LEGISLATIVE/REGULATORY AFFAIRS COMMITTEE REPORT.

The following are attached for review:

A. Acceptance of the August 16, 2011, Committee Meeting Minutes
B. Acceptance of the November 2, 2011, Committee Meeting Minutes
C. Acceptance of the January 24, 2012, Committee Meeting Minutes
D. Recommended prioritization of previously approved legislative proposals, for the upcoming legislative session, including:
   - Amend Business and Professions Code (BPC) Section 146, Violations of specified authorization statutes as infractions; Punishment.
   - Amend BPC Section 149, Notice to cease advertising in telephone directory; Contest and hearing; Disconnection of service.
   - Amend BPC Section 2570.2, Definitions.
   - Amend BPC Section 2570.3, Licensing requirement.
   - Amend BPC Section 2570.16, Fees.
   - Amend BPC Section 2570.18, Representation.
   - Amend BPC 2570.27, Discipline; Initial license issued on probation.
   - Add new BPC Section requiring mandatory reporting of employees who are terminated or suspended for cause, as specified, and consequences for failure to report.
   - Add new BPC Section regarding limiting liability of occupational therapists providing services in an emergency, disaster, or state of war.
   - Add new BPC Section establishing new language which would allow the Board to inspect records.
   - Add new BPC Section establishing standards of practice for telehealth by occupational therapists.
   - Add new BPC Section requiring the Board to perform a workforce study and authorize an appropriate expenditure for the workforce study.
E. Discussion and consideration of recommending a position to the Board on the following recently amended bills:
   - Assembly Bill (AB) 171(Beall), Autism.
   - AB 374 (Hayashi), Provides for licensure of Athletic Trainers.
   - AB 386 (Galgiani), Prisons: telehealth systems.
   - AB 439 (Skinner), Health care information.
   - AB 518 (Wagner), Elder and dependent adult abuse: mandated reporters.
   - AB 608 (Pan), Telemedicine.
   - AB 783 (Hayashi), Professional Corporations.
   - AB 800 (Huber), Boards and Commissions: Time Reporting.

Discussion and consideration of recommending a position to the Board on the following recently amended bills, *continued*:

- AB 958 (Berryhill) – Statute of limitations for disciplinary actions.
- AB 1003 (Smyth) Professional and vocational licenses.
- Senate Bill (SB) 399 (Huff), Healing Arts: Advertising.
- SB 462 (Blakeslee), Provides for certification of special education advocates.
- SB 544 (Price), Professions and Vocations: Amendments to the Business Practice Act.
- Senate Bill 924 (Walters), Physical therapists: direct access to services: professional corporations.

F. Report on bills previously reviewed by the Committee and signed into law. (Copies of bills not provided.)

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TELECONFERENCE LEGISLATIVE AND REGULATORY AFFAIRS COMMITTEE MEETING MINUTES

Tuesday, August 16, 2011

1. Call to order, roll call, establishment of a quorum

Luella Grangaard, Committee Chair, called the meeting to order at 3:05.

2. Introductions

The Committee members, Luella Grangaard, Board Member/Chair, Diane Josephs, Lin Reed, and Gigi Smith, all introduced themselves.

3. Review/update of Committee Member Roster/Information.

Ms. Grangaard asked the members to review their information on the roster and provide any changes to the Board's Executive Officer, Heather Martin.

4. Review and discussion of the Committee's Roles and Responsibilities and consideration of recommending changes to the Board.

After reviewing the draft Roles and Responsibilities document, the Committee discussed amending it to include "recommending legislative amendments" to the Board.

- Diane Josephs moved to recommend the Board accept the Committee's revised Roles and Responsibilities.
- Lynn Reed seconded the motion.

<u>Roll call vote</u>

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

5. Discussion and consideration of recommending a position to the Board on the following bills:

a) Assembly Bill (AB) 171(Beall), Autism spectrum disorder.

Prior to discussion about the bill, Ms. Grangaard reminded the Committee members of the positions they would be recommending to the Board, including, support, support if amended, oppose, oppose unless amended and neutral or watch.

One member asked if the bills should be reviewed with an understanding of the limitations of the current fiscal climate. It was agreed that while was one issue to consider, however, the primary purpose was to review each bill in terms of how it supports consumer protection.

AB 171 would require health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment of autism spectrum disorders.

Ms. Grangaard asked Jennifer Snyder, lobbyist with Capitol Advocacy, appearing on behalf of the Occupational Therapy Association of California (OTAC), if she knew what OTAC's position was on the bill. Ms. Snyder replied that OTAC was simply watching the bill and had not developed a position yet.

Lin Reed noted that the increased access and coverage would be beneficial and positive to both consumers and licensees.

- Gigi Smith moved to recommend the Board provide a Support position on AB 171..
- Diane Joseph seconded the motion.

<u>Roll call vote</u>

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

b) AB 374 (Hayashi), Athletic Trainers

Ms. Martin explained that this was a newer version of the bill than the Board previously viewed, which contained several provisions of concern. Also, the licensure provisions were amended out and the current verbiage simply makes it unlawful for any person to hold himself or herself out as a certified athletic trainer unless certain requirements had been met.

- Diane Josephs moved that the Committee recommend the Board not take any position on AB 372 and direct staff to continue to watch the bill.
- Gigi Smith seconded the motion.

<u>Roll call vote</u>

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

c) AB 518 (Wagner), Elder and dependent adult abuse: mandated reporters.

The Committee discussed the provisions of the bill including the deletion of the January 1, 2013, repeal date and other clarifying amendments.

- Lin Reed moved to recommend the Board provide a Support position on AB 518.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

d) AB 783 (Hayashi), Professional Corporations.

The Committee discussed the provisions of the bill including the absence of occupational therapy (OT) corporations in the Corporations Code.

- Lin Reed moved to recommend the Board support AB 783 bill if amended to include OT corporations.
- Diane Josephs seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

The Committee discussed which types of licensees should be included as employees of OT corporations, and added to the Corporations Code.

- Gigs Smith moved that if OT corporations were added to the Corporations Code, the Board should support AB 783 if it is amended to allow occupational therapy corporations to employ any of the following licensee types: doctors of podiatric medicine, psychologists, registered nurses, optometrists, marriage and family therapists, clinical social workers, physician assistants, chiropractors, acupuncturists, naturopathic doctors, physical therapists, speech-language pathologists, audiologists, and hearing aid dispensers.
- Diane Josephs seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

The Committee also discussed which other types of corporations should be able to employ occupational therapists and occupational therapy assistants.

- Diane Josephs moved to recommend the Board support the bill if it is amended to include occupational therapists and occupational therapy assistants as employees of naturopathic corporations.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

e) AB 800 (Huber), Boards and Commissions: Time Reporting.

The Committee discussed the quarterly Board Member reporting requirements of the bill

- Diane Josephs moved to recommend the Board remain neutral on this bill.
- Lin Reed seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

f) AB 958 (Berryhill) – Statute of limitations for disciplinary actions.

The Committee discussed the timeframe limitations for the boards to file disciplinary action accusations against licensees.

- Diane Josephs moved to recommend the Board oppose AB 958.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

g) AB 1003 (Smyth) Professional and vocational licenses.

The Committee discussed the bill's intent to require all professional and vocational licenses issued by DCA, the boards and the State Department of Public Health to be issued by from one central location while the enforcement authority would remain with the respective boards and department.

- Gigi smith moved to recommend the Board oppose AB 1003.
- Lin Reed seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

h) AB 386 (Galgiani), Prisons: telehealth systems.

The Committee discussed the provision of services in the prisons via telehealth and the limitation of doing so "only when it is in the best interest of the health and safety of the patient" and the exclusion of civil service physicians and dentists.

- Lin Reed moved to recommend the Board monitor AB 386.
- Diane Josephs seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

i) AB 415 (Logue), Telehealth.

The Committee discussed the fact that, as written, the bill would preserve the integrity of the therapy process and protect consumers without 'simply' cutting services. Further discussion ensued.

- Lin Reed moved to recommend the Board oppose AB 415 unless it is amended to include language that protects the consumers and still allows for face-to-face contact with the provider.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed.

j) AB 608 (Pan), Telemedicine.

The Committee discussed the bill, noting that it simply establishes the intent of the Legislature to enact legislation related to telemedicine, and that further amendments would be forthcoming. The Committee directed staff to watch the bill and report back at the next meeting.

k) Senate Bill (SB) 946 (Committee on Health), Telemedicine.

The Committee discussed the bill, noting that it replaces 'telemedicine' with 'telehealth,' established definitions relating to the provision of telehealth, and established a pilot program to provide services via telehealth. The Committee agreed that the bill was a step in the right direction.

- Gigi Smith moved to recommend the Board support SB 946.
- Diane Josephs seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

Due to time constraints, Agenda items 5(l), 5(m), 5(n), and 5(o) were tabled for a future meeting.

p) SB 924 (Walters), Direct patient access to physical therapy.

The Committee discussed the various provisions of the bill.

- Diane Josephs moved to recommend the Board oppose SB 924, unless provisions were included which better protects the consumers, and ensure the quality of care is appropriate, and referrals were made appropriately.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

Agenda items 5(q), 5(r), and 5(s) were tabled for a future meeting.

6. Selection of future meeting dates.

The Committee members agreed that the next meeting would be held October 18, 2011 at 5:30 pm.

7. Public comment on items not on agenda.

No public comments were provided.

8. Adjournment

The meeting adjourned at 5:05.

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TELECONFERENCE LEGISLATIVE AND REGULATORY AFFAIRS COMMITTEE MEETING MINUTES

Wednesday, November 2, 2011

1. **Call to order, roll call, establishment of a quorum.**

   Luella Grangaard called the meeting to order at 12:05. All committee members were present and a quorum was established.

2. **Discussion and consideration of previously approved legislative proposals, and recommendations to the Board regarding priorities for the upcoming legislative session:**
   a) **Amend Business and Professions Code (BPC) Section 146, Violations of specified authorization statutes as infractions; Punishment.**
   b) **Amend BPC Section 149, Notice to cease advertising in telephone directory; Contest and hearing; Disconnection of service.**

   The Committee discussed the provisions the legislative proposals to add the board to BPC sections 146 and 149.

   Erica Eisenlauer, Legislative Analyst, suggested that since the amendments were technical in nature, the proposals may meet the requirements of the Department of Consumer Affairs' annual omnibus bill.

   - Diane Josephs moved to recommend the Board request amendments to BPC Sections 146 and 149 to be included in the Department's omnibus bill or to consider as a low priority.
   - Gigi Smith seconded the motion.

   <u>Roll call vote</u>

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

   - Motion passed unanimously.

   c) **Amend BPC Section 2570.2, Definitions.**

   The Committee discussed the provisions of the legislative proposal to amend BPC 2570.2 and determined that based on the clarity to the Occupational Therapy

Practice Act and the importance of the amendments, the legislative proposal should be considered a high priority.

Jennifer Snyder, representing the Occupational Therapy Association of California, suggested the Committee exercise caution in providing language without considering input of stakeholders.

Ms. Grangaard explained that public comment had been considered when the Board previously approved the legislative proposals before the Committee. She further clarified that the purpose of the meeting was simply to prioritize the previously-approved legislative proposals, not to make recommendations regarding any language changes.

Ms. Grangaard asked the Committee if they preferred to discuss each and then vote on priority level of each item or discuss each item and then vote on a package of recommended priorities. The Committee agreed to discuss each item, come to consensus on a recommended prioritization, and then vote on the recommended list of prioritized legislative proposals.

After further discussion regarding the proposal to amend BPC 2570.2, the Committee members offered the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	High
Diane Josephs:	High
Lin Reed:	High
Gigi Smith:	High

d) Amend BPC Section 2570.3, Licensing requirement.

The Committee discussed the provisions of the legislative proposal to amend BPC 2570.3, requiring an application and fee for approving advanced practice courses, and suggested the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	High
Diane Josephs:	High
Lin Reed:	High
Gigi Smith:	High

e) Amend BPC Section 2570.16, Fees.

The Committee discussed the provisions of the legislative proposal to amend BPC 2570.16, requiring the payment of various fees, and suggested the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	High
Diane Josephs:	High
Lin Reed:	Medium
Gigi Smith:	High

f) Amend BPC Section 2570.18, Representation.

The Committee discussed the provisions of the legislative proposal to amend BPC 2570.18, regarding the way an occupational therapist with a doctoral level degree, among other things, represented themselves verbally and in writing, and suggested the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	Low
Diane Josephs:	Low
Lin Reed:	Low
Gigi Smith:	Low

Ms. Snyder remarked that the language appeared cumbersome and that these amendments may not be necessary.

g) Amend BPC 2570.19, California Board of Occupational therapy; Occupational Therapy fund.

Committee members were advised to ignore this item.

h) Amend BPC 2570.27, Discipline; Initial license issued on probation.

The Committee discussed the provisions of the legislative proposal to add a new BPC section so that probation monitoring costs could be charged to a licensee on probation and the board would not renew or reinstate the licensee who has failed to repay all of the costs ordered, and suggested the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	Medium
Diane Josephs:	High
Lin Reed:	High
Gigi Smith:	High

i) Add new BPC Section requiring mandatory reporting of employees who are terminated or suspended for cause, as specified, and consequences for failure to report.

The Committee discussed the provisions of the legislative proposal to add two new BPC sections establishing mandatory reporting requirements by employers and consequences for failure to report to the board, and suggested the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	High
Diane Josephs:	High
Lin Reed:	High
Gigi Smith:	High

j) Add new BPC Section regarding limiting liability of occupational therapists providing services in an emergency, disaster, or state of war.

The Committee discussed the provisions of the legislative proposal to amend the Government Code and add a new BPC section to limit the liability of occupational therapists providing services in an emergency, disaster, or state of war, and suggested the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	Medium
Diane Josephs:	High
Lin Reed:	High
Gigi Smith:	High

k) Add new BPC Section establishing new language which would allow the Board to inspect records.

The Committee discussed the provisions of the legislative proposal to add a new BPC section that would allow the Board to inspect facility records and suggested

the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	High
Diane Josephs:	High
Lin Reed:	High
Gigi Smith:	High

l) Add new BPC Section requiring an application and fee for providers of post-professional (advanced practice) education courses and the courses they offer, and require a biennial renewal thereafter.

Committee members were advised to ignore this item.

m) Add new BPC Section establishing standards of practice for telehealth by occupational therapists.

The Committee discussed the provisions of the legislative proposal to add a new BPC section establishing standards of practice for the delivery of occupational therapy via telehealth and suggested the following priority levels:

	Verbal Recommended Priority Level
Luella Grangaard:	High
Diane Josephs:	High
Lin Reed:	High
Gigi Smith:	High

Ms. Snyder advised the committee that the American Occupational Therapy Association had developed model telehealth language and was in the process of fine-tuning it; the language should be available soon.

The Committee thanked Ms. Snyder for the information.

n) Add new BPC Section requiring the Board to perform a workforce study and authorize an appropriate expenditure for the study.

The Committee discussed the provisions of the legislative proposal to add a new BPC that would require the board to complete an occupational therapy workforce study and appropriate funds to complete the study. After further consideration, the Committee suggested the legislative proposal not be considered a priority of any level at this time.

- Luella Grangaard moved to recommend the Board adopt the Committee's recommended prioritization of previously-approved legislative proposals.
- Diane Josephs seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

3. Public comment on items not on agenda.

There were no further public comments.

4. Adjournment

The Committee agreed they would next meet on January 24, 2012. The meeting adjourned at 12:45 pm.

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TELECONFERENCE LEGISLATIVE AND REGULATORY AFFAIRS COMMITTEE MEETING MINUTES

Tuesday, January 24, 2012

1. Call to order, roll call, establishment of a quorum.

The meeting was called to order at 3:07 pm. Lin Reed was not present when the roll was called, however, she joined the meeting moments later; a quorum was established.

2. Discussion and consideration of recommending a position to the Board on the following bills:

a) Assembly Bill (AB) 171(Beall), Autism.

Ms. Martin advised the Committee that when they last reviewed AB 171, they recommended the Board support the bill.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

<u>Roll call vote</u>

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

b) AB 374 (Hayashi), Provides for licensure of Athletic Trainers.

Ms. Martin advised the Committee that when they last reviewed AB 374, due to the considerable amendments the Committee no longer recommended opposing the bill, they now recommended the Board watch the bill.

- Diane Josephs moved to recommend the Board watch AB 374.
- Lin Reed seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

c) AB 386 (Galgiani), Prisons: telehealth systems.

The Committee discussed the AB 386 providing for a pilot project of delivering services via telehealth in California's prisons. However, there were concerns with OTs not being included among the 'protected' service providers (MDs and DDS), that telehealth must not be 'supplantwhen they last reviewed AB 171, they recommended the Board support the bill.

- Lin Reed moved to watch AB 386.
- Luella Grangaard seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

d) AB 439 (Skinner), Health care information.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

e) AB 518 (Wagner), Elder and dependent adult abuse: mandated reporters.

- Diane Josephs moved to recommend the Board support AB 171.

- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

f) AB 608 (Pan), Telemedicine.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

g) AB 783 (Hayashi), Professional Corporations.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

h) AB 800 (Huber), Boards and Commissions: Time Reporting.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye

Lin Reed: Aye
Gigi Smith: Aye

- Motion passed unanimously.

i) AB 958 (Berryhill) – Statute of limitations for disciplinary actions.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote
Luella Grangaard: Aye
Diane Josephs: Aye
Lin Reed: Aye
Gigi Smith: Aye

- Motion passed unanimously.

j) AB 1003 (Smyth) Professional and vocational licenses.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote
Luella Grangaard: Aye
Diane Josephs: Aye
Lin Reed: Aye
Gigi Smith: Aye

- Motion passed unanimously.

k) Senate Bill (SB) 399 (Huff), Healing Arts: Advertising.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote
Luella Grangaard: Aye
Diane Josephs: Aye
Lin Reed: Aye
Gigi Smith: Aye

- Motion passed unanimously.

l) SB 462 (Blakeslee), Provides for certification of special education advocates.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

m) SB 544 (Price), Professions and Vocations: Amendments to the Business and Professions Code; general provisions and the Occupational Therapy Practice Act.

- Diane Josephs moved to recommend the Board support AB 171.
- Gigi Smith seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

n) SB 924 (Walters), Direct patient access to physical therapy.

- Lin Reed moved to recommend the Board oppose SB 924
- Diane Josephs seconded the motion.

Roll call vote

Luella Grangaard:	Aye
Diane Josephs:	Aye
Lin Reed:	Aye
Gigi Smith:	Aye

- Motion passed unanimously.

3. **Report on bills previously reviewed by the Committee and signed into law:**
   a) **AB 415 (Logue), Telehealth.**
   b) **Senate Bill (SB) 24 (Simitian), Personal Information: Privacy.**
   c) **SB 541 (Price), Exemptions for boards from the Public Contract Code requirements (for use of Expert Consultants).**
   d) **SB 850 (Leno), Medical records: confidential information.**
   e) **SB 946 (Committee on Health), Telemedicine.**

   Ms. Martin referenced the material in the packet >>>> the Committee members had no questions.

4. **Selection of future meeting dates.**

   The Committee selected March 8, 2012, to meet if necessary.

5. **Public comment on items not on agenda.**

   There was no public comment.

6. **Adjournment.**

   The meeting adjourned at 4:20 pm.

Amend Business & Professions Code Section 146

146. (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following applies:
(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.
(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.
(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.
(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:
(1) Sections 2052 and 2054.
(2) Section 2630.
(3) Section 2903.
(4) Section 3660.
(5) Sections 3760 and 3761.
(6) Section 4080.
(7) Section 4825.
(8) Section 4935.
(9) Section 4980.
(10) Section 4996.
(11) Section 5536.
(12) Section 6704.
(13) Section 6980.10.
(14) Section 7317.
(15) Section 7502 or 7592.
(16) Section 7520.
(17) Section 7617 or 7641.
(18) Subdivision (a) of Section 7872.
(19) Section 8016.
(20) Section 8505.
(21) Section 8725.
(22) Section 9681.
(23) Section 9840.
(24) Subdivision (c) of Section 9891.24.
(25) Section 19049.
<u>(26) Section 2570.3.</u>
(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars ($250) and not more than one thousand dollars ($1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

Amend Business & Professions Code Section 149

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:
(1) Cease the unlawful advertising. .
(2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.
(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.
(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.
(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.
(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:
(1) The Bureau of Barbering and Cosmetology.
(2) The Cemetery and Funeral Bureau.
(3) The Veterinary Medical Board.
(4) The Landscape Architects Technical Committee.
(5) The California Board of Podiatric Medicine.
(6) The Respiratory Care Board of California.
(7) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
(8) The Bureau of Security and Investigative Services.
(9) The Bureau of Automotive Repair.
(10) The California Architects Board.
(11) The Speech-Language Pathology and Audiology Board.
(12) The Board for Professional Engineers and Land Surveyors.
(13) The Board of Behavioral Sciences.
(14) The Structural Pest Control Board within the Department of Pesticide Regulation.
(15) The Acupuncture Board.
(16) The Board of Psychology.
(17) The California Board of Accountancy.
(18) The Naturopathic Medicine Committee.
(19) The Physical Therapy Board of California.
(20) The Bureau for Private Postsecondary Education.
<u>(21) The California Board of Occupational Therapy.</u>

Amend Business & Professions Code Section 2570.2(k)

(k) "~~Practice of~~ ~~o~~Occupational therapy" means the therapeutic use of ~~purposeful and meaningful goal-directed~~ everyday life activities (occupations) with individuals, groups, or populations to address participation and function in roles and situations in home, school, workplace, community and other settings. Occupational therapy services are provided for habilitation, rehabilitation, promoting and maintaining health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect physical and mental health, ~~which engage the individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and promote or maintain health~~, well-being, and quality of life. Occupational therapy ~~services~~ encompasses research, education of students, occupational therapy ~~assessment~~ evaluation, treatment, education of, and consultation with~~, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)).~~ individuals, groups, programs, organizations, or communities.

(1) Occupational therapy ~~assessment~~ evaluation identifies performance abilities ~~and limitations~~ that are necessary for self-maintenance, learning, work, and other similar meaningful activities. Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability. Occupational therapy techniques that are used for treatment involve teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices excluding gait training). Occupational therapy consultation provides expert advice to enhance function and quality of life. Consultation or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Services are provided individually, in groups, ~~or through social groups~~ or via telehealth technologies.

(2) Occupational therapy includes, but is not limited to, performing as a clinician, supervisor of occupational therapy students and volunteers, researcher, scholar, consultant, administrator, faculty, clinical instructor, continuing education instructor and educator of consumers/clients. The term "client" is used to name the entity that receives occupational therapy services. Clients may be categorized as:

a) individuals, including individuals who may be involved in supporting or caring for the client (i.e. caregiver, teacher, parent, employer, spouse);

b) individuals within the context of a group (e.g., a family, a class); or

c) individuals within the context of a population (e.g., an organization, a community).

(l) "Hand therapy" is the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity and specialized skills in assessment and treatment to prevent dysfunction, restore function, or reverse the advancement of pathology. This definition is not intended to prevent an occupational therapist practicing hand therapy from providing other occupational therapy services authorized under this act in conjunction with hand therapy.

(m) "Physical agent modalities" means techniques that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. These techniques are used as adjunctive methods in conjunction with, or in immediate preparation for, occupational therapy services.

Amend Business & Professions Code Section 2570.3(k)

(k) ~~The amendments to subdivisions (d), (e), (f), and (g) relating to advanced practices, that are made by the act adding this subdivision, shall become operative no later than January 1, 2004, or on the date the board adopts regulations pursuant to subdivision (h), whichever first occurs.~~
The board may approve a provider of post-professional education courses, that on or after January 1, 2015, submits an application to the Board and pays the fee set forth in section 2570.16. Each approved provider shall expire on June 30.2014, and biennially thereafter.
(l) On or after January 1, 2015, the board may approve a post-professional education course, when a provider approved under section (k) submits a post-professional education course application to the Board and pays the fee set forth in section 2570.16.

(original language was approved as "on or after January 1, *2012.*")

Amend Business and Professions Code Section 2570.16

Initial license and renewal fees shall be established by the board in an amount that does not exceed a ceiling of one hundred fifty dollars ($150) per year. The board shall establish the following additional fees:

(a) An application fee not to exceed fifty dollars ($50).
(b) A late renewal fee as provided for in Section 2570.10.
(c) A limited permit fee.
(d) A fee to collect fingerprints for criminal history record checks.
(e) A fee to query the National Practitioner Data Bank and the Healthcare Integrity Protection Data Bank.
(f) An initial application fee for providers of post-professional education courses shall be a non-refundable fee of three hundred dollars ($300).
(g) A biennial renewal fee for an approved post-professional education course provider shall be no less than three hundred dollars ($300), but no more than five hundred-fifty dollars ($550) per renewal cycle.
(h) A one-time, non-refundable fee for review of each post-professional educational course shall be no less than ninety dollars ($90) and no more than one hundred-fifty ($150) dollars per course.

Amend Business & Professions Code Section 2570.18

(a) On and after January 1, 2003, a person shall not represent to the public by title, education, or background, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice occupational therapy in this state, unless authorized to practice occupational therapy under this chapter.
(b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations "O.T.," "O.T.R.," or "O.T.R./L.," or "Occupational Therapist," or "Occupational Therapist Registered," or any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy.
(c) A licensed occupational therapist or licensed occupational therapy assistant who has earned a doctoral degree, granted by an institution accredited by the Western Association of Schools and Colleges, or a program accredited by the Accreditation Council on Occupational Therapy Education, or by an accrediting agency recognized by the National Commission on Accrediting or the United States Department of Education that the board determines is equivalent to the Western Association of Schools and Colleges, may do the following:
(1) In a written communication, use the initials conferred with that earned degree, as applicable, following the licensee's name.
(2) In a written communication, use the title "Doctor" or the abbreviation "Dr." preceding the licensee's name, and the licensee's name shall be immediately followed by an unabbreviated specification of the applicable earned doctoral degree held by the licensee, or the unabbreviated term occupational therapist or occupation therapy assistant, as applicable.
(3) In a spoken communication while engaged in the practice of occupational therapy, use the title "doctor" preceding the person's name, and the speaker specifies that he or she is an occupational therapist or occupational therapy assistant.
(d) A licensed occupational therapist or occupational therapy assistant who has been granted an honorary degree by an educational institution accredited by the Western Association of Schools and Colleges, the Accreditation Council on Occupational Therapy Education, or by an accrediting agency recognized by the National Commission on Accrediting or the United States Department of Education that the board determines is equivalent to the Western Association of Schools and College, may do the following:
(1) In a written communication, use the initials granted with that honorary degree, as applicable, followed by the designation "(Hon.)" or "(Honorary)," following the licensee's name.
(2) In a written communication, use the title "Doctor" or the abbreviation "Dr." preceding the licensee's name, and the licensee's name shall be immediately followed by an unabbreviated specification of the applicable honorary doctoral degree held by the licensee with the designation "(Hon.)" or "(Honorary)," and the unabbreviated term occupational therapist or occupational therapy assistant, as applicable.
(3) In a spoken communication when engaged in the practice of occupational therapy, use the title "doctor" preceding the person's name, and the speaker specifies that he or she has been granted an honorary degree and specifies that he or she is an occupational therapist or occupational therapy assistant.
~~(c)~~ (e) Unless certified to assist in the practice of occupational therapy as an occupational therapy assistant under this chapter, a person may not use the professional abbreviations "O.T.A.," "C.O.T.A.," "C.O.T.A./C." or "Occupational Therapy Assistant," or "Certified Occupational Therapy Assistant," or any other words, letters, or symbols, with the intent to represent that the person assists in, or is authorized to assist in, the practice of occupational therapy as an occupational therapy assistant.
~~(d)~~(f) The unauthorized practice or representation as an occupational therapist or as an occupational therapy assistant constitutes an unfair business practice under Section 17200 and false and misleading advertising under Section 17500.

Amend Business & Professions Code Section 2570.27

2570.27. (a) The board may discipline a licensee by any or a combination of the following methods:

(1) Placing the license on probation with terms and conditions.

(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

(b) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section once a licensee has served his or her term of probation.

(2) Suspending the license and the right to practice occupational therapy for a period not to exceed one year.

(3) Revoking the license.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the board, in its discretion, deems proper.

(b) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

Add new Business and Professions Code Section 2570.33

(a) Any employer of an occupational therapy practitioner shall report to the California Board of Occupational Therapy the suspension or termination for cause of any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.
(b) For purposes of the section, "suspension or termination for cause" is defined to mean suspension or termination from employment for any of the following reasons:
(1) Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice occupational therapy.
(2) Unlawful sale of controlled substances or other prescription items.
(3) Patient neglect, physical harm to a patient, or sexual contact with a patient.
(4) Falsification of medical, treatment, client consultation or billing records.
(5) Incompetence or negligence.
(6) Theft from patients, other employees, or the employer.
(c) The first failure of an employer to make a report required by this section, shall result in a letter educating the employer of their reporting responsibilities. The second failure to make a report by this section shall be punishable by an administrative fine not to exceed one thousand dollars ($1,000). The third and any subsequent violations shall be punishable by an administrative fine not to exceed five thousand dollars ($5,000) per violation.

Add new Business and Professions Code Section 2570.35

(a) In addition to the reporting required under Section 2570.33, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 2570.33. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.
(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed five thousand dollars ($5,000) per violation.

Add new Business and Professions Code Section

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care. This section shall not grant immunity from civil damages when the person is grossly negligent.

An amendment to Government Code Section 8659(a)

(a) Any physician or surgeon (whether licensed in this state or any other state), hospital, pharmacist, respiratory care practitioner, nurse, occupational therapist, occupational therapy assistant, or dentist who renders services during any state of war emergency, a state of emergency, disaster, or a local emergency at the express or implied request of any responsible state or local official or agency shall have no liability for an injury sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause such injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission, or when the person is grossly negligent.

Similar language

BPC §2727.5. Liability for emergency care

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care. This section shall not grant immunity from civil damages when the person is grossly negligent.

BPC §3706. Immunity from liability for rendering emergency care; Exception

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of employment shall not be liable for any civil damages as the result of acts or omissions by the person in rendering the emergency care. This section does not grant immunity from civil damages when the person is grossly negligent.

Add new Business and Professions Code Section

(a) Each member of the board, or a Any licensed occupational therapist appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility providing occupational therapy treatment or services and the occupational therapy staff thereof, with respect to the occupational therapy treatment, services, or facilities provided therein, and may inspect occupational 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 an occupational therapist and shall be subject to the disclosure restrictions.
(b) The willful, unauthorized violation of professional confidence or unauthorized disclosure authorized by this section constitutes unprofessional conduct.

Add new Business and Professions Code Section 2572, Standards of Practice for Telehealth in Occupational Therapy

(a) The provision of telehealth is intended to provide equitable access or increased access to occupational therapy services, to promote independence, and to increase the quality and standards of care when a patient or client has a disability, illness, injury or has a need for consultative, preventative, diagnostic, wellness, or therapeutic services.
(b) The purpose of this section is to establish standards for the practice of telehealth by means of an interactive telecommunication system by an occupational therapist or occupational therapy assistant licensed under this chapter. The standard of care provided to patients is the same whether the patient is seen in-person, via telehealth or telerehabilitation, or other methods of electronically enabled occupational therapy, health care or education. Occupational therapists or occupational therapy assistants need not reside in California, as long as they have a valid, current and unrestricted California license.
(c) Occupational therapists must obtain verbal and written informed consent from the patient prior to delivering health care via telehealth, and also requires that this signed written consent statement becomes part of the patient's medical record.
(d) An occupational therapist or occupational therapy assistant licensed under this chapter conducting telehealth by means of an interactive telecommunication system must do all of the following:
(1) Provide services and/or treatment consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code,
(2) Interact with the patient maintaining the same ethical standards of practice required pursuant to Section 4170, California Code of Regulations;
(3) Comply with the supervision requirements for any licensed occupational therapy assistant providing services under this section;
(4) Provide and ensure appropriate client confidentiality and HIPAA compliance, establish secure connections, activate firewalls, and encrypt confidential information.
(e) For purposes of this section:
(1) "Telehealth" means the provision of health care, health information, or health education, using telecommunications technology, other technologies using interactive audio, video, or data communications when providing or using telerehabilitation, or via other specially adapted equipment.
(2) "Telerehabilitation" means the provision, at a distance, of telehealth-based rehabilitation services using various technologies including real-time videoconferencing, personal computer-based camera usage, videophones, home-applied technology for recording and submission of images, and includes the use of other technologies, including virtual reality videogame-based rehabilitation systems or other virtual reality systems with haptic interfaces.

Add new Business and Professions Code Section 2570.5, Workforce Study

(a) The board shall collect and analyze workforce data from its licensees for future workforce planning. The board may collect the data at the time of license renewal or from a scientifically selected random sample of its licensees. The board shall produce reports on the workforce data it collects, at a minimum, on a biennial basis. The board shall maintain the confidentially of the information it receives from licensees under this section and shall only release information in an aggregate form that cannot be used to identify an individual. The workforce data collected by the board shall include, at a minimum, employment information such as hours of work, number of positions held, time spent in direct patient care, clinical practice area, type of employer, and work location. The data shall also include future work intentions, reasons for leaving or reentering occupational therapy, job satisfaction ratings, and demographic data.

(b) Aggregate information collected pursuant to this section shall be placed on the board's Internet Web site.

(c) The board is authorized to expend the sum of fifty-five thousand dollars ($55,000) from the Occupational Therapy Fund for the purpose of implementing this section.

(d) This section shall be implemented by the board on or before January 1, 2014.

(original language was approved as "on or before July 1, *2009.*")

AMENDED IN ASSEMBLY JANUARY 23, 2012

AMENDED IN ASSEMBLY MAY 3, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 171

Introduced by Assembly Member Beall
(Coauthors: Assembly Members Ammiano, Blumenfield, Brownley, Carter, Chesbro, Eng, Huffman, Mitchell, Swanson, Wieckowski, Williams, and Yamada)

January 20, 2011

An act to add Section ~~1374.73~~ *1374.745* to the Health and Safety Code, and to add Section ~~10144.51~~ *10144.53* to the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

AB 171, as amended, Beall. ~~Autism spectrum disorder.~~ *Pervasive developmental disorder or autism.*

(1) Existing law provides for licensing and regulation of health care service plans by the Department of Managed Health Care. A willful violation of these provisions is a crime. Existing law provides for ~~licensing and~~ *the* regulation of health insurers by the Insurance Commissioner. Existing law requires health care service plan contracts and health insurance policies to provide ~~benefits for specified conditions, including certain mental health conditions.~~ *coverage for the diagnosis and treatment of severe mental illnesses, including pervasive developmental disorder or autism, under the same terms and conditions applied to other medical conditions, as specified. Commencing July 1, 2012, and until July 1, 2014, existing law requires health care service*

plan contracts and health insurance policies to provide coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism.

This bill would require health care service plan contracts and health insurance policies to provide coverage for the screening, diagnosis, and treatment, *other than behavioral health treatment,* of ~~autism spectrum disorders~~ *pervasive developmental disorder or autism.* The bill would, however, provide that no benefits are required to be provided ~~by a health benefit plan offered through the California Health Benefit Exchange that exceed the essential health benefits required~~ *that exceed the essential health benefits that will be required* under *specified* federal law. The bill would prohibit ~~coverage from being denied for specified reasons~~ *health care service plans and health insurers from denying, terminating, or refusing to renew coverage solely because the individual is diagnosed with or has received treatment for pervasive developmental disorder or autism.* Because the bill would change the definition of a crime with respect to health care service plans, it would thereby impose a state-mandated local program.

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

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

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

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

1 SECTION 1. Section ~~1374.73~~ *1374.745* is added to the Health
2 and Safety Code, to read:
3 ~~1374.73.~~
4 *1374.745.* (a) Every health care service plan contract issued,
5 amended, or renewed on or after January 1, ~~2012~~ *2013*, that
6 provides hospital, medical, or surgical coverage shall provide
7 coverage for the screening, diagnosis, and treatment of ~~autism~~
8 ~~spectrum disorders.~~ *pervasive developmental disorder or autism.*
9 (b) A health care service plan shall not terminate coverage, or
10 refuse to deliver, execute, issue, amend, adjust, or renew coverage,
11 to an enrollee solely because the individual is diagnosed with, or

has received treatment for, ~~an autism spectrum disorder~~ *pervasive developmental disorder or autism.*

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an enrollee than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the plan contract.

(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this chapter. Coverage shall not be denied *on the basis of the location of delivery of the treatment or* on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

(e) A health care service plan may request, no more than once annually, a review of treatment provided to an enrollee for ~~autism spectrum disorders~~ *pervasive developmental disorder or autism.* The cost of obtaining the review shall be borne by the plan. This subdivision does not apply to inpatient services.

(f) A health care service plan shall establish and maintain an adequate network of ~~qualified autism~~ service providers with appropriate training and experience in ~~autism spectrum disorders~~ *pervasive developmental disorder or autism* to ensure that enrollees have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 1367 and 1367.03 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an enrollee under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting *or excluding* benefits that are otherwise available to an enrollee under a health care service ~~plan.~~ *plan, including, but not limited to, benefits that are required to be covered pursuant to Sections 1374.72 and 1374.73.*

(3) This section shall not be construed to mean that the services required to be covered pursuant to this section are not required to be covered under other provisions of this chapter.

~~(3)~~

(4) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

~~(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health care service plan contract through the Exchange. However, those specific benefits are required to be provided if offered by a health care service plan contract outside of the Exchange.~~

(h) Notwithstanding subdivision (a), on and after January 1, 2014, this section does not require any benefits to be provided that exceed the essential health benefits that all health plans will be required by federal regulations to provide under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(i) As used in this section, the following terms shall have the following meanings:

~~(1) "Autism spectrum disorder" means a neurobiological condition that includes autistic disorder, Asperger's disorder, Rett's disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.~~

~~(2) "Behavioral health treatment" means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated~~

~~to treat the core symptoms associated with autism spectrum disorder.~~

~~(3) "Behavioral intervention therapy" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.~~

~~(4)~~

(1) "Diagnosis of ~~autism spectrum disorders"~~ *pervasive developmental disorder or autism"* means medically necessary assessment, evaluations, or tests to diagnose whether an individual has ~~one of the autism spectrum disorders~~ *pervasive developmental disorder or autism.*

~~(5) "Evidence-based research" means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.~~

(2) "Pervasive developmental disorder or autism" shall have the same meaning and interpretation as used in Section 1374.72.

~~(6)~~

(3) "Pharmacy care" means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

~~(7)~~

(4) "Psychiatric care" means direct or consultative psychiatric services provided by a psychiatrist ~~or any other appropriately licensed or certified provider~~ *licensed in the state in which he or she practices.*

~~(8)~~

(5) "Psychological care" means direct or consultative psychological services provided by a psychologist ~~or any other appropriately licensed or certified provider~~ *licensed in the state in which he or she practices.*

~~(9) "Qualified autism service provider" shall include any nationally or state licensed or certified person, entity, or group that designs, supervises, or provides treatment of autism spectrum disorders and the unlicensed personnel supervised by the licensed or certified person, entity, or group, provided the services are within the experience and scope of practice of the licensed or~~

~~certified person, entity, or group. "Qualified autism service provider" shall also include any service provider that is vendorized by a regional center to provide those same services for autism spectrum disorders under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code and the unlicensed personnel supervised by that provider, or a State Department of Education nonpublic, nonsectarian agency as defined in Section 56035 of the Education Code approved to provide those same services for autism spectrum disorders and the unlicensed personnel supervised by that agency. A qualified autism service provider shall ensure criminal background screening and fingerprinting, and adequate training and supervision of all personnel utilized to implement services. Any national license or certification recognized by this section shall be accredited by the National Commission for Certifying Agencies (NCCA).~~

~~(10)~~

(6) "Therapeutic care" means services provided by *a* licensed or certified speech ~~therapists~~ *therapist*, *an* occupational ~~therapists~~ *therapist*, or *a* physical ~~therapists or any other appropriately licensed or certified provider.~~ *therapist.*

~~(11)~~

(7) "Treatment for ~~autism spectrum disorders"~~ *pervasive developmental disorder or autism"* means all of the following care, including necessary equipment, *that develops, maintains, or restores to the maximum extent practicable the functioning or quality of life of an individual with pervasive developmental disorder or autism and is* prescribed or ordered for an individual diagnosed with ~~one of the autism spectrum disorders~~ *pervasive developmental disorder or autism* by a licensed physician and surgeon or a licensed psychologist ~~or any other appropriately licensed or certified provider~~ who determines the care to be medically necessary:

~~(A) Behavioral health treatment.~~

~~(B)~~

(A) Pharmacy care*, if the plan contract includes coverage for prescription drugs*.

~~(C)~~

(B) Psychiatric care.

~~(D)~~

(C) Psychological care.

~~(E)~~

(D) Therapeutic care.

~~(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.~~

(8) "Treatment for pervasive developmental disorder or autism" does not include behavioral health treatment, as defined in Section 1374.73.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health care service plan contracts.

SEC. 2. Section ~~10144.51~~ *10144.53* is added to the Insurance Code, to read:

~~10144.51.~~

10144.53. (a) Every health insurance policy issued, amended, or renewed on or after January 1, ~~2012,~~ *2013,* that provides hospital, medical, or surgical coverage shall provide coverage for the screening, diagnosis, and treatment of ~~autism spectrum disorders~~ *pervasive developmental disorder or autism.*

(b) A health insurer shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an insured solely because the individual is diagnosed with, or has received treatment for, ~~an autism spectrum disorder~~ *pervasive developmental disorder or autism.*

(c) Coverage required to be provided under this section shall extend to all medically necessary services and shall not be subject to any limits regarding age, number of visits, or dollar amounts. Coverage required to be provided under this section shall not be subject to provisions relating to lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that are less favorable to an insured than lifetime maximums, deductibles, copayments, or coinsurance or other terms and conditions that apply to physical illness generally under the policy.

(d) Coverage required to be provided under this section is a health care service and a covered health care benefit for purposes of this part. Coverage shall not be denied *on the basis of the location of delivery of the treatment or* on the basis that the treatment is habilitative, nonrestorative, educational, academic, or custodial in nature.

(e) A health insurer may request, no more than once annually, a review of treatment provided to an insured for ~~autism spectrum disorders~~ *pervasive developmental disorder or autism*. The cost of obtaining the review shall be borne by the insurer. This subdivision does not apply to inpatient services.

(f) A health insurer shall establish and maintain an adequate network of ~~qualified autism~~ service providers with appropriate training and experience in ~~autism spectrum disorders~~ *pervasive developmental disorder or autism* to ensure that insureds have a choice of providers, and have timely access, continuity of care, and ready referral to all services required to be provided by this section consistent with Sections 10133.5 and 10133.55 and the regulations adopted pursuant thereto.

(g) (1) This section shall not be construed as reducing any obligation to provide services to an insured under an individualized family service plan, an individualized program plan, a prevention program plan, an individualized education program, or an individualized service plan.

(2) This section shall not be construed as limiting *or excluding* benefits that are otherwise available to an enrollee under a health insurance policy, *including, but not limited to, benefits that are required to be covered under Sections 10144.5 and 10144.51.*

(3) This section shall not be construed to mean that the services required to be covered pursuant to this section are not required to be covered under other provisions of this chapter.

~~(3)~~

(4) This section shall not be construed as affecting litigation that is pending on January 1, 2012.

~~(h) On and after January 1, 2014, to the extent that this section requires health benefits to be provided that exceed the essential health benefits required to be provided under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) by qualified health plans offering those benefits in the California Health Benefit Exchange pursuant to Title 22 (commencing with Section 100500) of the Government Code, the specific benefits that exceed the federally required essential health benefits are not required to be provided when offered by a health insurance policy through the Exchange. However, those specific benefits are~~

~~required to be provided if offered by a health insurance policy outside of the Exchange.~~

(h) Notwithstanding subdivision (a), on and after January 1, 2014, this section does not require any benefits to be provided that exceed the essential health benefits that all health plans will be required by federal regulations to provide under Section 1302(b) of the federal Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152).

(i) As used in this section, the following terms shall have the following meanings:

~~(1) "Autism spectrum disorder" means a neurobiological condition that includes autistic disorder, Asperger's disorder, Rett's disorder, childhood disintegrative disorder, and pervasive developmental disorder not otherwise specified.~~

~~(2) "Behavioral health treatment" means professional services and treatment programs, including behavioral intervention therapy, applied behavioral analysis, and other intensive behavioral programs, that have demonstrated efficacy to develop, maintain, or restore, to the maximum extent practicable, the functioning or quality of life of an individual and that have been demonstrated to treat the core symptoms associated with autism spectrum disorder.~~

~~(3) "Behavioral intervention therapy" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in behaviors, including the use of direct observation, measurement, and functional analyses of the relationship between environment and behavior.~~

~~(4)~~

(1) "Diagnosis of ~~autism spectrum disorders"~~ *pervasive developmental disorder or autism"* means medically necessary assessment, evaluations, or tests to diagnose whether an individual has ~~one of the autism spectrum disorders~~ *pervasive developmental disorder or autism.*

~~(5) "Evidence-based research" means research that applies rigorous, systematic, and objective procedures to obtain valid knowledge relevant to autism spectrum disorders.~~

(2) "Pervasive developmental disorder or autism" shall have the same meaning and interpretation as used in Section 1374.72.

~~(6)~~

(3) "Pharmacy care" means medications prescribed by a licensed physician and surgeon or other appropriately licensed or certified provider and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

~~(7)~~

(4) "Psychiatric care" means direct or consultative psychiatric services provided by a psychiatrist ~~or any other appropriately licensed or certified provider~~ *licensed in the state in which he or she practices.*

~~(8)~~

(5) "Psychological care" means direct or consultative psychological services provided by a psychologist ~~or any other appropriately licensed or certified provider~~ *licensed in the state in which he or she practices.*

~~(9) "Qualified autism service provider" shall include any nationally or state licensed or certified person, entity, or group that designs, supervises, or provides treatment of autism spectrum disorders and the unlicensed personnel supervised by the licensed or certified person, entity, or group, provided the services are within the experience and scope of practice of the licensed or certified person, entity, or group. "Qualified autism service provider" shall also include any service provider that is vendorized by a regional center to provide those same services for autism spectrum disorders under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code or Title 14 (commencing with Section 95000) of the Government Code and the unlicensed personnel supervised by that provider, or a State Department of Education nonpublic, nonsectarian agency as defined in Section 56035 of the Education Code approved to provide those same services for autism spectrum disorders and the unlicensed personnel supervised by that agency. A qualified autism service provider shall ensure criminal background screening and fingerprinting, and adequate training and supervision of all personnel utilized to implement services. Any national license or certification recognized by this section shall be accredited by the National Commission for Certifying Agencies (NCCA).~~

~~(10)~~

(6) "Therapeutic care" means services provided by *a* licensed or certified speech ~~therapists~~ *therapist, an* occupational ~~therapists~~

therapist, or *a* physical~~ therapists or any other appropriately licensed or certified provider~~ *therapist*.

~~(11)~~

(7) "Treatment for~~ autism spectrum disorders"~~ *pervasive developmental disorder or autism"* means all of the following care, including necessary equipment, *that develops, maintains, or restores to the maximum extent practicable the functioning or quality of life of an individual with pervasive developmental disorder or autism and is* prescribed or ordered for an individual diagnosed with~~ one of the autism spectrum disorders~~ *pervasive developmental disorder or autism* by a licensed physician and surgeon or a licensed psychologist~~ or any other appropriately licensed or certified provider~~ who determines the care to be medically necessary:

~~(A) Behavioral health treatment.~~

~~(B)~~

(A) Pharmacy care*, if the policy includes coverage for prescription drugs*.

~~(C)~~

(B) Psychiatric care.

~~(D)~~

(C) Psychological care.

~~(E)~~

(D) Therapeutic care.

~~(F) Any care for individuals with autism spectrum disorders that is demonstrated, based upon best practices or evidence-based research, to be medically necessary.~~

(8) "Treatment for pervasive developmental disorder or autism" does not include behavioral health treatment, as defined in Section 10144.51.

(j) This section, with the exception of subdivision (b), shall not apply to dental-only or vision-only health insurance policies.

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

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY MAY 2, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 374

Introduced by Assembly Member Hayashi

February 14, 2011

~~An act to add Chapter 5.8 (commencing with Section 2697.2) to Division 2 of, and to repeal Section 2697.8 of, the Business and Professions Code, relating to athletic trainers.~~ *An act to add Chapter 2.7 (commencing with Section 18898) to Division 8 of the Business and Professions Code, relating to athletic trainers.*

LEGISLATIVE COUNSEL'S DIGEST

AB 374, as amended, Hayashi. ~~Athletic trainers.~~ *Athletic.*

Existing law provides for the regulation of various professions and vocations, including those of an athlete agent.

This bill would make it unlawful for any person to hold himself or herself out as a certified athletic trainer unless he or she has been certified by the Board of Certification, Inc., and has either graduated from a college or university, after completing an accredited athletic training education program, as specified, or completed requirements for certification by the Board of Certification, Inc., prior to January 1, 2004. The bill would make it an unfair business practice to violate these provisions.

~~Existing law provides for the regulation of various professions and vocations, including those of an athlete agent.~~

~~This bill would, commencing January 1, 2013, provide for the licensure and regulation of athletic trainers, as defined, by an Athletic Trainer Licensing Committee, to be established by the bill within the Medical Board of California. Under the bill, the committee would be comprised of 7 members, as specified, appointed by the Governor, subject to Senate confirmation, the Senate Committee on Rules, and the Speaker of the Assembly. The bill would, except as specified, prohibit a person from practicing as an athletic trainer or using certain titles without a license issued by the committee. The bill would require an applicant for licensure to meet certain educational requirements, pass a specified examination, hold specified athletic trainer certification, possess emergency cardiac care certification, and submit an application and pay an application and processing fee established by the committee. The bill would require the committee to issue a license to an applicant who qualifies for licensure and pays a specified license fee. The bill would also specify that a license shall be valid for 2 years and is subject to renewal upon the completion of specified requirements including the payment of a renewal fee. The bill would define the practice of athletic training and prescribe supervision and other requirements on athletic trainers. The bill would create the Athletic Trainers Account, within the Contingent Fund of the Medical Board of California, would direct the deposit of the application and renewal fees into this account, and would make those fees available to the committee subject to appropriation by the Legislature.~~

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

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

SECTION 1. Chapter 2.7 (commencing with Section 18898) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 2.7. ATHLETIC TRAINERS

18898. (a) No person shall hold himself or herself out to be a certified athletic trainer unless he or she meets the following requirements:

(1) He or she has done either of the following:

(A) Graduated from a college or university after completing an athletic training education program accredited by the Commission on Accreditation of Athletic Training Education, or its predecessors or successors.

(B) Completed requirements for certification by the Board of Certification, Inc., prior to January 1, 2004.

(2) He or she has been certified by the Board of Certification, Inc.

(b) It is an unfair business practice within the meaning of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 for any person to use the title of "certified athletic trainer" or any other term, such as "licensed," "registered," or "ATC," that implies or suggests that the person is certified as an athletic trainer, if the person does not meet the requirements of subdivision (a).

~~SECTION 1. The Legislature finds and declares the following:~~

~~(a) California is one of only three states that does not currently regulate the practice of athletic training. This continued lack of regulation creates the risk that individuals who have lost or are unable to obtain licensure in another state will come to California to practice, thereby putting the public in danger and degrading the standards of the profession as a whole.~~

~~(b) There is a pressing and immediate need to regulate the profession of athletic training in order to protect the public health, safety, and welfare. This need is particularly important because athletic trainers often work with schoolage children.~~

~~SEC. 2. Chapter 5.8 (commencing with Section 2697.2) is added to Division 2 of the Business and Professions Code, to read:~~

~~CHAPTER 5.8. ATHLETIC TRAINERS~~

~~2697.2. This chapter shall be known and may be cited as the Athletic Trainers Practice Act.~~

~~2697.4. For the purposes of this chapter, the following definitions shall apply:~~

~~(a) "Athletic trainer" means a person who meets the requirements of this chapter and is licensed by the committee.~~

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

~~(c) "Committee" means the Athletic Trainer Licensing Committee.~~

~~2697.6. (a) No person shall engage in the practice of athletic training unless licensed pursuant to this chapter.~~

~~(b) No person shall use the title "athletic trainer," "licensed athletic trainer," "certified athletic trainer," "athletic trainer certified," "a.t.," "a.t.l.," "c.a.t.," "a.t.c.," or any other variation of these terms, or any other similar terms indicating that the person is an athletic trainer unless that person is licensed pursuant to this chapter.~~

~~(c) Notwithstanding subdivisions (a) and (b), a person who practiced athletic training in California for a period of seven consecutive years prior to January 1, 2013, may use the title "athletic trainer" without being licensed by the committee. However, on and after January 1, 2016, no person may use the title "athletic trainer" unless he or she is licensed by the committee pursuant to the provisions of this chapter.~~

~~2697.8. (a) There is established an Athletic Trainer Licensing Committee within the Medical Board of California. The committee shall consist of seven members.~~

~~(b) The seven committee members shall include the following:~~

~~(1) Four licensed athletic trainers. Initially, the committee shall include four athletic trainers who have satisfied the requirements of subdivision (a) of Section 2697.12 and who will satisfy the remainder of the licensure requirements described in Section 2697.12 as soon as it is practically possible.~~

~~(2) One public member.~~

~~(3) Two licensees, in any combination, chosen from the following: physicians and surgeons licensed by the board, osteopathic physicians and surgeons licensed by the Osteopathic Medical Board of California, or doctors of chiropractic licensed by the State Board of Chiropractic Examiners.~~

~~(c) Subject to confirmation by the Senate, the Governor shall appoint two of the licensed athletic trainers and the public member. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a licensed athletic trainer and a physician and surgeon, an osteopathic physician and surgeon, or a doctor of chiropractic as described in paragraph (3) of subdivision (b).~~

~~(d) (1) All appointments shall be for a term of four years and shall expire on June 30 of the year in which the term expires. Vacancies shall be filled for any unexpired term.~~

~~(2) Notwithstanding paragraph (1), for initial appointments made on or after January 1, 2013, the public member appointed by the Governor shall serve a term of one year. Two of the athletic trainers appointed by the Senate Committee on Rules and the Speaker of the Assembly shall serve terms of three years, and the remaining members shall serve terms of four years.~~

~~(e) Each member of the committee shall receive per diem and expenses as provided in Section 103.~~

~~(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. The repeal of this section renders the committee subject to the review required by Article 7.5 (commencing with Section 9147.7) of the Government Code.~~

~~2697.10. (a) The committee shall adopt, repeal, and amend regulations as may be necessary to enable it to carry into effect the provisions of this chapter. All regulations shall be in accordance with the provisions of this chapter.~~

~~(b) In promulgating regulations, the committee may consult the professional standards issued by the National Athletic Trainers' Association, the Board of Certification, Inc., or any other nationally recognized professional association.~~

~~(c) The committee shall approve programs for the education and training of athletic trainers.~~

~~(d) 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.~~

~~2697.12. In order to qualify for a license, an applicant shall meet all of the following requirements:~~

~~(a) Has submitted an application developed by the committee that includes evidence that the applicant has completed athletic trainer certification eligibility requirements from a nationally accredited athletic training education program at a four-year college or university approved by the committee.~~

~~(b) Has passed an athletic training certification examination offered by a nationally accredited athletic trainer certification agency approved by the committee.~~

~~(c) Holds current athletic training certification from a nationally accredited athletic trainer certification agency approved by the committee.~~

~~(d) Possesses an emergency cardiac care certification from a certification body, approved by the committee, that adheres to the most current international guidelines for cardiopulmonary resuscitation and emergency cardiac care.~~

~~(e) Has paid the application and processing fee established by the committee, as described in Section 2697.16.~~

~~2697.13. The committee shall issue a license to an applicant who satisfies the requirements described in Section 2697.12 and pays a license fee, as described in Section 2697.16.~~

~~2697.14. A license issued by the committee pursuant to Section 2697.12 shall be valid for two years and thereafter shall be subject to the renewal requirements described in Sections 2697.16 and 2697.18.~~

~~2697.16. (a) Each applicant for licensure shall pay a nonrefundable application and processing fee, to be fixed as described in subdivision (b), at the time the application is filed.~~

~~(b) The application and processing fee shall be fixed by the committee by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed in an amount necessary to cover the reasonable regulatory costs of processing applications pursuant to this chapter as projected for the fiscal year commencing on the date the fees become effective.~~

~~(c) Each applicant who qualifies for licensure, as a condition precedent to the issuance of a license shall pay an initial license fee in an amount fixed by the committee consistent with this section in an amount sufficient to cover the reasonable regulatory costs of carrying out the provisions of this chapter.~~

~~(d) The biennial renewal fee shall be fixed by the committee consistent with this section and shall be sufficient to cover the reasonable regulatory costs of carrying out the provisions of this chapter.~~

~~2697.18. The committee shall renew a license if an applicant meets all of the following requirements:~~

~~(a) Pays the renewal fee as established by the committee.~~

~~(b) Submits proof of satisfactory completion of continuing education, as determined by the committee.~~

~~(c) Submits proof of current emergency cardiac care certification meeting the requirements of subdivision (c) of Section 2697.12.~~

~~(d) Demonstrates that his or her license is otherwise in good standing, including, that the applicant for renewal possesses a current, unencumbered certification from a nationally accredited athletic trainer certification agency approved by the committee.~~

~~2697.20. (a) The practice of athletic training is the professional treatment of a patient for risk management and injury and illness prevention; the clinical evaluation and assessment of a patient for an injury or illness sustained or exacerbated while participating in physical activity, or both; the immediate care and treatment of a patient for an injury or illness sustained or exacerbated while participating in physical activity, or both; and the rehabilitation and reconditioning of a patient's injury or illness, or both. An athletic trainer shall refer a patient to an appropriate licensed health care provider when the treatment or management of the injury, illness, or condition is not within the scope of practice of an athletic trainer.~~

~~(b) No licensee shall provide, offer to provide, or represent that he or she is qualified to provide any treatment that he or she is not qualified to perform by his or her education, training, or experience, or that he or she is otherwise prohibited by law from performing.~~

~~(c) Nothing in this chapter shall authorize an athletic trainer to perform grade 5 joint mobilizations.~~

~~(d) An athletic trainer shall render treatment under the direction of a physician and surgeon licensed by the board, an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California, or a doctor of chiropractic licensed by the State Board of Chiropractic Examiners who shall order and oversee the athletic trainer and shall be responsible for the athletic training activities performed by the athletic trainer. This direction shall be provided by verbal order when the directing physician and surgeon, osteopathic physician and surgeon, or doctor of chiropractic is present and by written order or by athletic training treatment plans or protocols, to be established by the physician and surgeon, osteopathic physician and surgeon, or doctor of chiropractic, when the directing physician and surgeon, osteopathic physician and surgeon, or doctor of chiropractic is not present.~~

~~(c) Notwithstanding any other provisions of law and consistent with the provisions of this chapter, the committee may establish other alternative mechanisms for the adequate supervision of an athletic trainer.~~

~~2697.22. The requirements of this chapter do not apply to the following:~~

~~(a) An athletic trainer licensed, certified, or registered in another state who is in California temporarily to engage in the practice of athletic training for, among other things, an athletic or sporting event.~~

~~(b) An athletic trainer licensed, certified, or registered in another state who is invited by a sponsoring organization, such as the United States Olympic Training Center, to temporarily provide athletic training services under his or her state's scope of practice.~~

~~(c) A student enrolled in an athletic training education program, while participating in educational activities under the supervision and guidance of an athletic trainer licensed under this chapter.~~

~~(d) A member of the United States Armed Forces, licensed, certified, or registered in another state, as part of his or her federal employment in California for a limited time.~~

~~2697.24. Nothing in this chapter shall be construed to limit, impair, or otherwise apply to the practice of any person licensed and regulated under any other chapter of Division 2 (commencing with Section 500).~~

~~2697.26. The committee may order the denial of an application for, or the issuance subject to terms and conditions of, or the suspension or revocation of, or the imposition of probationary conditions upon an athletic trainer's license after a hearing for unprofessional conduct that includes, but is not limited to, a violation of this chapter or the regulations adopted by the committee pursuant to this chapter.~~

~~2697.28. There is established in the Contingent Fund of the Medical Board of California the Athletic Trainers Account. All fees collected pursuant to this chapter shall be paid into the account. These fees shall be available to the committee, upon appropriation by the Legislature, for the regulatory purpose of carrying out the provisions of this chapter.~~

1 ~~2697.30. This chapter shall become operative on January 1,~~
2 ~~2013.~~

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AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 386

Introduced by Assembly Member Galgiani

February 14, 2011

An act to add Section 5023.3 to the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 386, as amended, Galgiani. Prisons: telehealth systems.

Existing law, the Telemedicine Development Act of 1996, regulates the practice of telemedicine, defined as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications, by a health care practitioner, as defined. Existing law establishes that it is the intent of the Legislature that the Department of Corrections and Rehabilitation operate in the most cost-effective and efficient manner possible when purchasing health care services for inmates.

This bill would state the Legislature's findings and declarations on the use of telehealth in the state's prisons. This bill would require the department, by January 1, 2013, to include protocols within its existing guidelines for determining when telehealth services are appropriate, and would require the department to require an operational telehealth services program at all adult institutions by January 1, 2016. The bill would require the department to schedule a patient for an evaluation with a distant physician when it is determined to be medically necessary, and would allow the department to use telehealth only when it is in the

best interest of the health and safety of the inmate patient. The bill would require the department to ensure that telehealth not be used to supplant civil service physicians and dentists.

The bill would require the department to report to the Legislature, as provided, by March 1, 2013, and every year thereafter, regarding the department's implementation of statewide telehealth services. This bill would render this reporting requirement inoperative on March 1, 2018.

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) It is the intent of the Legislature to require the Department
4 of Corrections and Rehabilitation to implement and maintain the
5 use of telehealth in state prisons.
6 (b) Telehealth improves inmates' access to health care by
7 enabling correctional systems to expand their provider network to
8 include physicians located outside the immediate vicinity of
9 prisons, particularly for inmates housed in remote areas of the state
10 with shortages of health care.
11 (c) The department's prison telehealth program began in 1997
12 as a pilot project for mental health inmates at Pelican Bay State
13 Prison and was successful at improving inmates' access to mental
14 health care. Accordingly, the department decided to expand the
15 program to provide mental health as well as medical specialty
16 services at other prisons. Currently, all of the state prisons are
17 equipped to provide basic telehealth services.
18 SEC. 2. Section 5023.3 is added to the Penal Code, to read:
19 5023.3. (a) In order to maximize the benefits that come with
20 the use of telehealth in the state's prisons, the department shall do
21 all of the following:
22 (1) By January 1, 2013, include within the department's existing
23 guidelines, protocols for determining when telehealth services are
24 medically appropriate and in the best interest of the health and
25 safety of the inmate patient.
26 (2) Require, by January 1, 2016, an operational telehealth
27 services program at all adult institutions within the department.
28 The program shall include all of the following:

(A) Specific goals and objectives for maintaining and expanding services and encounters provided by the telehealth services program, including store and forward telehealth technology.

(B) An information technology support infrastructure that will allow telehealth to be used at each adult prison.

(C) Specific guidelines for determining when and where telehealth would be the preferred delivery method for health care.

(D) Guidelines and protocols for appropriate use and expansion of store and forward telehealth technology in state prisons. For purposes of this section, "store and forward telehealth" means the transmission of medical information to be reviewed at a later time and at a distant site by a physician without the patient being present.

(3) Schedule a patient for evaluation with a distant physician via telehealth if and when it is determined that it is medically necessary.

(4) Utilize telehealth only when it is in the best interest of the health and safety of the inmate patient.

(5) Ensure that telehealth shall not be used to supplant civil service physician and dental positions.

(b) (1) On March 1, 2013, and each March 1 thereafter, the department shall report all of the following to the Joint Legislative Budget Committee, the Assembly Committee on Appropriations, the Assembly Committee on Budget, the Assembly Committee on Health, the Assembly Committee on Public Safety, the Senate Committee on Appropriations, the Senate Committee on Budget and Fiscal Review, the Senate Committee on Health, and the Senate Committee on Public Safety:

(A) The extent to which the department achieved the objectives developed pursuant to this section, as well as the most significant reasons for achieving or not achieving those objectives.

(B) The extent to which the department is operating a statewide telehealth services program, as set forth in this section, that provides telehealth services to every adult prison within the department, as well as the most significant reasons for achieving or not achieving that objective.

(C) A description of planned and implemented initiatives necessary to accomplish the next 12 months' objectives for achieving the goals developed pursuant to this section.

1 (2) The requirement for submitting a report imposed under this
2 subdivision is inoperative on March 1, 2018, pursuant to Section
3 10231.5 of the Government Code.
4 *(c) As used in this section, "telehealth" is defined as the mode*
5 *of delivering health care services and public health via information*
6 *and communication technologies to facilitate the diagnosis,*
7 *consultation, treatment, education, care management, and*
8 *self-management of a patient's health care while the patient is at*
9 *the originating site and the health care provider is at a distant*
10 *site. Telehealth facilitates patient self-management and caregiver*
11 *support for patients and includes synchronous interactions and*
12 *asynchronous store and forward transfers.*

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AMENDED IN SENATE JUNE 28, 2011

AMENDED IN ASSEMBLY MAY 18, 2011

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 439

Introduced by Assembly Member Skinner

February 14, 2011

An act to amend Section 56.36 of the Civil Code, relating to health care information.

LEGISLATIVE COUNSEL'S DIGEST

AB 439, as amended, Skinner. Health care information.

Existing law, the Confidentiality of Medical Information Act (CMIA), prohibits a health care provider, a contractor, or a health care service plan from disclosing medical information, as defined, regarding a patient of the provider or an enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. In addition to other remedies available, existing law authorizes an individual to bring an action against any person or entity who has negligently released his or her confidential records in violation of those provisions for nominal damages of $1,000.

This bill would specify that, in an action brought on or after January 1, 2012, a court may not award nominal damages if the defendant establishes specified factors as an affirmative defense, including, but not limited to, that it is a covered entity, as defined, and has complied with any obligations to notify persons entitled to receive notice regarding the release of the information. The bill would also make a technical, nonsubstantive change.

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

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

1 SECTION 1. Section 56.36 of the Civil Code is amended to
2 read:
3 56.36. (a) Any violation of the provisions of this part that
4 results in economic loss or personal injury to a patient is punishable
5 as a misdemeanor.
6 (b) In addition to any other remedies available at law, any
7 individual may bring an action against any person or entity who
8 has negligently released confidential information or records
9 concerning him or her in violation of this part, for either or both
10 of the following:
11 (1) Except as provided in subdivision (e), nominal damages of
12 one thousand dollars ($1,000). In order to recover under this
13 paragraph, it shall not be necessary that the plaintiff suffered or
14 was threatened with actual damages.
15 (2) The amount of actual damages, if any, sustained by the
16 patient.
17 (c) (1) In addition, any person or entity that negligently
18 discloses medical information in violation of the provisions of this
19 part shall also be liable, irrespective of the amount of damages
20 suffered by the patient as a result of that violation, for an
21 administrative fine or civil penalty not to exceed two thousand
22 five hundred dollars ($2,500) per violation.
23 (2) (A) Any person or entity, other than a licensed health care
24 professional, who knowingly and willfully obtains, discloses, or
25 uses medical information in violation of this part shall be liable
26 for an administrative fine or civil penalty not to exceed twenty-five
27 thousand dollars ($25,000) per violation.
28 (B) Any licensed health care professional, who knowingly and
29 willfully obtains, discloses, or uses medical information in violation
30 of this part shall be liable on a first violation, for an administrative
31 fine or civil penalty not to exceed two thousand five hundred
32 dollars ($2,500) per violation, or on a second violation for an
33 administrative fine or civil penalty not to exceed ten thousand
34 dollars ($10,000) per violation, or on a third and subsequent
35 violation for an administrative fine or civil penalty not to exceed

1 twenty-five thousand dollars ($25,000) per violation. Nothing in
2 this subdivision shall be construed to limit the liability of a health
3 care service plan, a contractor, or a provider of health care that is
4 not a licensed health care professional for any violation of this
5 part.
6 (3) (A) Any person or entity, other than a licensed health care
7 professional, who knowingly or willfully obtains or uses medical
8 information in violation of this part for the purpose of financial
9 gain shall be liable for an administrative fine or civil penalty not
10 to exceed two hundred fifty thousand dollars ($250,000) per
11 violation and shall also be subject to disgorgement of any proceeds
12 or other consideration obtained as a result of the violation.
13 (B) Any licensed health care professional, who knowingly and
14 willfully obtains, discloses, or uses medical information in violation
15 of this part for financial gain shall be liable on a first violation, for
16 an administrative fine or civil penalty not to exceed five thousand
17 dollars ($5,000) per violation, or on a second violation for an
18 administrative fine or civil penalty not to exceed twenty-five
19 thousand dollars ($25,000) per violation, or on a third and
20 subsequent violation for an administrative fine or civil penalty not
21 to exceed two hundred fifty thousand dollars ($250,000) per
22 violation and shall also be subject to disgorgement of any proceeds
23 or other consideration obtained as a result of the violation. Nothing
24 in this subdivision shall be construed to limit the liability of a
25 health care service plan, a contractor, or a provider of health care
26 that is not a licensed health care professional for any violation of
27 this part.
28 (4) Nothing in this subdivision shall be construed as authorizing
29 an administrative fine or civil penalty under both paragraphs (2)
30 and (3) for the same violation.
31 (5) Any person or entity who is not permitted to receive medical
32 information pursuant to this part and who knowingly and willfully
33 obtains, discloses, or uses medical information without written
34 authorization from the patient shall be liable for a civil penalty not
35 to exceed two hundred fifty thousand dollars ($250,000) per
36 violation.
37 (d) In assessing the amount of an administrative fine or civil
38 penalty pursuant to subdivision (c), the Office of Health
39 Information Integrity, licensing agency, or certifying board or
40 court shall consider any one or more of the relevant circumstances

presented by any of the parties to the case including, but not limited to, the following:

(1) Whether the defendant has made a reasonable, good faith attempt to comply with this part.

(2) The nature and seriousness of the misconduct.

(3) The harm to the patient, enrollee, or subscriber.

(4) The number of violations.

(5) The persistence of the misconduct.

(6) The length of time over which the misconduct occurred.

(7) The willfulness of the defendant's misconduct.

(8) The defendant's assets, liabilities, and net worth.

(e) (1) In an action brought by an individual pursuant to subdivision (b) on or after January 1, 2012, the court shall award any actual damages and reasonable attorney's fees and costs, but may not award nominal damages, for a violation of this part if the defendant establishes all of the following as an affirmative defense:

(A) The defendant is a covered entity, as defined in Section 160.103 of Title 45 of the Code of Federal Regulations.

(B) The defendant has complied with any obligations to notify all persons entitled to receive notice regarding the release of the information or records.

(C) The release of confidential information or records was solely to another covered entity.

(D) The defendant took appropriate preventive actions to protect the confidential information or records against release, retention, or use by any person or entity other than the covered entity that received the information or records, including, but not limited to:

(i) Developing and implementing security policies and procedures.

(ii) Designating a security official who is responsible for developing and implementing its security policies and procedures, including educating and training the workforce.

(iii) Encrypting the information or records, and protecting against the release or use of the encryption key and passwords*, or transmitting the information or records in a manner designed to provide similar protections against improper disclosures*.

(E) The defendant took appropriate corrective action after the release of the confidential records or information, and the covered entity that received the information or records immediately destroyed or returned the information or records.

(F) The covered entity that received the confidential information or records did not retain, use, or release the information or records.

(G) The defendant has not ~~previously violated this part, or, in the court's discretion, despite the prior violation,~~ *been found liable for a violation of this part within the three years preceding the alleged violation, or the court determines that* application of the affirmative defense is found to be compelling and consistent with the purposes of this section to promote reasonable conduct in light of all the facts.

(2) In an action under this subdivision, a plaintiff shall be entitled to recover reasonable attorney's fees and costs without regard to an award of actual or nominal damages.

(3) A defendant shall not be liable for more than one judgment on the merits for a violation of this subdivision.

(f) (1) The civil penalty pursuant to subdivision (c) shall be assessed and recovered in a civil action brought in the name of the people of the State of California in any court of competent jurisdiction by any of the following:

(A) The Attorney General.

(B) Any district attorney.

(C) Any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance.

(D) Any city attorney of a city.

(E) Any city attorney of a city and county having a population in excess of 750,000, with the consent of the district attorney.

(F) A city prosecutor in any city having a full-time city prosecutor or, with the consent of the district attorney, by a city attorney in any city and county.

(G) The Director of the Office of Health Information Integrity may recommend that any person described in subparagraphs (A) to (F), inclusive, bring a civil action under this section.

(2) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in paragraph (3), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the

1 treasurer of the city in which the judgment was entered and one-half
2 to the treasurer of the county in which the judgment was entered.
3 (3) If the action is brought by a city attorney of a city and
4 county, the entire amount of the penalty collected shall be paid to
5 the treasurer of the city and county in which the judgment was
6 entered.
7 (4) Nothing in this section shall be construed as authorizing
8 both an administrative fine and civil penalty for the same violation.
9 (5) Imposition of a fine or penalty provided for in this section
10 shall not preclude imposition of any other sanctions or remedies
11 authorized by law.
12 (6) Administrative fines or penalties issued pursuant to Section
13 1280.15 of the Health and Safety Code shall offset any other
14 administrative fine or civil penalty imposed under this section for
15 the same violation.
16 (g) For purposes of this section, "knowing" and "willful" shall
17 have the same meanings as in Section 7 of the Penal Code.
18 (h) No person who discloses protected medical information in
19 accordance with the provisions of this part shall be subject to the
20 penalty provisions of this part.

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AMENDED IN ASSEMBLY MARCH 23, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 518

Introduced by Assembly Member Wagner

February 15, 2011

~~An act to amend Section 15630.1 of the Welfare and Institutions Code, relating to elder abuse.~~ *An act to repeal Section 7480 of the Government Code, and to amend Section 15630.1 of, and to amend and repeal Sections 15633, 15634, 15640, and 15655.5 of, the Welfare and Institutions Code, relating to elder and dependent adult abuse.*

LEGISLATIVE COUNSEL'S DIGEST

AB 518, as amended, Wagner. Elder and dependent adult abuse: mandated reporters.

Existing law, the Elder Abuse and Dependent Adult Civil Protection Act, establishes procedures for the reporting, investigation, and prosecution of elder and dependent adult abuse, including, but not limited to financial abuse, as defined. These procedures require persons, defined as mandated reporters, to report known or suspected instances of elder or dependent adult abuse. A violation of the reporting requirements by a mandated reporter is a misdemeanor. Existing law, which will be repealed on January 1, 2013, defines who is a mandated reporter of suspected financial abuse of an elder or dependent adult. A violation of the financial abuse reporting requirements is subject to civil penalties.

This bill would delete the January 1, 2013, repeal date *and make conforming changes*.

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 7480 of the Government Code, as amended by Section 2 of Chapter 234 of the Statutes of 2008, is repealed.

~~7480. Nothing in this chapter prohibits any of the following:~~

~~(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.~~

~~(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:~~

~~(1) The number of items dishonored.~~

~~(2) The number of items paid that created overdrafts.~~

~~(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.~~

~~(4) The dates and amounts of deposits and debits and the account balance on these dates.~~

~~(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.~~

~~(6) The date the account opened and, if applicable, the date the account closed.~~

~~(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account~~

~~statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).~~

~~(c) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, or a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish, and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the requesting party for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:~~

~~(1) The number of items dishonored.~~

~~(2) The number of items paid that created overdrafts.~~

~~(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.~~

~~(4) The dates and amounts of deposits and debits and the account balance on these dates.~~

~~(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.~~

~~(6) The date the account opened and, if applicable, the date the account closed.~~

~~(7) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).~~

~~(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:~~

~~(1) Authorization of the disclosure for the period specified in subdivision (c).~~

~~(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.~~

~~(3) A description of the financial records that are authorized to be disclosed.~~

~~(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county adult protective services office when investigating the financial abuse of an elder or dependent adult, a long-term care ombudsman when investigating the financial abuse of an elder or dependent adult, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.~~

~~(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.~~

~~(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.~~

~~(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant~~

~~authority to examine, audit, or require reports of financial records or financial institutions as follows:~~

~~(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.~~

~~(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.~~

~~(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.~~

~~(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.~~

~~(h) The disclosure to the State Board of Equalization of any of the following:~~

~~(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.~~

~~(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.~~

~~(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.~~

~~(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.~~

~~(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.~~

~~(k) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.~~

~~(*l*) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:~~

~~(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.~~

~~(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.~~

~~(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.~~

~~(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.~~

~~(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.~~

~~(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:~~

~~(A) Any of the following, dated within the last three years:~~

~~(i) Form 599.~~

~~(ii) Form 1099.~~

~~(iii) A bank statement.~~

~~(iv) A check.~~

~~(v) A bank passbook.~~

~~(vi) A deposit slip.~~

~~(vii) A copy of a federal or state income tax return.~~

~~(viii) A debit or credit advice.~~

~~(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.~~

~~(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.~~

~~(xi) An asset identification report from a federal agency.~~

~~(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.~~

~~(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.~~

~~(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the~~

~~federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.~~

~~(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.~~

~~(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.~~

~~(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.~~

~~(n) The dissemination of financial information and records pursuant to any of the following:~~

~~(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.~~

~~(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.~~

~~(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.~~

~~(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.~~

~~(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.~~

~~(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.~~

~~(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.~~

~~(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.~~

~~(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:~~

~~(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.~~

~~(B) Disclosing information in response to a court order pursuant to paragraph (3).~~

~~(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.~~

~~(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:~~

~~(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied~~

~~with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.~~

~~(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.~~

~~(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.~~

~~(p) When the governing board of the Public Employees' Retirement System or the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipient's death, or if the account has been closed, the name and address of the person who closed the account.~~

~~(q) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.~~

~~(r) When the Franchise Tax Board certifies in writing to a financial institution that (1) a taxpayer filed a tax return that authorized a direct deposit refund with an incorrect financial institution account or routing number that resulted in all or a portion of the refund not being received, directly or indirectly, by~~

~~the taxpayer; (2) the direct deposit refund was not returned to the Franchise Tax Board; and (3) the refund was deposited directly on a specified date into the account of an accountholder of the financial institution who was not entitled to receive the refund, then the financial institution shall furnish to the Franchise Tax Board the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of direct deposit refund, or if the account has been closed, the name and address of the person who closed the account.~~

~~(s) This section shall become operative on January 1, 2013.~~

~~SECTION 1.~~

SEC. 2. Section 15630.1 of the Welfare and Institutions Code is amended to read:

15630.1. (a) As used in this section, "mandated reporter of suspected financial abuse of an elder or dependent adult" means all officers and employees of financial institutions.

(b) As used in this section, the term "financial institution" means any of the following:

(1) A depository institution, as defined in Section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

(2) An institution-affiliated party, as defined in Section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

(3) A federal credit union or state credit union, as defined in Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752), including, but not limited to, an institution-affiliated party of a credit union, as defined in Section 206(r) of the Federal Credit Union Act (12 U.S.C. Sec. 1786(r)).

(c) As used in this section, "financial abuse" has the same meaning as in Section 15610.30.

(d) (1) Any mandated reporter of suspected financial abuse of an elder or dependent adult who has direct contact with the elder or dependent adult or who reviews or approves the elder or dependent adult's financial documents, records, or transactions, in connection with providing financial services with respect to an elder or dependent adult, and who, within the scope of his or her employment or professional practice, has observed or has knowledge of an incident, that is directly related to the transaction or matter that is within that scope of employment or professional practice, that reasonably appears to be financial abuse, or who reasonably suspects that abuse, based solely on the information

before him or her at the time of reviewing or approving the document, record, or transaction in the case of mandated reporters who do not have direct contact with the elder or dependent adult, shall report the known or suspected instance of financial abuse by telephone immediately, or as soon as practicably possible, and by written report sent within two working days to the local adult protective services agency or the local law enforcement agency.

(2) When two or more mandated reporters jointly have knowledge or reasonably suspect that financial abuse of an elder or a dependent adult for which the report is mandated has occurred, and when there is an agreement among them, the telephone report may be made by a member of the reporting team who is selected by mutual agreement. A single report may be made and signed by the selected member of the reporting team. Any member of the team who has knowledge that the member designated to report has failed to do so shall, thereafter, make that report.

(3) If the mandated reporter knows that the elder or dependent adult resides in a long-term care facility, as defined in Section 15610.47, the report shall be made to the local ombudsman or local law enforcement agency.

(e) An allegation by the elder or dependent adult, or any other person, that financial abuse has occurred is not sufficient to trigger the reporting requirement under this section if both of the following conditions are met:

(1) The mandated reporter of suspected financial abuse of an elder or dependent adult is aware of no other corroborating or independent evidence of the alleged financial abuse of an elder or dependent adult. The mandated reporter of suspected financial abuse of an elder or dependent adult is not required to investigate any accusations.

(2) In the exercise of his or her professional judgment, the mandated reporter of suspected financial abuse of an elder or dependent adult reasonably believes that financial abuse of an elder or dependent adult did not occur.

(f) Failure to report financial abuse under this section shall be subject to a civil penalty not exceeding one thousand dollars ($1,000) or if the failure to report is willful, a civil penalty not exceeding five thousand dollars ($5,000), which shall be paid by the financial institution that is the employer of the mandated

reporter to the party bringing the action. Subdivision (h) of Section 15630 shall not apply to violations of this section.

(g) (1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel. Multiple actions for the civil penalty may not be brought for the same violation.

(2) Nothing in the Financial Elder Abuse Reporting Act of 2005 shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

(h) As used in this section, "suspected financial abuse of an elder or dependent adult" occurs when a person who is required to report under subdivision (a) observes or has knowledge of behavior or unusual circumstances or transactions, or a pattern of behavior or unusual circumstances or transactions, that would lead an individual with like training or experience, based on the same facts, to form a reasonable belief that an elder or dependent adult is the victim of financial abuse as defined in Section 15610.30.

(i) Reports of suspected financial abuse of an elder or dependent adult made by an employee or officer of a financial institution pursuant to this section are covered under subdivision (b) of Section 47 of the Civil Code.

SEC. 3. Section 15633 of the Welfare and Institutions Code, as amended by Section 5 of Chapter 140 of the Statutes of 2005, is amended to read:

15633. (a) The reports made pursuant to Sections 15630, 15630.1, and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected abuse of an elder or dependent adult and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse, nor shall it be construed to prohibit the disclosure by a financial institution of any reports or records relevant to the reports of abuse of an elder or dependent adult if the disclosure would be required of a financial institution by otherwise applicable state or federal law or court order.

~~(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 4. Section 15633 of the Welfare and Institutions Code, as added by Section 6 of Chapter 140 of the Statutes of 2005, is repealed.

~~15633. (a) The reports made pursuant to Sections 15630 and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.~~

~~(b) Reports of suspected elder or dependent adult abuse and information contained therein may be disclosed only to the following:~~

~~(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.~~

~~(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.~~

~~(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.~~

~~(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of elder or dependent adult abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse.~~

~~(d) This section shall become operative on January 1, 2013.~~

SEC. 5. Section 15634 of the Welfare and Institutions Code, as amended by Section 7 of Chapter 140 of the Statutes of 2005, is amended to read:

15634. (a) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of abuse of an elder or dependent adult shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of abuse of an elder or dependent adult shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of abuse of an elder or dependent adult or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) No care custodian, clergy member, health practitioner, mandated reporter of suspected financial abuse of an elder or dependent adult, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected abuse of an elder or dependent adult, provides the requesting agency with access to the victim of a known or suspected instance of abuse of an elder or dependent adult, shall incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report abuse of an elder or dependent adult, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present to the ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* a claim for reasonable ~~attorneys'~~ *attorney's* fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The ~~State Board of Control~~ *California Victim Compensation and Government Claims Board* shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. ~~Attorneys'~~ *Attorney's* fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

~~(d) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 6. Section 15634 of the Welfare and Institutions Code, as amended by Section 711 of Chapter 538 of the Statutes of 2006, is repealed.

~~15634. (a) No care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of the suspected victim or for disseminating the photographs with the reports required by this article. However, this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.~~

~~(b) No care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency investigating a report of known or suspected elder or dependent adult abuse, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse, shall incur civil or criminal liability as a result of providing that access.~~

~~(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, clergy member, health practitioner, or employee of an adult protective services agency or a local law~~

~~enforcement agency may present to the California Victim Compensation and Government Claims Board a claim for reasonable attorney's fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The California Victim Compensation and Government Claims Board shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorney's fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public entity has provided for the defense of the action pursuant to Section 995 of the Government Code.~~

~~(d) This section shall become operative on January 1, 2013.~~

SEC. 7. Section 15640 of the Welfare and Institutions Code, as amended by Section 9 of Chapter 140 of the Statutes of 2005, is amended to read:

15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 or 15630.1 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.

(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law

enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.

(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of ~~Health Services~~ *Public Health* shall immediately report by telephone and in writing

within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.

(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.

~~(g) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 8. Section 15640 of the Welfare and Institutions Code, as added by Section 10 of Chapter 140 of the Statutes of 2005, is repealed.

~~15640. (a) (1) An adult protective services agency shall immediately, or as soon as practically possible, report by telephone to the law enforcement agency having jurisdiction over the case any known or suspected instance of criminal activity, and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of abuse pursuant to Section 15630 of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision. Prior to making any cross-report of allegations~~

~~of financial abuse to law enforcement agencies, an adult protective services agency shall first determine whether there is reasonable suspicion of any criminal activity.~~

~~(2) If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person making the report that he or she is required to make the report to the long-term care ombudsman program or to a local law enforcement agency. The adult protective services agency shall not accept the report by telephone but shall forward any written report received to the long-term care ombudsman.~~

~~(b) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse determines, pursuant to its investigation, that the abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately, or as soon as practically possible, report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.~~

~~(c) A local law enforcement agency shall immediately, or as soon as practically possible, report by telephone to the long-term care ombudsman program when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or dependent adult. A local law enforcement agency shall also send a written report thereof within two working days of receiving the information~~

~~concerning the incident to any agency to which it is required to make a telephone report under this subdivision.~~

~~(d) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent. A long-term care ombudsman program and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, that has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until the report becomes a matter of public record.~~

~~(e) When a county adult protective services agency, a long-term care ombudsman program, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.~~

~~(f) County adult protective services agencies, long-term care ombudsman programs, and local law enforcement agencies shall report the results of their investigations of referrals or reports of abuse to the respective referring or reporting agencies.~~

~~(g) This section shall become operative on January 1, 2013.~~

SEC. 9. Section 15655.5 of the Welfare and Institutions Code, as amended by Section 11 of Chapter 140 of the Statutes of 2005, is amended to read:

15655.5. A county adult protective services agency shall provide the organizations listed in paragraphs (v), (w), and (x) of Section 15610.17, and mandated reporters of suspected financial abuse of an elder or dependent adult pursuant to Section 15630.1, with instructional materials regarding abuse and neglect of an elder

or dependent adult and their obligation to report under this chapter. At a minimum, the instructional materials shall include the following:

(a) An explanation of abuse and neglect of an elder or dependent adult, as defined in this chapter.

(b) Information on how to recognize potential abuse and neglect of an elder or dependent adult.

(c) Information on how the county adult protective services agency investigates reports of known or suspected abuse and neglect.

(d) Instructions on how to report known or suspected incidents of abuse and neglect, including the appropriate telephone numbers to call and what types of information would assist the county adult protective services agency with its investigation of the report.

~~(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 10. Section 15655.5 of the Welfare and Institutions Code, as amended by Section 712 of Chapter 538 of the Statutes of 2006, is repealed.

~~15655.5. A county adult protective services agency shall provide the organizations listed in paragraphs (v), (w), and (x) of Section 15610.17 with instructional materials regarding elder and dependent adult abuse and neglect and their obligation to report under this chapter. At a minimum, the instructional materials shall include the following:~~

~~(a) An explanation of elder and dependent adult abuse and neglect, as defined in this chapter.~~

~~(b) Information on how to recognize potential elder and dependent adult abuse and neglect.~~

~~(c) Information on how the county adult protective services agency investigates reports of known or suspected abuse and neglect.~~

~~(d) Instructions on how to report known or suspected incidents of abuse and neglect, including the appropriate telephone numbers to call and what types of information would assist the county adult protective services agency with its investigation of the report.~~

~~(e) This section shall become operative on January 1, 2013.~~

O

ASSEMBLY BILL No. 608

Introduced by Assembly Member Pan

February 16, 2011

An act relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 608, as introduced, Pan. Health care coverage: telemedicine.

Existing law provides that it is the intent of the Legislature to recognize the practice of telemedicine as a legitimate means by which an individual may receive medical services from a health care provider without person-to-person contact with the provider. Existing law defines telemedicine as the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Existing law sets forth procedures a health care practitioner must follow prior to providing health care through telemedicine.

This bill would declare the intent of the Legislature to enact legislation related to telemedicine.

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

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

1 SECTION 1. It is the intent of the Legislature to enact
2 legislation related to telemedicine.

O

AMENDED IN ASSEMBLY APRIL 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 783

Introduced by Assembly Member Hayashi

February 17, 2011

An act to amend Section 2406 of the Business and Professions Code, and to amend Section 13401.5 of the Corporations Code, relating to ~~professional corporations, and declaring the urgency thereof, to take effect immediately.~~ *professional corporations.*

LEGISLATIVE COUNSEL'S DIGEST

AB 783, as amended, Hayashi. Professional corporations: licensed physical *therapists and occupational* therapists.

Existing law regulating professional corporations provides that certain healing arts practitioners may be shareholders, officers, directors, or professional employees of a medical corporation ~~or a~~, podiatric medical corporation, *or a chiropractic corporation,* subject to certain limitations.

This bill would add licensed physical therapists *and licensed occupational therapists* to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of those corporations. The bill would also make conforming changes to a related provision.

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: ~~2/3~~ *majority*. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 2406 of the Business and Professions
2 Code is amended to read:
3 2406. A medical corporation or podiatry corporation is a
4 corporation that is authorized to render professional services, as
5 defined in Sections 13401 and 13401.5 of the Corporations Code,
6 so long as that corporation and its shareholders, officers, directors,
7 and employees rendering professional services who are physicians
8 and surgeons, psychologists, registered nurses, optometrists,
9 podiatrists, chiropractors, acupuncturists, naturopathic doctors,
10 physical therapists, or, in the case of a medical corporation only,
11 physician assistants, marriage and family therapists, or clinical
12 social workers are in compliance with the Moscone-Knox
13 Professional Corporation Act, the provisions of this article and all
14 other statutes and regulations now or hereafter enacted or adopted
15 pertaining to the corporation and the conduct of its affairs.
16 With respect to a medical corporation or podiatry corporation,
17 the governmental agency referred to in the Moscone-Knox
18 Professional Corporation Act is the board.
19 SEC. 2. Section 13401.5 of the Corporations Code is amended
20 to read:
21 13401.5. Notwithstanding subdivision (d) of Section 13401
22 and any other provision of law, the following licensed persons
23 may be shareholders, officers, directors, or professional employees
24 of the professional corporations designated in this section so long
25 as the sum of all shares owned by those licensed persons does not
26 exceed 49 percent of the total number of shares of the professional
27 corporation so designated herein, and so long as the number of
28 those licensed persons owning shares in the professional
29 corporation so designated herein does not exceed the number of
30 persons licensed by the governmental agency regulating the
31 designated professional corporation:
32 (a) Medical corporation.
33 (1) Licensed doctors of podiatric medicine.
34 (2) Licensed psychologists.
35 (3) Registered nurses.
36 (4) Licensed optometrists.
37 (5) Licensed marriage and family therapists.
38 (6) Licensed clinical social workers.

(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed physical therapists.
(12) Licensed occupational therapists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed physical therapists.
(9) Licensed occupational therapists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.

1 (10) Naturopathic doctors.
2 (g) Marriage and family therapy corporation.
3 (1) Licensed physicians and surgeons.
4 (2) Licensed psychologists.
5 (3) Licensed clinical social workers.
6 (4) Registered nurses.
7 (5) Licensed chiropractors.
8 (6) Licensed acupuncturists.
9 (7) Naturopathic doctors.
10 (h) Licensed clinical social worker corporation.
11 (1) Licensed physicians and surgeons.
12 (2) Licensed psychologists.
13 (3) Licensed marriage and family therapists.
14 (4) Registered nurses.
15 (5) Licensed chiropractors.
16 (6) Licensed acupuncturists.
17 (7) Naturopathic doctors.
18 (i) Physician assistants corporation.
19 (1) Licensed physicians and surgeons.
20 (2) Registered nurses.
21 (3) Licensed acupuncturists.
22 (4) Naturopathic doctors.
23 (j) Optometric corporation.
24 (1) Licensed physicians and surgeons.
25 (2) Licensed doctors of podiatric medicine.
26 (3) Licensed psychologists.
27 (4) Registered nurses.
28 (5) Licensed chiropractors.
29 (6) Licensed acupuncturists.
30 (7) Naturopathic doctors.
31 (k) Chiropractic corporation.
32 (1) Licensed physicians and surgeons.
33 (2) Licensed doctors of podiatric medicine.
34 (3) Licensed psychologists.
35 (4) Registered nurses.
36 (5) Licensed optometrists.
37 (6) Licensed marriage and family therapists.
38 (7) Licensed clinical social workers.
39 (8) Licensed acupuncturists.
40 (9) Naturopathic doctors.

(10) Licensed physical therapists.
(11) Licensed occupational therapists.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.
(10) Naturopathic doctors.
(m) Naturopathic doctor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed physician assistants.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Licensed physical therapists.
(8) Licensed doctors of podiatric medicine.
(9) Licensed marriage, family, and child counselors.
(10) Licensed clinical social workers.
(11) Licensed optometrists.
(n) Dental corporation.
(1) Licensed physicians and surgeons.
(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.

~~SEC. 3. 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:~~

~~In order to authorize licensed physical therapists to be shareholders, officers, directors, or professional employees of~~

1 ~~medical corporations and podiatric medical corporations as soon~~
2 ~~as possible, it is necessary that this act take effect immediately.~~

O

ASSEMBLY BILL No. 800

Introduced by Assembly Member Huber

February 17, 2011

An act to add Section 11564.10 to the Government Code, relating to boards and commissions.

LEGISLATIVE COUNSEL'S DIGEST

AB 800, as introduced, Huber. Boards and commissions: time reporting.

Existing law establishes various boards and commissions within state government. Existing law sets forth various standards and procedures that govern the amount of salary or per diem expenses that a member of a board or commission may earn or claim.

This bill would require that a member of a board or commission that meets specified requirements submit a quarterly report to the chair of the board or commission that details the time worked by the member fulfilling the duties of his or her position. This bill would also require that the chair of the board or commission submit a quarterly report to specified committees of the Legislature that contains copies of all of the time reports received by the chair.

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

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

1 SECTION 1. Section 11564.10 is added to the Government
2 Code, to read:

11564.10. (a) Notwithstanding any other law, a member of a board or commission that meets the requirements set out in subdivision (c) shall submit a quarterly report to the chair of that board or commission that details the time worked by the member fulfilling the duties of his or her position. The time worked shall be reported in increments of hours and tenths of hours.

(b) Notwithstanding Section 10231.5, the chair of the board or commission shall submit a quarterly report to the Senate Committee on Rules, the Assembly Committee on Rules, and any policy committee of the Legislature that has jurisdiction over the board or commission that contains copies of the reports received by the chair pursuant to subdivision (c) for the past quarter.

(c) This section shall apply to a member of a board or commission that meets all of the following requirements:

(1) The member was appointed to the position.

(2) The member receives a salary that is greater than the per diem expenses claimed by the member in furtherance of his or her duties.

(3) The member's salary is set by statute.

O

ASSEMBLY BILL No. 958

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:

1 SECTION 1. Section 110.5 is added to the Business and
2 Professions Code, to read:
3 110.5. (a) Notwithstanding any other provision of law and
4 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.~~

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ASSEMBLY BILL No. 1003

Introduced by Assembly Member Smyth

February 18, 2011

An act relating to professional and vocational licenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1003, as introduced, Smyth. Professional and vocational licenses.

Under existing law, boards within the Department of Consumer Affairs are responsible for the licensure and regulation of various professions and vocations. Existing law also provides for the licensure, registration, and regulation of clinical laboratories and various clinical laboratory personnel by the State Department of Public Health.

This bill would declare the intent of the Legislature to enact legislation that would require that all professional and vocational licenses currently issued by the Department of Consumer Affairs and its affiliate boards, and specified licenses issued by the State Department of Public Health, be issued from one central location and that the current regulatory, oversight, and enforcement authority with respect to holders of those licenses remain with those boards and the department currently performing those functions.

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

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

1 SECTION 1. It is the intent of the Legislature to enact
2 legislation that would require that all professional and vocational
3 licenses currently issued by the Department of Consumer Affairs

1 and its affiliate boards, bureaus, and commissions, and those
2 licenses issued by the State Department of Public Health pursuant
3 to Chapter 3 (commencing with Section 1200) of Division 2 of
4 the Business and Professions Code be issued from one central
5 location. It is also the intent of the Legislature that the current
6 regulatory, oversight, and enforcement authority with respect to
7 holders of those licenses remain with those boards, bureaus, and
8 commissions and the department currently performing those
9 functions.

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SENATE BILL No. 399

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:

1 SECTION 1. Section 651 of the Business and Professions Code
2 is amended to read:
3 651. (a) It is unlawful for any person licensed under this
4 division or under any initiative act referred to in this division to
5 disseminate or cause to be disseminated any form of public
6 communication containing a false, fraudulent, misleading, or
7 deceptive statement, claim, or image for the purpose of or likely
8 to induce, directly or indirectly, the rendering of professional
9 services or furnishing of products in connection with the
10 professional practice or business for which he or she is licensed.

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

1 certified" in reference to that certification is in accordance with
2 subparagraph (A). A physician and surgeon licensed under Chapter
3 5 (commencing with Section 2000) by the Medical Board of
4 California who is certified by a board or association referred to in
5 clause (i), (ii), or (iii) shall not use the term "board certified" unless
6 the full name of the certifying board is also used and given
7 comparable prominence with the term "board certified" in the
8 statement.
9 For purposes of this subparagraph, a "multidisciplinary board
10 or association" means an educational certifying body that has a
11 psychometrically valid testing process, as determined by the
12 Medical Board of California, for certifying medical doctors and
13 other health care professionals that is based on the applicant's
14 education, training, and experience.
15 For purposes of the term "board certified," as used in this
16 subparagraph, the terms "board" and "association" mean an
17 organization that is an American Board of Medical Specialties
18 member board, an organization with equivalent requirements
19 approved by a physician and surgeon's licensing board, or an
20 organization with an Accreditation Council for Graduate Medical
21 Education approved postgraduate training program that provides
22 complete training in a specialty or subspecialty.
23 The Medical Board of California shall adopt regulations to
24 establish and collect a reasonable fee from each board or
25 association applying for recognition pursuant to this subparagraph.
26 The fee shall not exceed the cost of administering this
27 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the
28 Statutes of 1990, this subparagraph shall become operative July
29 1, 1993. However, an administrative agency or accrediting
30 organization may take any action contemplated by this
31 subparagraph relating to the establishment or approval of specialist
32 requirements on and after January 1, 1991.
33 (C) A doctor of podiatric medicine licensed under Chapter 5
34 (commencing with Section 2000) by the Medical Board of
35 California may include a statement that he or she is certified or
36 eligible or qualified for certification by a private or public board
37 or parent association, including, but not limited to, a
38 multidisciplinary board or association, if that board or association
39 meets one of the following requirements: (i) is approved by the
40 Council on Podiatric Medical Education, (ii) is a board or

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.

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AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 4, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 25, 2011

SENATE BILL No. 462

Introduced by Senator Blakeslee
(Coauthor: Senator Runner)

February 16, 2011

An act to amend Section 56502 of, and to add Chapter 4.2 (commencing with Section 56395) to Part 30 of Division 4 of Title 2 of, the Education Code, relating to special education.

LEGISLATIVE COUNSEL'S DIGEST

SB 462, as amended, Blakeslee. Special education: special education advocates: certification.

Existing law requires local educational agencies to initiate, and individualized education program teams to conduct, meetings for the purposes of developing, reviewing, and revising the individualized education program of each individual with exceptional needs, as specified. Existing law also provides that it is the intent of the Legislature that parties to special education disputes be encouraged to seek resolution through mediation in a nonadversarial atmosphere, which may not be attended by attorneys or other independent contractors used to provide legal advocacy services, prior to filing a request for a due process hearing. Existing law provides, however, that this does not preclude the parent or public agency from being accompanied and advised by nonattorney representatives in mediation conferences.

This bill would ~~require~~ *authorize a* special education local plan ~~areas~~ *area*, ~~collectively, and~~ in collaboration with the State Department of Education, to develop a voluntary special education advocate certification program for persons who would participate, upon the invitation of a parent, as a member of a pupil's individualized education program team, or, upon the invitation of a parent, in a mediation conference, as specified. The bill would authorize *a* special education local plan ~~areas~~ *area* to provide alternative dispute resolution training, and require the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* to administer a test, to persons seeking certification, as specified. The bill would also require the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* to certify ~~, and maintain a registry of,~~ persons who have successfully passed the test and completed the training. The bill would require a certified special education advocate to disclose his or her relationship to the pupil or his or her parents, as specified. ~~Because the bill would require local educational agencies to perform additional duties, the bill would impose a state-mandated local program.~~

Existing law provides that upon receipt by the Superintendent of Public Instruction of a written request for a due process hearing regarding a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child with exceptional needs, the provision of a free appropriate public education to the child, or the availability of a program appropriate for the child, including the question of financial responsibility, from the parent or guardian or public agency, the Superintendent or his or her designee or designees immediately shall notify, in writing, all parties and provide them with a list of persons and organizations within the geographical area that can provide free or reduced cost representation or other assistance in preparing for the due process hearing. Existing law provides that the Superintendent or his or her designee shall have complete discretion in determining which individuals or groups shall be included on the list.

This bill would require the Superintendent or his or her designee to certify that the listed persons, including *certified* special education advocates, or organizations provide services for free or at a reduced cost.

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

SECTION 1. Chapter 4.2 (commencing with Section 56395) is added to Part 30 of Division 4 of Title 2 of the Education Code, to read:

CHAPTER 4.2. SPECIAL EDUCATION ADVOCATES

56395. It is the intent of the Legislature to protect families of individuals with exceptional needs and to improve the relationship between special education advocates and school districts by providing a voluntary special education advocate certification program.

56395.1. For the purpose of this chapter:

(a) "Alternative dispute resolution" means nonadversarial techniques used to reduce conflict and to come to a mutually beneficial agreement.

(b) "Certified special education advocate" means any nonattorney person, paid or unpaid, who speaks, writes, or works on behalf of a pupil who qualifies as an individual with exceptional needs, as defined in Section 56026, and who has been certified pursuant to the provisions of this chapter.

56395.2. (a) ~~Special~~ *A special* education local plan ~~areas~~ *area*, in collaboration with the department, ~~shall~~ *may* do all of the following:

~~(1) Collectively, and in consultation with the Office of Administrative Hearings, develop a voluntary special education~~*(1) Develop a voluntary special education* advocate certification program that includes a test, which shall be administered by the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences*, to certify that the person has sufficient knowledge and understanding of the process for resolving special education disputes.

(2) Determine the yearly fee to be charged ~~by a special education local plan area~~ to a person seeking certification as a special education advocate that shall not exceed the reasonable costs of providing training pursuant to subdivision (b).

(3) Notify the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* whether a person seeking certification has completed alternative dispute resolution training.

(b) ~~Special education local plan areas are authorized to~~ *A special education local plan area may* provide alternative dispute resolution training at least twice per year for persons seeking certification as a special education advocate. This training also may be offered by an entity pursuant to a contract with a special education local plan area. The training may consist of all of the following:

(1) At least four hours of alternative dispute resolution training.

(2) Relevant ethics training.

(3) Review of relevant special education laws.

56395.3. The ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* shall do all of the following:

(a) Administer a test, either online or in person, to a person seeking certification as a special education advocate. The test shall be offered in the native language of the person seeking certification as a special education advocate.

(b) Certify a person who has successfully passed the test described in subdivision (a) and who has fulfilled the training requirements listed in subdivision (b) of Section 56395.2. Certification may be granted for a period not to exceed five years.

~~(c) Post a registry of certified special education advocates on its Internet Web site.~~

~~(d)~~

(c) Charge a fee to a person seeking certification as a special education advocate that shall not exceed the reasonable costs of administering the test pursuant to subdivision (a) ~~and maintaining the registry pursuant to subdivision (c)~~.

56395.4. (a) A certified special education advocate shall do all of the following:

(1) Upon the invitation of a parent, speak, write, or work on behalf of a pupil who qualifies as an individual with exceptional needs pursuant to paragraph (1) of subdivision (b) of Section 56341, or subdivision (b) of Section 56500.3.

(2) Register with the ~~Office of Administrative Hearings~~ *Board of Behavioral Sciences* and renew their certification every five years by successfully passing the test described in subdivision (a) of Section 56395.3. Additional training shall not be required in order to renew certification. ~~Registrants shall indicate whether they are a paid or an unpaid advocate. If a person registers as a paid advocate, and he or she is referred by an attorney, he or she shall be required to report the identity of the person who employs him or her.~~

(3) Have a report, available upon request by parents, special education local plan area staff, a school district, or the department, regarding the frequency of their advocacy activities, the subject matter of the issues upon which he or she has worked, the fees, if any, he or she has received for his or her advocacy, and the length of time he or she took to resolve each case.

(4) Disclose at the beginning of an individualized education program team meeting and at the beginning of a mediation session, in writing, his or her relationship to the pupil or his or her parents and indicate whether he or she is receiving payment of any kind for his or her services.

(b) A certified special education advocate shall not be reimbursed by a parent, organization, advocacy group, or school district for the certification fee imposed pursuant to paragraph (2) of subdivision (a) of Section 56395.2 or subdivision ~~(d)~~*(c)* of Section 56395.3.

(c) Nothing in this section shall be construed to allow fees or costs awarded to a prevailing party pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) to be awarded to a special education advocate.

56395.5. (a) A parent, as defined in Section 56028, is not required to be certified pursuant to the provisions of this chapter in order to represent his or her child.

(b) A mediator, as described in subdivision (d) of Section 56500.3, shall require nonparent participants in a mediation session to disclose their relationship to the pupil and their status as an advocate.

SEC. 2. Section 56502 of the Education Code is amended to read:

1 56502. (a) All requests for a due process hearing shall be filed
2 with the Superintendent in accordance with Section 300.508(a)
3 and (b) of Title 34 of the Code of Federal Regulations.
4 (b) The Superintendent shall develop a model form to assist
5 parents in filing a request for due process that is in accordance
6 with Section 300.509 of Title 34 of the Code of Federal
7 Regulations.
8 (c) (1) The party, or the attorney representing the party,
9 initiating a due process hearing by filing a written request with the
10 Superintendent shall provide the other party to the hearing with a
11 copy of the request at the same time as the request is filed with the
12 Superintendent. The due process hearing request notice shall
13 remain confidential. In accordance with Section 1415(b)(7)(A) of
14 Title 20 of the United States Code, the request shall include the
15 following:
16 (A) The name of the child, the address of the residence of the
17 child, or available contact information in the case of a homeless
18 child, and the name of the school the child is attending.
19 (B) In the case of a homeless child or youth within the meaning
20 of paragraph (2) of Section 725 of the federal McKinney-Vento
21 Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)), available
22 contact information for the child and the name of the school the
23 child is attending.
24 (C) A description of the nature of the problem of the child
25 relating to the proposed initiation or change, including facts relating
26 to the problem.
27 (D) A proposed resolution of the problem to the extent known
28 and available to the party at the time.
29 (2) A party may not have a due process hearing until the party,
30 or the attorney representing the party, files a request that meets
31 the requirements listed in this subdivision.
32 (d) (1) The due process hearing request notice required by
33 Section 1415(b)(7)(A) of Title 20 of the United States Code shall
34 be deemed to be sufficient unless the party receiving the notice
35 notifies the due process hearing officer and the other party in
36 writing that the receiving party believes the due process hearing
37 request notice has not met the notice requirements. The party
38 providing a hearing officer notification shall provide the
39 notification within 15 days of receiving the due process hearing
40 request notice. Within five days of receipt of the notification, the

hearing officer shall make a determination on the face of the notice of whether the notification meets the requirements of Section 1415(b)(7)(A) of Title 20 of the United States Code, and shall immediately notify the parties in writing of the determination.

(2) (A) The response to the due process hearing request notice shall be made within 10 days of receiving the request notice in accordance with Section 1415(c)(2)(B) of Title 20 of the United States Code.

(B) In accordance with Section 300.508(e)(1) of Title 34 of the Code of Federal Regulations, if the local educational agency has not sent a prior written notice under Section 56500.4 and Section 300.503 of Title 34 of the Code of Federal Regulations to the parent regarding the subject matter contained in the due process hearing request of the parent, the response from the local educational agency to the parent shall include all of the following:

(i) An explanation of why the agency proposed or refused to take the action raised in the due process hearing request.

(ii) A description of other options that the individualized education program team considered and the reasons why those options were rejected.

(iii) A description of each assessment procedure, assessment, record, or report the agency used as the basis for the proposed or refused action.

(iv) A description of other factors that are relevant to the proposed or refused action of the agency.

(C) A response by a local educational agency under subparagraph (B) shall not be construed to preclude the local educational agency from asserting that the due process request of the parent was insufficient, where appropriate.

(D) Except as provided under subparagraph (B), the party receiving a due process hearing request notice, within 10 days of receiving the notice, shall send to the other party, in accordance with Section 300.508(f) of Title 34 of the Code of Federal Regulations, a response that specifically addresses the issues raised in the due process hearing request notice.

(e) A party may amend a due process hearing request notice only if the other party consents in writing to the amendment and is given the opportunity to resolve the hearing issue through a meeting held pursuant to Section 1415(f)(1)(B) of Title 20 of the United States Code, or the due process hearing officer grants

1 permission, except that the hearing officer may only grant
2 permission at any time not later than five days before a due process
3 hearing occurs. The applicable timeline for a due process hearing
4 under this chapter shall recommence at the time the party files an
5 amended notice, including the timeline under Section 1415(f)(1)(B)
6 of Title 20 of the United States Code.
7 (f) The Superintendent shall take steps to ensure that within 45
8 days after receipt of the written hearing request the hearing is
9 immediately commenced and completed, including, any mediation
10 requested at any point during the hearing process pursuant to
11 paragraph (2) of subdivision (b) of Section 56501, and a final
12 administrative decision is rendered, unless a continuance has been
13 granted pursuant to Section 56505.
14 (g) Notwithstanding any procedure set forth in this chapter, a
15 public agency and a parent, if the party initiating the hearing so
16 chooses, may meet informally to resolve an issue or issues relating
17 to the identification, assessment, or education and placement of
18 the child, or the provision of a free appropriate public education
19 to the child, to the satisfaction of both parties prior to the hearing.
20 The informal meeting shall be conducted by the district
21 superintendent, county superintendent, or director of the public
22 agency or his or her designee. A designee appointed pursuant to
23 this subdivision shall have the authority to resolve the issue or
24 issues.
25 (h) Upon receipt by the Superintendent of a written request by
26 the parent or public agency, the Superintendent or his or her
27 designee or designees immediately shall notify, in writing, all
28 parties of the request for the hearing and the scheduled date for
29 the hearing. The notice shall advise all parties of all their rights
30 relating to procedural safeguards. The Superintendent or his or her
31 designee shall provide both parties with a list of persons, including
32 *certified* special education advocates, and organizations within the
33 geographical area that can provide free or reduced cost
34 representation or other assistance in preparing for the due process
35 hearing. This list shall include a brief description of the requirement
36 to qualify for the services. The Superintendent or his or her
37 designee shall certify that the listed persons or organizations
38 provide services for free or at a reduced cost, but shall otherwise
39 have complete discretion in determining which individuals or
40 groups shall be included on the list.

(i) In accordance with Section 1415(f)(3)(B) of Title 20 of the United States Code, the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under this section, unless the other party agrees otherwise.

~~SEC. 3. If the Commission on State Mandates determines that this act contains 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.~~

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AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL **No. 544**

Introduced by Senator Price

February 17, 2011

An act to amend Sections 116, 155, 159.5, 726, ~~802.1,~~ 803, 803.5, 803.6, ~~822,~~ *1695,* 2246, *2360, 2662, 2770,* 2960.1, *3534, 4860,* 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, *1707,* 1947.1, 1947.2, 1947.3, 1947.4, ~~1947.5,~~ 1947.6, 1947.7, 1947.8, *1954.5, 2320, 2458.1,* 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, ~~2533.10, 2533.11,~~ 2533.12, 2533.13, 2533.14, *2538.52.5,* 2570.38, 2570.39, 2570.40, 2570.41, ~~2570.42, 2570.43, 2570.44,~~ 2570.45, 2570.46, 2570.47, *2570.48,* 2661.8, 2661.9, 2661.10, 2661.11, ~~2661.12, 2661.13, 2661.14,~~ 2661.15, 2661.16, 2661.17, *2673,* 2766, 2766.1, 2766.2, 2766.3, ~~2766.4, 2766.5, 2766.6,~~ 2766.7, 2766.8, *2799.2,* 2879.1, 2879.2, 2879.3, 2879.4, ~~2879.5, 2879.6, 2879.7,~~ 2879.8, 2879.10, *2886.5,* 2969.1, 2969.2, 2969.3, 2969.4, *2972,* 3112, 3112.1, 3112.2, 3112.3, ~~3112.4, 3112.5, 3112.6,~~ 3112.7, 3112.8, 3112.9, *3123,* 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, *3533.5, 3664.5,* 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, *3769.11,* 4316, 4316.1, 4316.2, 4316.3, ~~4316.4,~~ 4316.5, 4316.6, *4344,* 4375, 4526, 4526.1, 4526.2, 4526.3, ~~4526.4, 4526.5, 4526.6,~~ 4526.8, 4526.9, *4543.5,* 4888, 4888.1, 4888.2, 4888.3, ~~4888.4,~~ 4888.5, 4888.6, 4888.7, *4962,* 4964.1, 4964.2, 4964.3, 4964.4, ~~4964.55, 4964.6, 4964.7,~~ 4964.8, 4964.9, 4964.10, *4990.43,* 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. 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 Department of Justice to serve or submit to a healing arts board for service accusations and default decisions within a specified timeframe and would also require the Department of Justice to set a hearing within a specified timeframe upon receiving a notice of defense, except as specified.*

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 licentiate 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 *certain* healing arts without a current and valid license, ~~except as specified;~~ or to fraudulently buy, sell, or obtain *such* a license to practice *certain* 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~~ *2014*, 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~~ *certain* healing arts ~~board~~ *boards* 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~~ *diversion programs administered by the Dental Board of California, the Osteopathic Medical Board of California, the Physical Therapy Board of California, the Board of Registered Nursing, the Physician Assistant Committee, and the Veterinary Medical Board of California by January 1, 2014.*

(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.

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

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

1 SECTION 1. This act shall be known and may be cited as the
2 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 licentiates. 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.~~

SEC. 3. 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.~~

SEC. 4. 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 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, Professions and Economic Development and the Assembly Committee on Health annually regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

~~SEC. 7.~~

SEC. 5. 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 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.

(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.~~

SEC. 6. 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 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (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.~~

SEC. 7. 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 6 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.~~

SEC. 8. 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.

(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.

(c) This section shall not apply to sexual contact between a licensee and his or her spouse or person in an equivalent domestic relationship when that licensee provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship.

~~SEC. 11.~~

SEC. 9. 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.~~

SEC. 10. 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.~~

SEC. 11. 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 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 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.~~

SEC. 12. 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 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 board that issued the license.

~~SEC. 17.~~

SEC. 13. 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 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.~~

SEC. 14. 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 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.~~

SEC. 15. 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.~~

SEC. 16. 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.~~

SEC. 17. 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~~

2538.52.5. Notwithstanding any other provision of law, 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 fit and sell hearing aids to engage in the fitting and selling of hearing aids.

(b) Any person to fraudulently buy, sell, or obtain a license to fit and sell hearing aids or to violate any provision of this chapter.

~~SEC. 50.~~

SEC. 47. 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.~~

SEC. 48. 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 *into* 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.~~

SEC. 49. 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~~ *held* 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.~~

SEC. 50. 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~~ *"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~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 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.~~

SEC. 51. 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 licentiate 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. 58.~~

SEC. 52. Section 2570.46 is added to the Business and Professions Code, to read:

2570.46. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, 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~~ *whom* 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

AMENDED IN SENATE JANUARY 26, 2012

AMENDED IN SENATE MAY 24, 2011

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE MARCH 30, 2011

SENATE BILL No. 924

Introduced by ~~Senator~~ *Senators Price,* Walters, *and Steinberg*
~~(Coauthors: Senators Emmerson, Runner, and Strickland)~~
~~(Coauthors: Assembly Members Bill Berryhill, Chesbro, Knight, Morrell, Norby, and Silva)~~

February 18, 2011

An act to amend ~~Section 2660~~ *Sections 2406 and 2690* of, and to add ~~Section~~ *Sections 2406.5,* 2620.1, *and 2694.5* to, the Business and Professions Code, *and to amend Section 13401.5 of the Corporations Code,* relating to ~~physical therapists~~ *healing arts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 924, as amended, ~~Walters~~ *Price.* Physical therapists: direct access to ~~services.~~ *services: professional corporations.*

~~Existing~~

(1) Existing law, the Physical Therapy Practice Act, creates the Physical Therapy Board of California and makes it responsible for the licensure and regulation of physical therapists. The act defines the term "physical therapy" for its purposes and makes it a crime to violate any of its provisions. ~~The act authorizes the board to suspend, revoke, or impose probationary conditions on a license, certificate, or approval issued under the act for unprofessional conduct, as specified.~~

This bill would specify that patients may access physical therapy treatment directly, and would, in those circumstances, require a physical

therapist to refer his or her patient to another specified healing arts practitioner if the physical therapist has reason to believe the patient has a condition requiring treatment or services beyond that scope of practice, ~~to disclose to the patient any financial interest he or she has in treating the patient,~~ and, with the patient's written authorization, to notify the patient's physician and surgeon, if any, that the physical therapist is treating the patient. The bill would prohibit a physical therapist from treating a patient beyond ~~a 30-day period~~ *30 business days or 12 visits, whichever occurs first*, unless the ~~patient has obtained a diagnosis from a physician and surgeon~~ *physical therapist receives a specified authorization from a person with a physician and surgeon's certificate. The bill would require a physical therapist, prior to the initiation of treatment services, to provide a patient with a specified notice concerning the limitations on the direct treatment services.* ~~The bill would provide that failure to comply with these provisions constitutes unprofessional conduct subject to disciplinary action by the board.~~

(2) Existing law regulating professional corporations provides that certain healing arts practitioners may be shareholders, officers, directors, or professional employees of a medical corporation or a podiatric medical corporation, subject to certain limitations.

This bill would add licensed physical therapists and licensed occupational therapists to the list of healing arts practitioners who may be shareholders, officers, directors, or professional employees of those corporations. The bill would also provide that specified healing arts licensees may be shareholders, officers, directors, or professional employees of a physical therapy corporation. The bill would require, except as specified, that a medical corporation, podiatry corporation, and physical therapy corporation provide patients with a specified disclosure notifying them that they may seek physical therapy treatment services from any physical therapy provider. The bill would also make conforming changes to related provisions.

Because the bill would specify additional requirements under the Physical Therapy Practice Act, the violation of which would be a crime, it would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. The Legislature finds and declares that an
2 individual's access to early intervention to physical therapy
3 treatment may decrease the duration of a disability, reduce pain,
4 and lead to a quicker recovery.
5 *SEC. 2. Section 2406 of the Business and Professions Code is*
6 *amended to read:*
7 2406. A medical corporation or podiatry corporation is a
8 corporation ~~which~~ *that* is authorized to render professional services,
9 as defined in Sections 13401 and 13401.5 of the Corporations
10 Code, so long as that corporation and its shareholders, officers,
11 directors, and employees rendering professional services who are
12 physicians *and surgeons*, psychologists, registered nurses,
13 optometrists, podiatrists, *chiropractors, acupuncturists,*
14 *naturopathic doctors, physical therapists, occupational therapists,*
15 or, in the case of a medical corporation only, physician assistants,
16 *marriage and family therapists, or clinical social workers,* are in
17 compliance with the Moscone-Knox Professional Corporation Act,
18 the provisions of this article, and all other statutes and regulations
19 now or hereafter enacted or adopted pertaining to the corporation
20 and the conduct of its affairs.
21 With respect to a medical corporation or podiatry corporation,
22 the governmental agency referred to in the Moscone-Knox
23 Professional Corporation Act is the ~~Division of Licensing~~ *board.*
24 *SEC. 3. Section 2406.5 is added to the Business and Professions*
25 *Code, to read:*
26 *2406.5. (a) A medical corporation or podiatry corporation*
27 *that is authorized to render professional services, as defined in*
28 *Sections 13401 and 13401.5 of the Corporations Code, shall*
29 *disclose to its patients, orally and in writing, when initiating any*
30 *physical therapy treatment services, that the patient may seek*
31 *physical therapy treatment services from a physical therapy*
32 *provider of his or her choice who may not necessarily be employed*
33 *by the medical or podiatry corporation.*
34 *(b) This disclosure requirement shall not apply to any medical*
35 *corporation that contracts with a health care service plan with a*

license issued pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code) if the licensed health care service plan is also exempt from federal taxation pursuant to Section 501(c)(3) of the Internal Revenue Code.

~~SEC. 2.~~

SEC. 4. Section 2620.1 is added to the Business and Professions Code, to read:

2620.1. (a) In addition to receiving wellness and evaluation services from a physical therapist, a person may initiate physical therapy treatment directly from a licensed physical therapist provided that the treatment is within the scope of practice of physical therapists, as defined in Section 2620, and that all the following conditions are met:

(1) If, at any time, the physical therapist has reason to believe that the patient has signs or symptoms of a condition that requires treatment beyond the scope of practice of a physical therapist, the physical therapist shall refer the patient to a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California or to a person licensed to practice dentistry, podiatric medicine, or chiropractic.

(2) The physical therapist shall ~~disclose to the patient any financial interest he or she has in treating the patient and shall~~ comply with Article 6 (commencing with Section 650) of Chapter 1 of Division 2.

(3) With the patient's written authorization, the physical therapist shall notify the patient's physician and surgeon, if any, that the physical therapist is treating the patient.

(4) With respect to a patient initiating physical therapy treatment services directly from a physical therapist, the physical therapist shall not continue treating that patient beyond 30 business days or 12 visits, whichever occurs first, without receiving, from a person holding a physician and surgeon's certificate from the Medical Board of California or the Osteopathic Medical Board of California, a dated signature on the physical therapist's plan of care indicating approval of the physical therapist's plan of care. Approval of the physical therapist's plan of care shall include an appropriate patient examination by the person holding a physician and surgeon's certificate from the Medical Board of California

or the Osteopathic Medical Board of California. For purposes of this paragraph, "business day" means any calendar day except Saturday, Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(b) The conditions in paragraphs (1), (2), ~~and~~ (3), *and (4)* of subdivision (a) do not apply to a physical therapist when providing evaluation or wellness physical therapy services to a patient as described in subdivision (a) of Section 2620 *or treatment provided upon referral or diagnosis by a physician and surgeon, podiatrist, dentist, chiropractor, or other appropriate health care provider acting within his or her scope of practice. Nothing in this subdivision shall be construed to alter the disclosure requirements of Section 2406.5.*

(c) Nothing in this section shall be construed to expand or modify the scope of practice for physical therapists set forth in Section 2620, including the prohibition on a physical therapist diagnosing a disease.

(d) Nothing in this section shall be construed to require a health care service plan, insurer, *workers' compensation insurance plan,* or any other person or entity, including, but not limited to, a state program or state employer, to provide coverage for direct access to treatment by a physical therapist.

~~(e) A physical therapist shall not continue treating a patient beyond a 30-day period, unless the patient has obtained a diagnosis by a physician and surgeon.~~

(e) When a person initiates physical therapy treatment services directly pursuant to this section, the physical therapist shall not perform physical therapy treatment services without first providing the following written notice, orally and in writing, on one page, in at least 14-point type, and obtaining a patient signature on the notice:

Direct Physical Therapy Treatment Services

You are receiving direct physical therapy treatment services from an individual who is not a physician and surgeon, but who is a physical therapist licensed by the Physical Therapy Board of California.

Under California law, you may continue to receive direct physical therapy treatment services for a period of 30 business days or 12 visits, whichever occurs first, after which time a physical therapist may continue providing you with physical therapy treatment services only after receiving, from a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California, a dated signature on the physical therapist's plan of care indicating approval of the physical therapist's plan of care.

If you have received direct physical therapy treatment services for a duration of 30 business days or 12 visits, whichever occurs first, from a physical therapist, it may constitute unprofessional conduct for that physical therapist or for another physical therapist to provide direct physical therapy treatment services without receiving from a person holding a physician and surgeon's certificate issued by the Medical Board of California or by the Osteopathic Medical Board of California a dated signature on the physical therapist's plan of care, indicating approval of the physical therapist's plan of care.

_____

[Patient's Signature/Date]

~~SEC. 3. Section 2660 of the Business and Professions Code is amended to read:~~

~~2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:~~

~~(a) Advertising in violation of Section 17500.~~

~~(b) Fraud in the procurement of any license under this chapter.~~

~~(c) Procuring or aiding or offering to procure or aid in criminal abortion.~~

~~(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.~~

~~(e) Habitual intemperance.~~

~~(f) Addiction to the excessive use of any habit-forming drug.~~

~~(g) Gross negligence in his or her practice as a physical therapist or physical therapist assistant.~~

~~(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.~~

~~(i) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.~~

~~(j) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.~~

~~(k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.~~

~~(*l*) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board 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, regulations, and guidelines 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. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.~~

~~The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.~~

~~(m) The commission of verbal abuse or sexual harassment.~~

~~(n) Failure to comply with the provisions of Section 2620.1.~~

SEC. 5. Section 2690 of the Business and Professions Code is amended to read:

2690. A physical therapy corporation is a corporation that is authorized to render professional services, as defined in ~~Section~~ *Sections* 13401 *and 13401.5* of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physical therapists, *physicians and surgeons, podiatrists, acupuncturists, naturopathic doctors, occupational therapists, speech-language pathologists, audiologists, registered nurses, psychologists, and physician assistants* are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a physical therapy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the ~~Physical Therapy Board of California~~ *board.*

SEC. 6. Section 2694.5 is added to the Business and Professions Code, to read:

2694.5. A physical therapy corporation that is authorized to render professional services, as defined in Sections 13401 and 13401.5 of the Corporations Code, shall disclose to its patients, orally and in writing, when initiating any physical therapy treatment services, that the patient may seek physical therapy treatment services from a physical therapy provider of his or her choice who may not necessarily be employed by the physical therapy corporation.

SEC. 7. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.
(1) Licensed doctors of podiatric medicine.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed professional clinical counselors.
(12) Licensed physical therapists.
(13) Licensed occupational therapists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed physical therapists.
(9) Licensed occupational therapists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(9) Naturopathic doctors.
(10) Licensed professional clinical counselors.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.

(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(10) Naturopathic doctors.
(11) Licensed professional clinical counselors.
(g) Marriage and family therapist corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed professional clinical counselors.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(7) Naturopathic doctors.
(8) Licensed professional clinical counselors.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.

1 (6) Licensed acupuncturists.
2 (7) Naturopathic doctors.
3 (k) Chiropractic corporation.
4 (1) Licensed physicians and surgeons.
5 (2) Licensed doctors of podiatric medicine.
6 (3) Licensed psychologists.
7 (4) Registered nurses.
8 (5) Licensed optometrists.
9 (6) Licensed marriage and family therapists.
10 (7) Licensed clinical social workers.
11 (8) Licensed acupuncturists.
12 (9) Naturopathic doctors.
13 (10) Licensed professional clinical counselors.
14 (*l*) Acupuncture corporation.
15 (1) Licensed physicians and surgeons.
16 (2) Licensed doctors of podiatric medicine.
17 (3) Licensed psychologists.
18 (4) Registered nurses.
19 (5) Licensed optometrists.
20 (6) Licensed marriage and family therapists.
21 (7) Licensed clinical social workers.
22 (8) Licensed physician assistants.
23 (9) Licensed chiropractors.
24 (10) Naturopathic doctors.
25 (11) Licensed professional clinical counselors.
26 (m) Naturopathic doctor corporation.
27 (1) Licensed physicians and surgeons.
28 (2) Licensed psychologists.
29 (3) Registered nurses.
30 (4) Licensed physician assistants.
31 (5) Licensed chiropractors.
32 (6) Licensed acupuncturists.
33 (7) Licensed physical therapists.
34 (8) Licensed doctors of podiatric medicine.
35 (9) Licensed marriage and family therapists.
36 (10) Licensed clinical social workers.
37 (11) Licensed optometrists.
38 (12) Licensed professional clinical counselors.
39 (n) Dental corporation.
40 (1) Licensed physicians and surgeons.

(2) Dental assistants.
(3) Registered dental assistants.
(4) Registered dental assistants in extended functions.
(5) Registered dental hygienists.
(6) Registered dental hygienists in extended functions.
(7) Registered dental hygienists in alternative practice.
(o) Professional clinical counselor corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Licensed marriage and family therapists.
(5) Registered nurses.
(6) Licensed chiropractors.
(7) Licensed acupuncturists.
(8) Naturopathic doctors.
(p) Physical therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed acupuncturists.
(4) Naturopathic doctors.
(5) Licensed occupational therapists.
(6) Licensed speech-language pathologists.
(7) Licensed audiologists.
(8) Registered nurses.
(9) Licensed psychologists.
(10) Licensed physician assistants.
~~SEC. 4.~~

SEC. 8. 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.

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Martin, Heather@DCA

From: Jennifer Snyder <jsnyder@capitoladvocacy.com>
Sent: Thursday, March 08, 2012 11:13 AM
To: Martin, Heather@DCA
Cc: Polastri Karen; Phipps Shawn; Willmarth Chuck
Subject: OTAC/AOTA positions on AB 171 & SB 924
Attachments: AB 171 Factsheet 012312 (2).pdf; ATT00001..txt

Heather,
I am not able to attend the Board's Legislative and Regulatory Affairs Committee meeting today so I thought I would forward OTAC and AOTA's positions on the two bills included on the Committee's agenda as an FYI.

AB 171 (Beall)
OTAC and AOTA are supportive of Beall's intent with AB 171 to confirm/clarify existing law that requires health plans to provide coverage for the diagnosis and medically necessary treatment of pervasive developmental disorders. The Association is communicating with the author's office relative to the technical wording of the bill which modifies existing law enacted by SB 946 (Statutes of 2011) that requires health plans to provide coverage for autism services. There is some concern that AB 171 makes it less clear that occupational therapy services for behavioral health treatment would be a covered service. As long as this concern is addressed, OTAC plans to support AB 171.

SB 924 (Price)
OTAC and AOTA support the provisions of SB 924 which clarify that an occupational therapist can be employed by a medical corporation. The Associations believe it is important for occupational therapists to have the ability to be employed by a medical corporation if they so choose. OTAC and AOTA are neutral on the language in SB 924 which would allow for patient direct access to physical therapy services for up to 30 business days without a physician referral. Thus, the Association's position on SB 924 is neutral.

Let me know if you need any further clarity. I have attached a fact sheet on AB 171 that I received from the author's office just in case the background might be helpful to you.
Take care,
Jennifer

Martin, Heather@DCA

·om: Stacy DeFoe <SDeFoe@ccapta.org>
ɔent: Friday, March 09, 2012 10:00 AM
To: Martin, Heather@DCA
Cc: Tameka Island
Subject: SB 924

Hi Heather,

It was nice to see you yesterday. Thank you for allowing us to address some questions related to SB 924 Consumer Direct Access to Physical Therapist Services. In response to our conversation, the following is a list of the consumer safeguards that are included in the current version of the bill.

- Upon authorization of the patient, physical therapists must notify the patient's physician that they are treating the patient;
- Physical therapists must refer patients to an appropriate health care professional if they see conditions outside of their scope of practice.
- Physical therapists must disclose any financial interest they have in treating the patient;
- Physical therapists are prohibited from treating a patient beyond 30 business days or 12 visits unless a diagnosis has been obtained from a physician;
- SB 924 reiterates that physical therapists are prohibited from diagnosing disease and that the bill is not an expansion or modification of scope of practice;
- SB 924 clarifies that insurance companies and health plans are not required to provide coverage for direct treatment; and
- Lastly, if a physical therapist fails to comply with the conditions of the bill, a cause for disciplinary action up to revocation is possible.

If you or your Board members have any additional questions, please don't hesitate to contact Tameka Island or myself.

Best regards,

Stacy N. DeFoe, MA, CAE
Executive Director
California Physical Therapy Association
1990 Del Paso Road
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(916) 929-2782 | (916) 646-5960 - fax
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California Physical Therapy Association

Move CALIFORNIA

Consumer Direct Access to Physical Therapist Services
SB 924 (Price, Steinberg, Walters)

How is physical therapy accessed across the United States?

Currently, 36 states, including all of the western states surrounding California, allow patients to directly access physical therapist treatment and have been doing so safely for an average of 25 years.

How is physical therapy accessed in California?

Currently, in California, patients have direct access to physical therapists for the purpose of evaluation but patients must receive a diagnosis from a physician before physical therapy treatment can start. The requirement for a diagnosis results from a 1965 Attorney General's opinion. Then-AG Thomas Lynch speculated that the intent of the law was to require a diagnosis by a physician before physical therapy treatment could begin, even though such a requirement was or is not stated anywhere in law. The practice act for physical therapists states that the practice of physical therapy does not "...authorize the diagnosis of disease...," and that is understood. Physical therapists treat mobility- and movement-related impairments.

Often, a physician's diagnosis is simply a symptom description or a listing of a body part, such as "back pain" or "elbow." Non-specific descriptions of musculoskeletal problems by primary care physicians and other specialists are most often appropriate because they do not necessarily have the expertise required to make a more specific diagnosis or identify the underlying cause of the problem. Orthopaedic surgeons and physical therapists remain the best-trained specialists to evaluate and treat patients with musculoskeletal disorders.

Why is consumer direct access to physical therapist's services important?

Allowing consumers to see physical therapists directly would increase their access to safe and efficacious healthcare and enable them to have more choices about their care. With health care reform implementation on the horizon, millions more patients will require access to care. Under the direct access model, an appropriate physical therapy patient can begin treatment without delay. If the patient is not appropriate for physical therapy, the physical therapist must refer the patient to the appropriate health care professional. SB 924 creates a new direct cause of action for loss of license for failing to refer properly. Additionally, Medicare (which is also used as the basis for many services under Medi-Cal) will pay for direct access, as long as an appropriate provider approves the plan of care within 30 days.

Are physical therapists properly trained to see patients directly?

Yes. Physical therapists receive three years of post-bachelor's degree training and education. The standard for all accredited physical therapy training programs in the 53 U.S. states and territories is a clinical doctorate in physical therapy (DPT). Physical therapy students from across the United States take the same national licensing exam. As such, physical therapists in Arizona, Nevada or Oregon who possess the same training and education as those in California, may provide patient care directly to a patient and lose that privilege when they cross the state line into California.

Is direct access to physical therapist services safe for patients?

Yes. According to the Health Providers Service Organization (the malpractice insurance carrier for physical therapists in all 50 states) there is NO premium differential for physical therapists in direct access states versus non-direct access states because there is no increase in claims activity attributable to direct access. In addition, the Federation of State Boards of Physical Therapy (an organization that is comprised of the 53 licensing jurisdictions in the United States and the territories of Guam, Puerto Rico and Washington, D.C.) has not found an increase in licensing complaints or actions taken against physical therapists in direct access states when compared with states that have limited or no direct access. This evidence demonstrates that the practice is safe.

How can physical therapists treat patients directly when they are prohibited from making a medical diagnosis?

Physical therapists are trained in the diagnostic process and take full responsibility for the patient's medical diagnosis, whether or not the patient is referred by a physician. As the literature demonstrates, physical therapists and orthopedic surgeons perform better in musculoskeletal diagnosis and screening for serious pathology than all other physician groups. ("BMC Musculoskeletal Disorders" 2005, 6:32, dol:10.1186/1471-2474-6-32) PTs do not diagnose disease, nor do they seek to do so. Physical therapists are trained to screen for "red flags" and determine whether a patient's concern falls within their scope of practice and, further, within their area of competence and expertise. When a physical therapist concludes that a patient's condition cannot be treated most effectively within his or her scope of practice, he or she refers the patient to the most appropriate medical specialist, just as other healthcare practitioners do. Under SB 924, PTs failing to refer patients for something outside their scope of practice risk losing their license.

Will insurance companies be required to pay for direct access to physical therapist services under SB 924?

No, but under Medicare and in the other states where direct access to physical therapist treatment is allowed, insurance companies do pay for this care. In addition, private payers, such as United Health Care, have policies already in place to cover direct access to physical therapist treatment in states where patients have the right to access physical therapist treatment directly. These policies are in place because payers view direct access as an efficient healthcare model.

Will direct access to physical therapist services lead to overutilization of physical therapy services?

Nothing in SB 924 changes the authority for insurers, including government-sponsored programs, to require that a "medical necessity" standard be met, to cap services, or to require authorization for care. As musculoskeletal specialists, physical therapists formulate a specific plan of action to efficiently treat patients' physical problems. Physical therapists who work in physician-owned physical therapy clinics (POPTs) can be pressured to see patients for the maximum number of allowable visits, regardless of whether the patients need them. A 1992 New England Journal of Medicine article summarizing a study of referral-for-profit practices in the California Workers' Compensation system stated that physical therapy was initiated 2.3 times more often by the physicians in self-referral arrangements.

Also, in a 2006 federal Department of Health Services report by Stuart Wright, Deputy Inspector General for Evaluations and Inspections, titled "Physical Therapy Billed By Physicians," the conclusion states "when a physician orders and directs physical therapy services, 91 percent of the time the care is

below professional standards and considered unnecessary and fraudulent under the Medicare program" (underline added). Four states have now banned this conflict-of-interest practice. In addition, serious consideration is being given in Washington, D.C. to closing the loopholes in the "Ethical Patient Referrals Act," also known as the "Stark Law." The Alliance for Integrity in Medicare (AIM) is a coalition of physicians and other health professionals whose mission is to close self-referral loopholes to maintain the integrity of the Medicare program and improve efficiency of care.

Can Direct Access lead to cost savings and fewer physical therapy visits?

Yes. A recently-released (October 2011) study at the University of Iowa analyzed five years (2003-2007) of private health insurance physical therapy claims data from a Midwest insurer on beneficiaries aged 18-64 in Iowa and South Dakota. In total, 63,000 outpatient physical therapy episodes of care were analyzed—more than 45,000 were physician-referred, while more than 17,000 were "self-referred" to physical therapists. Researchers found that self-referred patients had fewer physical therapy visits (86% compared to those that were physician-referred) and lower allowable amounts ($0.87 for every $1.00 of physician-referred) during the episode of care. Also, overall related health care use, or care related to the problem for which physical therapy was received, but not physical therapy treatment, was lower in the self-referred group. The researchers concluded, "Our findings do not support the assertion that self-referral leads to overuse of care or discontinuity in care, based on a very large population of individuals in a common private health insurance plan with no requirement for PT [physical therapy] referral or prohibition on patient self-referral. We consistently found lower use in the self-referral group, after adjusting for key demographic variables, diagnosis group, and case mix. We also found that individuals in both groups were similarly engaged with the medical care system during their course of care and afterwards."

Another recent study, published in the journal, Spine, ("Management Patterns in Acute Low Back Pain: The Role of Physical Therapy" Spine. 2010 Nov 19.) demonstrated a decreased usage of medical services in patients who receive physical therapy early after an acute low back pain episode. The study showed that Medicare patients who received physical therapy in the acute phase following an episode of low back pain were less likely to receive epidural steroid injections, lumbar surgery, or frequent physician office visits in the year following their initial physician visit as compared with patients who received physical therapist treatment later. This underlines the fact that direct access to physical therapist services gets patients on a path to recovery sooner, significantly decreasing future costs.
In addition, many payers currently reimburse physician-provided physical therapy at a higher rate than PT provided in the PT-owned practice setting making direct access to physical therapist services a lower cost item for both the payer and the patient.

Who supports Direct Access?

Supporters of Direct Access include the California Physical Therapy Association (CPTA), the American Physical Therapy Association, the Physical Therapy Board of California, the Federation of State Physical Therapy Boards, consumers, consumer groups and others.

fsbpt

FEB 26 2011

Stacy N. DeFoe, Executive Director
California Physical Therapy Association
2880 Gateway Oaks Drive, Suite 140
Sacramento, CA 95833

February 22, 2011

Dear Ms. DeFoe,

I understand that the California Physical Therapy Association is currently looking at the issue of direct access and physical therapy practice. The Federation of State Boards of Physical Therapy is the organization representing the 53 jurisdictional boards which license physical therapists in the United States. Our member boards are made up of professionals, public members, and administrators. The Federation was formed in 1986, to provide an organization through which member licensing authorities could work together to promote and protect the health, welfare and safety of the American public.

One of the sources of information regarding physical therapy practice across the United States maintained by the Federation is the Jurisdiction Licensing Reference Guide. The Guide is updated regularly with survey information directly from the member boards. According to the records regarding direct access, according to how a state board defines direct access, forty-six states and the District of Columbia have some form of direct access to physical therapy evaluation and treatment. These records can be accessed at [illegible]. Of those forty-seven jurisdictions, seventeen have what is considered unlimited direct access. Those 17 states that are considered to have unlimited direct access include: Alaska, Arizona, Colorado, Hawaii, Idaho, Iowa, Kentucky, Maryland, Massachusetts, Montana, Nebraska, Nevada, North Dakota, South Dakota, Utah, Vermont and West Virginia. As for your inquiry letter, dated February 1, 2011, I would confirm that the 19 jurisdictions that you have listed (Arkansas, Connecticut, District of Columbia, Delaware, Florida, Tennessee, South Carolina, Maine, Minnesota, New Hampshire, New Jersey, New york, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Virginia, Washington) have the authority to evaluate and initiate treatment under various provisions stipulated in each of their practice acts. I can also confirm that the practice act's in Colorado, Connecticut, Idaho, Maine, Minnesota, North Carolina, and Utah contain language that prohibits the diagnosis of disease or medical diagnosis.

I hope that this information is useful to you. Please feel free to contact me by phone 703-299-3100 ext 233 or e-mail [illegible] if I can be of further assistance.

Sincerely,

Leslie Adrian, PT, MS, MPA
Director of Professional Standards
Federation of State Boards of Physical Therapy

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April 19, 2007

Assemblyman Bill Emmerson
Assembly District 63
State Capitol Office, Room 4158
Sacramento, CA 95814

Dear Assemblyman Emerson:

Thank you for your recent letter. The national office of the American Physical Therapy Association awarded its exclusive endorsement to the professional liability insurance program marketed by Healthcare Service Providers Organization (HPSO) and underwritten by the CNA Insurance Companies in 1992. Since that time, this nationwide program has become a leading provider of professional liability coverage to the physical therapy profession.

I understand that California Assembly Bill 1444 - Consumer Direct Access to Physical Therapist Services, would allow physical therapists in California to treat patients without a physician referral. We are aware that, currently, 43 states and the District of Columbia have some form of direct access. Based upon our review of our claims, we do not view the ability to treat patients without referral (either as a result of state legislation or CMS regulation) as a risk requiring specific screening at this time because we can not make a direct correlation between direct access and increased claims activity. This is demonstrated by the fact that our program does not have a premium differential for physical therapists in direct access states versus non-direct access states.

While we will continue to monitor this legislation as it relates to program claims experience, at this time neither we nor CNA – our insurance partner, foresees that direct access to physical therapy services will become a claim or rate issue for providers of professional liability coverage to the physical therapy profession.

Sincerely,

Michael J. Loughran
Executive Vice President

cc: Jennifer Baker APTA
Stacy DeFoe - CPTA
Justin Elliott – APTA

Dedicated To Serving The Insurance Needs of Healthcare Providers

Healthcare Providers Service Organization is a division of Affinity Insurance Services, Inc.; in NY and NH, AIS Affinity Insurance Agency; in MN and OK, AIS Affinity Insurance Agency, Inc.; and in CA, AIS Affinity Insurance Agency, Inc. dba Aon Direct Insurance Administrators License #0795465.

Report on bills previously reviewed by the Committee and signed into law:

a) AB 415 (Logue), Telehealth.

This bill, among other things:

- Deletes the provisions of state law regarding telemedicine, and instead sets forth provisions relating to telehealth, as defined. This bill requires a health care provider, as defined, prior to the delivery of health care via telehealth, to verbally inform the patient that telehealth may be used and obtain verbal consent from the patient.
- Provides that failure to comply with this provision constitutes unprofessional conduct. This bill, subject to contract terms and conditions, also precludes health care service plans and health insurers from imposing prior to payment, certain requirements regarding the manner of service delivery.
- Establishes procedures for granting privileges to, and verifying and approving credentials for, providers of telehealth services. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.
- Prohibits a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service is appropriately provided by telehealth, as defined, and would make related changes.

b) Senate Bill (SB) 24 (Simitian), Personal Information: Privacy.

This bill:

- Requires any agency, person, or business that is required to issue a security breach notification pursuant to existing law to fulfill certain additional requirements pertaining to the security breach notification, as specified.
- Requires any agency, person, or business that is required to issue a security breach notification to more than 500 California residents pursuant to existing law to electronically submit a single sample copy of that security breach notification to the Attorney General, as specified.
- Provides that a covered entity under the federal Health Insurance Portability and Accountability Act of 1996 is deemed to have complied with these provisions, if it has complied with existing federal law, as specified.

c) SB 541 (Price), Exemptions for boards from the Public Contract Code requirements (for use of Expert Consultants).

This bill:

- Authorizes specified 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 requires each board to establish policies and procedures for the selection and use of these consultants.

d) SB 850 (Leno), Medical records: confidential information.

- Existing law requires every provider of health care, health care service plan, pharmaceutical company, or contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical information shall do so in a manner that preserves the confidentiality of the information contained therein.
- This bill requires an electronic health or medical record system to automatically record and preserve any change or deletion of electronically stored medical information, and would require the record to include, among other things, the identity of the person who accessed and changed the medical information and the change that was made to the medical information.

e) SB 946 (Committee on Health), Telemedicine.

- Existing law requires health care service plan contracts and health insurance policies to provide benefits for specified conditions, including certain mental health conditions.

  This bill, among other things:

- Effective July 1, 2012, requires those health care service plan contracts and health insurance policies, except as specified, to provide coverage for behavioral health treatment, as defined, for pervasive developmental disorder or autism. The bill provides, however, that no benefits are required to be provided that exceed the essential health benefits that will be required under specified federal law. Because a violation of these provisions with respect to health care service plans would be a crime, the bill would impose a state-mandated local program.
- Requires the Department of Managed Health Care, in conjunction with the Department of Insurance, to convene an Autism Advisory Task Force by February 1, 2012, to provide assistance to the department on topics related to behavioral health treatment and to develop recommendations relating to the education, training, and experience requirements to secure licensure from the state.
- Requires the department to submit a report of the Task Force to the Governor and specified members of the Legislature by December 31, 2012.