonstrate rehabilitation.

If a petitioner fails to appear for his or her scheduled reinstatement or penalty relief hearing, such action shall result in a default decision to deny reinstatement of the license or reduction of penalty.

# Dental Hygiene Practice Act

---

## Conviction of a Crime

### Section 1950 (a)

#### Conviction of a Crime.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of crime.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*

## Unprofessional Conduct

### Section 1950.5 (a)

#### Obtaining of Any Fee by Fraud or Misrepresentation.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3-5 years probation.*

1. *Standard Conditions 1-14*
2. *Monitoring – Practice Billing (18)*  
*Worksite Monitor (21)*

### Section 1950.5 (b)

#### Aiding or Abetting of Any Unlicensed Person to Practice Dentistry.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard terms 1-14*

### Section 1950.5 (c)

#### Aiding or Abetting of Any Unlicensed Person to Practice Dentistry Unlawfully.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard terms 1- 14*

### Section 1950.5 (d)

#### Sexual Abuse, Sexual Misconduct or Relations with a Patient.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation*

### Section 1950.5 (e)

#### Use of Any False, Assumed or Fictitious Name Other Than Licensed to Practice.

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

*Standard Conditions 1-14*

**Section 1950.5 (f)**

**Accepting or Receiving a Commission.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3 – 5 years probation.*

*Standard Conditions 1-14*

**Section 1950.5 (g)**

**False or Misleading Advertising.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard Conditions 1–14*

**Section 1950.5 (h)**

**Advertising Superiority.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard Conditions 1–14.*

**Section 1950.5 (i)**

**Employing or Using Solicitors.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard Conditions 1–14*

**Section 1950.5 (j)**

**Advertising in Violation of Section 651.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard terms 1- 14*

**Section 1950.5 (k)**

**Advertising to Perform Painless Service.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard terms 1–14*

**Section 1950.5 (l)**

**Violation of Any Provisions of This Division.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard terms 1–14*

2. ~~*Any additional conditions warranted by nature and severity of action or conduct.*~~

**Section 1950.5 (m)**      **Permitting of Any Person to Operate Dental Radiographic Equipment Who Has Not Met The Requirements of Section 1656.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard terms 1- 14*

**Section 1950.5 (n)**      **Excessive Administration of Drugs or Treatment.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard terms 1–14*
2. *Restriction of Practice (22)*

**Section 1950.5 (o)**      **Threats or Harassment Against an Employee or Patient.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

*Standard Conditions 1-14*

**Section 1950.5 (p)**      **Suspension or Revocation of a License Issued by Another Agency or State That Would be Grounds in This State.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed*

1. *Standard Conditions 1-14*
2. ~~*Any additional conditions warranted by nature and severity of action or conduct.*~~

**Section 1950.5 (q)**      **Alteration of Patient Record with Intent to Deceive.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Monitoring –Billing (18)*
3. *Worksite Monitor (21)*

**Section 1950.5 (r)**      **Unsafe or Unsanitary Office Conditions.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3 years probation.*

*Standard Conditions 1-14*

**Section 1950.5 (s) (u)      Securing a License by Fraud or Deceit.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

1. *Standard terms 1–14*
2. *Actual Suspension (15)*
3. *Restriction of Practice(22)*

**Section 1950.5 (t)      Willful Misrepresentation of Facts Relating to Discipline to Patients.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed with 3 years probation*

*Standard terms 1 – 14*

**Section 1950.5 (v)      Any Action or Conduct That Would Have Warranted the Denial of a License.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

1. *Standard Conditions 1-14*
2. ~~*Any additional conditions warranted by nature and severity of action or conduct.*~~

**Section 1950.5 (w)      Aiding or Abetting Licensee to Practice in a Negligent Manner.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

*Standard Conditions 1-14*

**Section 1950.5 (x)(y)      Failure to Report the Death of a Patient to Committee .**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation.*

1. *Standard Conditions 1-14*
2. ~~*Any additional condition warranted by nature and severity of action or conduct.*~~

**Section 1952(a)**

**Obtain or Possess Any Controlled Substance.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Abstain from Alcohol (24)*
3. *Abstain from Control Substance (25)*
4. *Submit to Biological ~~Fluid~~ Samples (20)*

**Section 1952 (b)**

**Use of a Controlled Substance.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Abstain from Alcohol (24)*
3. *Abstain from Controlled Substances (25)*
4. *Submit to Biological ~~Fluid~~ Samples (20)*

**Section 1952 (c)**

**Conviction Involving Controlled Substance.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Abstain from Alcohol (24)*
3. *Abstain from Controlled Substance (25)*
4. *Submit to Biological ~~fluid~~ testing (20)*

**Section 1953 (b)**

**Failure to Identify In Patient Record (Repeated Acts).**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

*Standard Conditions 1-14*

**Section 1956**

**Negligence/Gross Negligence.**

Maximum Penalty: *Revocation*

Minimum Penalty: *Revocation stayed 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*
3. *Billing Monitor (18)*
4. *Worksite Monitor (21)*

## **General Business and Professions Code Provisions**

---

**Section 125**

**Misdemeanor Offenses by Licensees.**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*

**Section 125.6**

**Refusal to Treat Patient.**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

*Standard Conditions 1-14*

**Section 125.9**

**Failure to Comply with Citation.**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

1. *Standard Conditions 1-14*
2. *Compliance with citation, if applicable*

**Section 480**

**Denial of a License.**

- Maximum Penalty: *Denial of license*
- Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of violation.*

*Standard Conditions 1-14*

**Section 493**

**Evidentiary Effect of Record of Conviction of Crime Substantially Related to Licensee's Qualifications, Functions, and Duties.**

**Section 496**

**Subversion of Licensing Examinations.**

- Maximum Penalty: *Denial of license or Suspension*



Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of violation.*

*Standard Conditions 1-14*

**Section 498      Securing License by Fraud, Deceit, or Misrepresentation.**

- Maximum Penalty: *Denial of license, Suspension, or Revocation*
- Minimum Penalty: *Revocation stayed with 3–5 years probation depending on nature and severity of violation.*

*Standard Conditions 1-14*

**Section 650      Accepting or Receiving Rebates.**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

*Standard Conditions 1-14*

**Section 651      False, Misleading or Deceptive Public Communications.**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

*Standard Conditions 1-14*

**Section 654.2      Charges, Billings, Solicitations or Referrals without Disclosure of Beneficial Interest Prohibited.**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 3 years probation.*

*Standard Conditions 1-14*

**Section 726      Commission of Act of Sexual Abuse or Misconduct with Patient.**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation*

**Section 810      Insurance Fraud**

- Maximum Penalty: *Revocation*
- Minimum Penalty: *Revocation stayed with 5 years probation.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*
3. *Billing Monitor (18)*
4. *Worksite Monitor (21)*

**Section 822      Psychological or Physical Illness.**

- Maximum Penalty:      *Revocation or Suspension*
- Minimum Penalty:      *Revocation stayed with 3–5 years probation depending on nature and severity of violation.*

1. *Standard Conditions 1-14*
2. *Actual Suspension (15)*
3. *Psychological Evaluation (16)*
4. *Physical Examination (17)*

## Index of Violations

---

<b><u>Business and Professions Code</u></b>	<b><u>Page No.</u></b>
Section <b>1950 (a)</b> – Conviction of a Crime	27
Section <b>1950.5 (a)</b> – Obtaining of Any Fee by Fraud or Misrepresentation	27
Section <b>1950.5 (b)</b> – Aiding or Abetting of Any Unlicensed Person to Practice Dentistry	27
Section <b>1950.5 (c)</b> – Aiding or Abetting of Any Unlicensed Person to Practice Dentistry Unlawfully	27
Section <b>1950.5 (d)</b> – Sexual Abuse, Sexual Misconduct or Relations with a Patient	27
Section <b>1950.5 (e)</b> – The Use of Any False, Assumed or Fictitious Name Other Than Licensed to Practice	27
Section <b>1950.5 (f)</b> – Accepting or Receiving a Commission	28
Section <b>1950.5 (g)</b> – False or Misleading Advertising	28
Section <b>1950.5 (h)</b> – Advertising Superiority	28
Section <b>1950.5 (i)</b> – Employing or Using Solicitors	28
Section <b>1950.5 (j)</b> – Advertising in Violation of Section 651	28
Section <b>1950.5 (k)</b> – Advertising to Perform Painless Service	28
Section <b>1950.5 (l)</b> – Violation of Any Provision of This Division	28
Section <b>1950.5 (m)</b> – Permitting of Any Person to Operate Dental	29

Radiographic Equipment Who Has Not Met The  
Requirements of Section 1656

Section <b>1950.5 (n)</b>	– Excessive Administration of Drugs or Treatment	29
Section <b>1950.5 (o)</b>	– Threats or Harassment Against an Employee or Patient	29
Section <b>1950.5 (p)</b>	– Suspension or Revocation of a License Issued by Another Agency or State That Would be Grounds in This State	29
Section <b>1950.5 (q)</b>	– Alteration of Patient Record with Intent to Deceive	29
Section <b>1950.5 (r)</b>	– Unsafe or Unsanitary Office Conditions	29
Section <b>1950.5 (s)(u)</b>	– Securing a License by Fraud or Deceit	30
Section <b>1950.5 (t)</b>	– Willful Misrepresentation of Facts Relating to Discipline to Patients	30
Section <b>1950.5 (v)</b>	– Any Action or Conduct that Would Warrant the Denial of a License	30
Section <b>1950.5 (w)</b>	– Aiding or Abetting a Licensee to Practice in a Negligent Manner	30
Section <b>1950.5 (x)(y)</b>	– Failure to Report the Death of a Patient to Committee.	30
Section <b>1952 (a)</b>	– Obtain or Possess Any Controlled Substance	31
Section <b>1952 (b)</b>	– Use of a Control Substance	31
Section <b>1952 (c)</b>	– Conviction Involving Controlled Substance	31
Section <b>1953 (b)</b>	– Failure to Identify In Patient Record, Repeated Acts	31
Section <b>1956</b>	– Negligence/Gross Negligence	32
Section <b>125</b>	– Misdemeanor Offenses by Licensees	33
Section <b>125.6</b>	– Refusal to Treat Patient	33
Section <b>125.9</b>	– Failure to Comply with Citation	33
Section <b>480</b>	– Denial of a License	33

Section <b>493</b>	– Evidentiary Effect of Record of Conviction of Crime Substantially Related to Licensee's Qualifications, Functions, and Duties	33
Section <b>496</b>	– Subversion of Licensing Examinations	33
Section <b>498</b>	– Securing License by Fraud, Deceit, or Misrepresentation	34
Section <b>650</b>	– Accepting or Receiving Rebates	34
Section <b>654.2</b>	– Charges, Billings, Solicitations or Referrals without Disclosure of Beneficial Interest Prohibited	34
Section <b>726</b>	– Commission of Act of Sexual Abuse or Misconduct with Patient	34
Section <b>810</b>	– Insurance Fraud	34
Section <b>822</b>	– Psychological or Physical Illness	35
Section <b>651</b>	– False, Misleading or Deceptive Public Communications	34



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 13**

Budget Report



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Traci Napper, Budget Analyst
<b>SUBJECT</b>	<b>Agenda Item 13: Budget Report</b>

Attached is DHCC's Budget Report. DHCC's budget report is a projection. Please be advised that projections can be based on prior years spending, straight line expenses or a combination of both.

**Listed below are acronyms as seen in the attached reports:**

BCP – Budget Change Proposal  
FY – Fiscal Year  
PY – Positions per year  
OEE – Operating expenses and equipment  
DOI – Department of Investigations  
OIS – Office of Information Services  
FC – Fund Condition  
AG – Attorney General

This item is informational only.

**BUDGET REPORT**  
**FY 2010/11 Expenditure Projection**  
*Month 7 Calstars*

Month(s)	9
Mo. Remaining	3

[illegible]



**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Full Committee Agenda Item 14**

Strategic Business Plan





## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Lori Hubble Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 14 – Strategic Business Plan</b>

### Informational Only

On September 26, 2010 with the assistance of DCA personnel, DHCC developed and adopted its inaugural three year strategic plan. During the development process objectives were discussed and it was agreed that many of these could be incorporated into a business plan. The attached draft serves an in-progress working document and journal formatted to be reviewed and refined during each of DHCC's subcommittee and full committee meetings beginning August 21, 2011. This document will also serve as a valuable reference for the Sunset Hearing process scheduled for 2012/13.

# DHCC Strategic Plan

The Dental Hygiene Committee of California (DHCC) is responsible for licensing three categories of primary oral health care professionals in dental hygiene. The DHCC develops and administers written and clinical licensing examinations, enforces rules and regulations governing the practice of dental hygiene, and evaluates educational courses. The DHCC also participates in outreach and support of the community and its stakeholders, with the goal of ensuring the highest quality of oral health care for all Californians.

## OUR MISSION:

To promote and ensure the highest quality of oral health care for all Californians

## OUR VISION:

Optimal oral health for all Californians

## OUR VALUES:

Integrity: We are honest, fair and respectful in our treatment of everyone.

Unity: We value all our stakeholders and are inclusive in all our interactions.

Diversity: We recognize and celebrate California's ever-changing diversity.

Service: We are professional and responsive to the needs of our stakeholders.

Consumer Protection: We make effective and informed decisions in the best interest and for the safety of Californians.

Transparency: We hold ourselves accountable to the people of California.

# Dental Hygiene Committee of California

## Strategic Business Plan

<u>Item</u>	<b>Goal 1: Legislation and Regulation</b>	<u>Initiation Date</u>	<u>Progress Dates/Notes</u>	<u>Scheduled Completion</u>
	<b>Objective 1A: Develop and adopt regulations to govern the practice of dental hygiene.</b>			
	1. Develop regulations to address approval of Administration of Local Anesthetic, Nitrous Oxide and Oxygen and Periodontal soft tissue curettage providers (LA, STC, NO)	12-10-09		
	2. Consider DHCC having its own citation and fine program set in regulation. Fine amounts have increased to \$5000. a. Agreed at Enforcement Subcommittee on April 30, 2010 that subcommittee would work on language with legal counsel and recommend DHCC go forward with the regulatory process. b. Would be useful alternative to formal disciplinary actions.	12-6-10		
	3. Develop new regulations to address licensee renewal auditing, timelines. Conduct survey of other boards in order to ascertain how they derive their fees and how their fees correlate with the costs of audit administration.			
	4. Remediation for RDH clinical exam failure.	12-6-10		
	5. Remediation for RDHAP written exam failure.			
	6. Course and/or program criteria for Continued Competency Education (CCE) providers, fees to be charged. Conduct survey of other boards in order to ascertain how they derive their fees and how their fees correlate with the costs of administration.			
	7. Address fictitious names, businesses, including fees to be charged.			
	8. SB 1111 (4/12/2010 version or later) Proposed changes through regulations. Note: Make sure statutes from cleanup language includes these changes.			
	9. Proposed language for retroactive fingerprint regulations SB 389	12-10-09		
	10. Contract with Legislative Bill Tracking Service, Wavelength, Inc. to track all Assembly/Senate bills.			
	11. Re-designation of current and new regulations	12-6-10		
	<b>Objective 1B: Evaluate existing statutes and introduce revisions as necessary.</b>			
	1. 1632.5 (b) The Western Regional Examining Board examination process shall be regularly reviewed by DHCC pursuant to Section 139.			
	2. The WREB examination process shall meet the mandates of Subdivision (a) of Section 12944 of the Government Code.			

	<ul style="list-style-type: none"> <li>3. The WREB examination process shall be consistent with the mission, vision, goals and objectives of DHCC.</li> <li>4. Provide for staggered DHCC member terms. (Currently everyone terms out at the same time.)</li> </ul>			
	5. Change existing statute of “DHCC within Dental Board” to reflect original intent of bill author to clarify relationship between the Dental Board and DHCC	12-6-10		
	6. Change Dental Hygiene Committee of California to Dental Hygiene Board of California.			
	<b>Objective 1C: Review, Evaluate and Revise Statutes within 3 years of promulgation.</b>			
	<b>Objective 1D: Conduct a license feasibility study for license application and renewal fee increase.</b>			
	<b>Objective 1E: Conduct a license feasibility study for a fee increase, and get the increase passed in statute.</b>			
	<b>Goal 2: Licensing and Examinations</b>			
	<b>Objective 2A: Review, evaluate and revise licensure and examination requirements.</b>			
	<ul style="list-style-type: none"> <li>1. Explore electronic exam technology to improve efficiency.</li> </ul>			
	<ul style="list-style-type: none"> <li>2. DCA’s legal counsel developed a question to be placed on the renewal applications of each health related board to provide a uniform question on the renewal form, relative to whether or not a licensee seeking renewal has been convicted of a crime or has had their license disciplined since their last renewal. The intent is to provide uniformity and consistency.</li> </ul>			
	<b>Objective 2B: Review, evaluate and revise the written law and ethics examinations.</b>			
	<ul style="list-style-type: none"> <li>1. Evaluate OPES contract and investigate other options.</li> </ul>			
	<ul style="list-style-type: none"> <li>2. Continued development of written law and ethics examinations. <ul style="list-style-type: none"> <li>A. RDH</li> <li>B. RDHAP</li> </ul> </li> </ul>	7-1-09 7-1-10 2-1-11		
	<b>Objective 2C: Review, evaluate and revise DHCC training and materials for clinical examinations and personnel.</b>			
	<ul style="list-style-type: none"> <li>1. Create handbook for licensure &amp; post as download on website.</li> </ul>			
	<ul style="list-style-type: none"> <li>2. Create handbook for clinical exam candidates &amp; post as download on website.</li> </ul>			
	<ul style="list-style-type: none"> <li>3. Create handbook for examiners in addition to written handbooks posted on website.</li> </ul>			
	<ul style="list-style-type: none"> <li>4. Conduct &amp; review RDH Examination Instrumentation Course (performed every other year)</li> </ul>			

	5. Create a series of video modules to serve as tutorials.			
	<b>Objective 2D: Study the feasibility of alternative pathways to initial licensure.</b>			
	1. Investigate standardized exit exam concept.			
	2. Identify challenges with current licensing process.			
	3. Work with ad-hoc committee and stakeholders to develop report.			
	<b>Objective 2E: Study the feasibility of continued competency as a requirement for license renewal.</b>			
	1. Identify challenges to current competency.			
	2. Work with ad hoc committee and stakeholders to define continued competency.			
	3. Identify timeframe for completion of required updates.			
	<b>Goal 3: Outreach &amp; Communication</b>			
	<b>Objective 3A: Develop and implement strategies to educate and inform stakeholders of the DHCC's purpose and function.</b>			
	1. Develop series of articles (e.g. News releases)			
	2. DHCC Website launched.	7-1-09		
	3. Create DHCC e-newsletter			
	4. Promote subscribers to website.	7-1-09		
	5. Outreach to schools.			
	6. Create a PowerPoint presentation and script for outreach to appropriate audiences.			
	7. Encourage students to attend DHCC board meetings.			
	8. Develop a printed piece for consumer fairs.			
	9. History of DHCC.			
	10. Calendar of events.	12-6-10		
	<b>Objective 3B: Leverage the DHCC website as a centralized source of consumer protection, licensee and applicant information.</b>			
	1. Develop links to other health care.			
	2. List of approved programs with links.			
	3. Implement online renewal collection fee.	1-1-10		
	<b>Objective 3C: Provide Comprehensive information on retroactive fingerprinting requirements to licensees.</b>			
	1. Update info on website.	12-6-10		
	2. Send camera-ready artwork to stakeholders (components / CDHA)			

	<b>Objective 3D: Continue to network and build cooperation and partnerships with stakeholders.</b>			
	1. Attend DH-related events a. CDHA Annual Meeting b. CDHEA Annual Meeting			
	2. Man exhibit booth @ CDA Presents.			
	3. Participate in consumer related health fairs.			
	4. Evaluate membership in WREB.			
	<b>Objective 3E: Continue to cultivate a collaborative relationship with the Dental Board.</b>			
	1. Continue to represent DHCC at Dental Board meetings .			
	2. DHCC members alternate attending DBC meetings, report to DHCC.			
	3. Formal invitations to DBC to attend DHCC board meetings regarding shared interests.			
	4. Update DBC on DHCC relevant issues.			
	5. Start joint task force bet DBC & DHCC; 2 members from each board.			
	6. Start joint ad-hoc for infection control every year.			
	<b>Goal 4: Organizational Development</b>			
	<b>Objective 4A: Encourage professional development and growth of employees.</b>			
	1. Have EO inform staff of upward mobility positions available.			
	2. Evaluate funding for staff development.			
	<b>Objective 4B: Recognize employee efforts and accomplishments.</b>			
	1. Quarterly appreciation activities 2. DHCC members expressing gratitude during staff interaction (i.e. email thank you)			
	<b>Objective 4C: Explore alternate funding sources.</b>			
	<b>Objective 4D: Focus on environmentally conscious innovation.</b>			
	1. Digital copies of board packets required for meetings.			
	2. DCA provide laptops for members use to view materials.			
	3. Online renewal/ application process.			
	4. Utilize teleconference technology.			

	<b>Objective 4E: Conduct an annual Executive Officer evaluation.</b>			
	1. 2010			
	2. 2011			
	3. 2012			
	<b>Goal 5: Enforcement</b>			
	<b>Objective 5A: Ensure transparency and equity in committee enforcement actions.</b>			
	1. Post Disciplinary guidelines.			
	2. Post enforcement statistics.			
	3. Post number and status of complaints received.			
	4. Provide summary of enforcement stages, materials.			
	<b>Objective 5B: Ensure timely and accurate response to complaints.</b>			
	1. Develop internal policies for timely review of complaints.			
	2. Manage each stage of the complaint process within mandated timeframes.			
	3. Notify complainants in a timely matter of each significant stage in the administrative process.			
	<b>Objective 5C: Review and evaluate probation monitoring and the expert reviewer programs.</b>			
	1. Ensure that a Committee representative meets with new probationers within 30 days of the decision effective date to fully explain the terms of probation.			
	2. Ensure that all active probationers are interviewed at least each year to confirm compliance with all terms of probation.			
	3. Assess Expert Reviewer Program for validity, training requirements and quality.			
	<b>Objective 5D: Review, evaluate and revise enforcement regulations to improve efficiency and effectiveness.</b>			
	1. Develop and Review, on a regular basis, DHCC Disciplinary Guidelines and Uniform Standards Related to Substance Abuse.			
	2. Review, update, and if necessary, develop enforcement policies and procedures.			
	3. Develop and Review, on a regular basis, Cite and Fine guidelines specific to the DHCC.			
	4. Inform and educate licensees and consumers about trends in enforcement complaints and disciplinary actions.			
	<b>Objective 5e: Study the feasibility of a diversion program.</b>			

	<b>Goal 6: Access to Care</b>			
	<b>Objective 6A: Gather and analyze practice information to identify access to care deficiencies.</b>			
	1. Investigate logistics to accomplish this.			
	2. Promote this as Masters level thesis project.			
	<b>Objective 6B: Identify and promote loan repayment programs to encourage licensees to practice in shortage areas.</b>			
	1. Gather list of loan repayment.			
	2. Post on website.			
	3. Work on statute changes to correct language.			
	<b>Objective 6C: Monitor new oral healthcare delivery models.</b>			
	1. Attend OSPHD Hearing on Teledentistry project.			
	2. Gather position papers and reports on new delivery models.			
	<b>Objective 6D: Monitor federal healthcare reform for applicable changes.</b>			
	1. Provide DHCC with information from DCA on implications.			





**Friday, April 29, 2011**

**Dental Hygiene Committee of California**

**Legislative and Regulatory Agenda Item 15**

Update on Dental Board of California's Infection Control Regulations [Title 16, California Code of Regulations, §1005(d)]



## MEMORANDUM

<b>DATE</b>	April 29, 2011
<b>TO</b>	DHCC Committee Members
<b>FROM</b>	Lori Hubble, Executive Officer
<b>SUBJECT</b>	<b>Agenda Item 15: Update on Dental Board of California's Infection Control Regulations [Title 16, California Code of Regulations, §1005(d)]</b>

A verbal report will be provided.