LEGISLATIVE PACKET

MEDICAL BOARD MEETING

JULY 29, 2011
SACRAMENTO, CA

Medical Board of California
Tracker - Legislative Bill File
7/18/2011

BILL	AUTHOR	TITLE	STATUS	POSITION	AMENDED
AB 415	Logue	Healing Arts: Telehealth	Senate Approps	Support	7/7/2011
AB 507	Hayashi	Pain Management	Senate Approps	Support	7/1/2011
AB 536	Ma	Physicians and Surgeons: Expungement	Senate	Reco: Support	6/14/2011
AB 584	Fong	Worker's Comp: Utilitzation Review	Senate Approps - Susp.	Reco: Support	4/6/2011
AB 589	Perea	Medical School Scholarships	Senate Approps	Support	7/12/2011
AB 1127	Brownley	Physicians & Surgeons: Physician Interview	Enrolled	Sponsor/Support	4/4/2011
AB 1267	Halderman	Physicians & Surgeons: Misdemeanor Incarceration	Enrollment	Sponsor/Support	6/30/2011
AJR 13	Lara	Graduate Medical Education Residency Positions	Senate	Reco: Support	6/2/2011
SB 100	Price	Healing Arts : Outpatient Settings	Assembly Approps	Support	7/12/2011
SB 233	Pavley	Emergency Services and Care: Physician Assistants	Assembly Approps	Support	7/14/2011
SB 380	Wright	Chronic Disease Prevention - Nutrition/Lifestyle Behavior	Assembly	Reco: Neutral	6/20/2011
SB 541	Price	Regulatory Boards: Expert Consultants	Assembly Approps.	Sponsor/Support	6/21/2011
SB 824	Negrete McLeod	Opticians: Change of Ownership	Assembly	Reco: Neutral	6/23/2011
SB 943	Sen. B&P	Healing Arts - Polysom Grandfathering	Assembly Approps	Reco: Support	7/12/2011
		2-Year Status			
AB 352	Eng	Radiologist Assistants	Asm. B&P - 2 yr.	Support	4/15/2011
AB 374	Hayashi	Athletic Trainers	Senate B&P - 2 yr	Oppose Unless Amended	5/27/2011
AB 783	Hayashi	Professional Corporations: Licensed PTs	Senate B&P - 2 yr.	Support	4/7/2011
AB 824	Chesbro	Rural Hospitals: Physician Services	Asm. Health- 2 yr.		3/31/2011
AB 895	Halderman	Personal Income Tax: Physicians: Qual. Med. Svcs.	Asm. Rev. & Tax	Support	5/9/2011
AB 926	Hayashi	Physicians & Surgeons: Direct Employment	Asm. B&P		4/27/2011
AB 958	Berryhill, B.	Regulatory Boards: Statutes of Limitation	Asm. B&P - 2 yr.		
AB 1360	Swanson	Physicians & Surgeons: Employment	Asm. Health - 2 yr.		
SB 544	Price	Consumer Health Protection Enforcement Act	Senate B&P - 2 yr.		4/14/2011

Pink - Sponsored Bill, Green - 2 year bill, Blue - For Discussion

SPONSORED BILLS

AB 1127

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1127
Author:	Brownley
Bill Date:	April 4, 2011, amended
Subject:	Physicians and Surgeons: Unprofessional Conduct
Sponsor:	Medical Board of California
Position:	Sponsor/Support

STATUS OF BILL:

This bill has been enrolled and is now with the Governor.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would make it a violation of unprofessional conduct for a physician and surgeon who is the subject of an investigation by the Medical Board of California (the Board) to repeatedly fail, absent good cause, to attend and participate in an interview scheduled by mutual agreement of the physician and surgeon and the Board.

ANALYSIS:

This bill is sponsored by the Board. Currently, when the Board receives a complaint from a consumer, the Board must interview the physician to either close the case, or move forward with disciplinary action. The Board is having documented delays in investigations due to physicians intentionally not showing up for their physician interviews. Out of the total 3,568 cases opened over the last three year, 338 cases, or 9.5%, have required subpoenas to be issued for the purpose of requiring a subject physician to appear at a physician interview with the Board. This has resulted in case delays anywhere from 60 days to over a year.

In 2005, the board's enforcement program monitor released the final report that found, among other things, that the Board's case processing times were high and cited delays in physician interviews as a contributing factor. This bill will address this issue and is supported by the Center for Public Interest Law for this reason. Further, many other healing arts boards are in the process of putting this requirement in regulations as part of the Consumer Protection Enforcement Initiative.

The Board decided to sponsor this bill because it believes that it will help to expedite the closure of disciplinary cases and significantly reduce case delays by providing an incentive for physicians to attend and participate in physician interviews.

This bill was recently amended to address concerns raised by the California Medical Association, and they are now Neutral on the bill.

SUPPORT: Medical Board of California (Sponsor)
Center for Public Interest Law

OPPOSITION: None on file

FISCAL: None

POSITION: Sponsor/Support

July 1, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1127

Introduced by Assembly Member Brownley

February 18, 2011

An act to amend Section 2234 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1127, as amended, Brownley. Physicians and surgeons: unprofessional conduct.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires the board to take action against any licensee who is charged with unprofessional conduct and describes acts constituting unprofessional conduct. Existing law makes a violation of that provision a crime.

This bill would provide that unprofessional conduct also includes, ~~among other things, the willful noncompliance by a certificate holder with the duty to cooperate with an investigation being conducted by the board~~ *the repeated failure, except for good cause, by a certificate holder who is the subject of a board investigation, to attend and participate in an interview scheduled by the mutual agreement of the certificate holder and the board.*

By changing the definition of a crime, the bill would impose a state-mandated local program.

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

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

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

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

SECTION 1. Section 2234 of the Business and Professions Code is amended to read:

2234. The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate.

(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon

the implementation of the proposed registration program described in Section 2052.5.

~~(h) The willful noncompliance by a certificate holder with the duty to cooperate with an investigation being conducted by the board. For the purposes of this subdivision, "willful noncompliance" includes, but is not limited to, repeated failure,~~

(h) The repeated failure by a certificate holder, in the absence of good cause, to attend *and participate in* an interview scheduled by *the* mutual agreement of the certificate holder and the board. *This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board.*

SEC. 2. 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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AB 1267

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1267
Author:	Halderman
Bill Date:	June 30, 2011, amended
Subject:	Physicians and Surgeons: Certificate
Sponsor:	Medical Board of California
Position:	Sponsor/Support

STATUS OF BILL:

This bill has been sent to enrollment.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would authorize the Medical Board of California (the Board) to automatically place a physician's license on inactive status when a physician is incarcerated after the conviction of a misdemeanor for the period of incarceration. This bill would allow the Board to disclose the reason for the inactive status on the Board's Internet Web site.

This bill was amended in Senate Business, Professions and Economic Development Committee to require the Board to move the physician's license status back to its prior or appropriate status within five business days of receiving notification from the Attorney General's Office that the physician is no longer incarcerated.

This bill was recently amended to remove the Attorney General's name from the bill and instead put the five day time line starting when the Board receives notice that the physician is no longer incarcerated. This bill now requires the Board to adopt regulations to specify the type of notice required to be submitted to the Board.

ANALYSIS:

This bill is sponsored by the Board. Existing law, Business and Profession Code Section 2236.1, authorizes the Board to automatically suspend the license of a physician incarcerated for a felony. An automatic suspension is a disciplinary action that goes on the physician's license and is reported to the National Practitioner's Data Bank. Currently, the Board finds out when a physician is incarcerated because information is obtained from DOJ on arrests, and staff tracks the trial and the sentencing. The physician is also required to let us know when they are convicted.

After meeting with CMA on this bill and working with them on amendments, it was suggested that instead of an automatic suspension, that the license be put on inactive

status. This achieves the same goal; the physician is not allowed to practice medicine while incarcerated. The difference from the original concept is that this is not a disciplinary action and does not negatively affect the physician's licensing record. This would be an internal action that changes the license status to inactive while the physician is incarcerated. The bill would still require disclosure on the Board's Internet Web site for the public, the fact that the physician is incarcerated would be disclosed.

When the physician is released from incarceration, even if the Board's investigation is not complete, the license would no longer be on inactive status and the notice of incarceration would be removed from the Board's Web site. The process for the Board to find out when a physician is released from incarceration for felonies now is that the physician's attorney lets the Attorney General's (AG) office know, and the AG's office lets Board staff know. The same process would take place for misdemeanor incarcerations and the Medical Board would be able to change the status back internally in a short amount of time after notification (five or less working days).

The June 9th amendments were taken in Senate Business, Professions and Economic Development Committee at the request of a committee member to require the Board to move the physician's license status back to its prior or appropriate status within five business days of receiving notification from the Attorney General's Office that the physician is no longer incarcerated. Board staff believes that this time frame is reasonable.

The June 30th amendments were taken to address concerns raised by the Attorney General's (AG's) Office. It had concerns that naming the AG's Office in the bill, although this process mirrors existing practice, was putting a new, implied obligation on the Attorney General that may result in costs. To address the concerns, the Board took the AG's name out of the bill. The amendments now start the five day time line when the Board receives notice that the physician is no longer incarcerated. The Board will be required to adopt regulations to specify the type of notice that needs to be submitted to the Board.

The Medical Board of California fundamentally believes that physicians should not be practicing medicine while incarcerated. Currently, there is nothing prohibiting physicians incarcerated for misdemeanors from practicing medicine while incarcerated. This bill will protect consumers in California by not allowing incarcerated physicians to practice medicine and allowing for greater transparency by providing this information on Board's Internet Web site. Consumers have a right to know if their physician is incarcerated and physicians should cease practicing medicine until they are released from incarceration. This is an interim measure and would only be effective for the period of incarceration; the Board would still go through its normal enforcement process related to the investigation of the misdemeanor conviction.

SUPPORT: Medical Board of California (Sponsor)

OPPOSITION: None on File

FISCAL: None

POSITION: Sponsor/Support

June 29, 2011

AMENDED IN SENATE JUNE 30, 2011

AMENDED IN SENATE JUNE 9, 2011

AMENDED IN ASSEMBLY APRIL 12, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1267

Introduced by Assembly Member Halderman

February 18, 2011

An act to add Section 2236.2 to the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1267, as amended, Halderman. Physicians and surgeons: certificate.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Existing law requires that a physician and surgeon's certificate be suspended automatically when the holder of the certificate is incarcerated after a felony conviction.

This bill would require that a physician and surgeon's certificate be automatically placed on inactive status during any period of incarceration after a misdemeanor conviction. The bill would require the reason for this type of inactive status to be disclosed, as specified. *The bill would require a certificate placed on inactive status to be returned by the board to its prior or appropriate status, as specified, and would require the board to adopt regulations in this regard.*

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 2236.2 is added to the Business and Professions Code, to read:

2236.2. (a) Notwithstanding Article 9 (commencing with Section 700) of Chapter 1 of Division 2 or any other provision of law, a physician and surgeon's certificate shall be automatically placed on inactive status during any period of time that the holder of the certificate is incarcerated after conviction of a misdemeanor.

(b) A physician and surgeon's certificate placed on inactive status pursuant to subdivision (a) shall be returned by the board to its prior or appropriate status within five business days of receiving notice ~~from the Attorney General~~ that the physician and surgeon is no longer incarcerated. *The board shall adopt regulations that specify the type of notice required to be submitted to the board.*

(c) The reason for the inactive status described in subdivision (a) shall be disclosed on the board's Internet Web site.

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SB 541

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 541
Author:	Price
Bill Date:	June 21, 2011, amended
Subject:	Regulatory Boards: Expert Consultants
Sponsor:	Medical Board of California (co-sponsor) Contractors State License Board (co-sponsor)
Position:	Co-Sponsor/Support

STATUS OF BILL:

This bill is currently in Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would enable all boards and bureaus in the Department of Consumer Affairs (DCA) to continue to utilize expert consultants, using a simplified contract and an expedited contracting process, without having to go through the formal contracting process.

This bill was recently amended to specify that nothing in this bill shall be construed to expand the scope of practice of an expert consultant providing services.

ANALYSIS:

The Board has been hiring and paying experts for over 25 years using a signed agreement and statement of services, without going through a formal contracting process. DCA issued a memo on November 10, 2010 that stated all boards and bureaus must enter into a formal consulting services contract with each expert consultant they use to provide an opinion in an enforcement matter (from the initial review through testifying at a hearing). The memo further stated that each board would need to go through the required contracting process for each consultant utilized.

During the past calendar year, the Board referred approximately 2,900 cases to expert consultants performing the initial or triage review to determine the need to move the case forward for investigation. It utilized 281 expert consultants in one quarter to review completed investigations, which translates to 457 cases. Under the new DCA policy, the Board would be required to go through the contracting process for each expert consultant, even if the expert only reviews one case. The contract would need to be approved before the Board can utilize the expert's services and the Board would have to encumber the funding for the expert consultant once the contract is approved (again, before the expert's services are utilized).

This bill would enable the Board to continue to utilize expert consultants, via a simplified contracting process, without having to go through the formal contracting process.

The June 21st amendment specifies that nothing in this bill shall be construed to expand the scope of practice of an expert consultant providing services. This amendment was added to ensure that the expert services listed in the bill, if not within an expert's scope of practice, are not interpreted to expand that expert's scope of practice (since the expert is also a licensee).

Going through the formal contracting process in order to utilize the services of an expert consultant would create an enormous backlog for both DCA and the Board and would significantly impact the time required to complete the initial review and investigate complaints filed with the Board. In addition, this would severely limit the Board's ability to take disciplinary actions against physicians and result in tremendous case delays. This could mean cases would be lost due to the statute of limitations expiring.

SUPPORT: Medical Board of California (co-sponsor); Contractors State License Board (co-sponsor); Board of Barbering and Cosmetology; Board of Behavioral Sciences; Board of Optometry; Board of Pharmacy; Board of Podiatric Medicine; Board of Psychology; Board of Registered Nursing; Board of Vocational Nursing and Psychiatric Technicians; California Board of Accountancy; California State Pipe Trades Council; Court Reporters Board of California; Dental Board of California; International Brotherhood of Electrical Workers; Physician Assistant Committee; Respiratory Care Board of California; State Board of Guide Dogs for the Blind; and Western States Council of Sheet Metal Workers

OPPOSITION: None on file

FISCAL: None – without this bill, workload will increase by requiring the Board to go through the formal contracting process for each expert consultant and pro rata would increase as DCA would have to increase staffing in order to process these in a timely manner.

AMENDED IN ASSEMBLY JUNE 21, 2011

AMENDED IN SENATE APRIL 13, 2011

SENATE BILL **No. 541**

Introduced by Senator Price

February 17, 2011

An act to add Section 40 to the Business and Professions Code, relating to ~~profession~~ *professions* and vocations, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 541, as amended, Price. ~~Contractors' State License~~ Regulatory boards: expert consultants.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law, the Chiropractic Act, enacted by initiative, provides for the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners. Existing law, the Osteopathic Act, requires the Osteopathic Medical Board of California to regulate osteopathic physicians and surgeons. Existing law generally requires applicants for a license to pass an examination and authorizes boards to take disciplinary action against licensees for violations of law. Existing law establishes standards relating to personal service contracts in state employment.

This bill would authorize these boards to enter into an agreement with an expert consultant, subject to the standards regarding personal service contracts described above, to provide enforcement and examination assistance. The bill would require each board to establish policies and procedures for the selection and use of these consultants.

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

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 40 is added to the Business and Professions Code, to read:

40. (a) Subject to the standards described in Section 19130 of the Government Code, any board, as defined in Section 22, the State Board of Chiropractic Examiners, or the Osteopathic Medical Board of California may enter into an agreement with an expert consultant to do any of the following:

(1) Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.

(2) Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.

(3) Evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety.

(b) An executed contract between a board and an expert consultant shall be exempt from the provisions of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) Each board shall establish policies and procedures for the selection and use of expert consultants.

(d) Nothing in this section shall be construed to expand the scope of practice of an expert consultant providing services pursuant to this section.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that licensees engaging in certain professions and vocations are adequately regulated at the earliest possible time in order to protect and safeguard consumers and the public in this state, it is necessary that this act take effect immediately.

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2011 TRACKER 1

AB 415

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 415
Author: Logue
Bill Date: July 7, 2011, Amended
Subject: Healing Arts: Telehealth
Sponsor: California State Rural Health Association
Position: Support

STATUS OF BILL:

This bill is currently in Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would repeal existing law related to telemedicine and replaces this law with the Telehealth Advancement Act of 2011.

This bill was amended to include language from existing law, which provides that a violation of the telemedicine law constitutes unprofessional conduct. This bill was amended to include the remainder of the language in existing law related to not altering the scope of practice of any health care provider; the portion related to the delivery of services was added. This bill was also amended to add language that clarifies that the physician is responsible for determining if treatment is appropriate for telehealth. These amendments were suggested by the Board and have changed the Board's position from "Support if Amended" to "Support".

Recent amendments make technical changes and address concerns raised by health care service plans. These amendments do not change the Board's support position.

ANALYSIS:

Existing law related to telemedicine defines telemedicine, requires informed consent for patients and provides that a violation of the telemedicine law constitutes unprofessional conduct.

This bill would repeal existing law and replace it with a new section. This bill makes findings and declarations under the Telehealth Advancement Act of 2011. The bill finds that lack of primary care providers, specialty providers and transportation are all barriers to care. The bill also states that parts of California have difficulty attracting and retaining health professionals and many providers in underserved areas are isolated from necessary information resources. This bill states the intent of the Legislature to create a parity of telehealth with other care delivery modes and to actively promote telehealth to improve health status and system improvement. It also states intent related to telehealth,

as being part of a multifaceted approach to address inadequate provider distribution and to assist in improving the physical and economic health of medically underserved communities. Lastly, it states the intent that the provider–patient relationship be preserved and states that payment needs to be assured and legal and policy barriers need to be resolved to realize the full potential of telehealth.

This bill repeals and replaces section 2290.5 of the Business and Professions Code to do the following:

- Defines "Asynchronous store and forward" as the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

- Defines "Distant Site" as a site where a health care provider is located while providing services via a telecommunications system.

- Defines "Originating Site" as a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward transfer occurs.

- Defines "telehealth" as the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at the distant site. States that telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

- States that this section shall not be construed to alter the scope of practice of any health care provider.

  This was taken from language in existing law; however, the rest of the language should be added "....or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law."

- Provides that all laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

- This bill also applies the Business and Professions Code Section to the laws relating to Health Care Service Plans and to the Insurance code and requires health care service plans and health insurance companies to adopt payment policies to compensate health care providers who provide covered health care services through telehealth. This bill also applies these requirements to the Medi-Cal managed care program.

According to the author's office, the purpose of this bill is to remove barriers in existing law and update the law to current practice regarding the use of telehealth in the delivery of health care. The author's office believes that telehealth has the potential to reduce costs, increase access, and improve quality of care, especially in underserved areas of the state where it is difficult for patient to get specialized care.

Board staff suggested that amendments are needed in order for the Board to support this bill, as follows:

- Existing law provides that a violation of the telemedicine law constitutes unprofessional conduct. This language should be added to this bill.
- This bill should include the remainder of the language in existing law related to not altering the scope of practice of any health care provider; the portion related to the delivery of services should be added.
- This bill should add language that would clarify that the physician is responsible for determining if treatment is appropriate for telehealth; this should not be decided by the payment policies that are required to be adopted by health care service plans and health insurance companies.

The May 10th amendments make the changes suggested by the Board listed in the bullets above. The language that clarifies that the provider is responsible for determining if treatment is appropriate for telehealth states that a health insurer is not authorized to require the use of telehealth when the health care provider has determined it is not appropriate. With these changes, the Board now has a Support position on this bill.

The May 27th amendments are technical and clarifying changes related to Medi-Cal reimbursement, they do not affect the Board or the Board's support position.

The July 7th amendments make technical and clarifying changes and also address concerns raised by health care service plans. These amendments do not affect the Board or the Board's support position.

SUPPORT: California State Rural Health Association (sponsor); AgeTech California; Association of California Healthcare Districts; California Association of Physician Groups; California Center for Rural Health Policy; California Healthcare Institute; California Hospital Association; California Medical Association; Children's Partnership Del Norte Clinics, Inc; Kaiser Permanente; Kings View Corporation; Latino Coalition for a Healthy California; Medical Board of California; National Multiple Sclerosis Society - CA Action Network; Occupational Therapy Association of California; Peach Tree Healthcare; Regional Council of Rural Counties; Rural Health Sciences Institute, College of the Siskiyous; and University of California

OPPOSITION: None on file

FISCAL: None

AMENDED IN SENATE JULY 7, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 415

Introduced by Assembly Member Logue
(Principal coauthors: Assembly Members Chesbro, Pan, and V. Manuel Pérez)

February 14, 2011

An act to repeal and add Section 2290.5 of the Business and Professions Code, to repeal and add Section 1374.13 of the Health and Safety Code, to repeal and add Section 10123.85 of the Insurance Code, and to amend Sections 14132.72 and 14132.725 of the Welfare and Institutions Code, relating to telehealth.

LEGISLATIVE COUNSEL'S DIGEST

AB 415, as amended, Logue. Healing arts: telehealth.

(1) Existing law provides for the licensure and regulation of various healing arts professions by various boards within the Department of Consumer Affairs. A violation of specified provisions is a crime. Existing law defines telemedicine, for the purpose of its regulation, to mean the practice of health care delivery, diagnosis, consultation, treatment, transfer of medical data, and education using interactive audio, video, or data communications. Existing law requires a health

care practitioner, as defined, to ~~obtained~~ *obtain* verbal and written informed consent from the patient or the patient's legal representative before telemedicine is delivered. Existing law also imposes various requirements with regard to the provision of telemedicine by health care service plans, health insurers, or under the Medi-Cal program, including a prohibition on requiring face-to-face contact between a health care provider and a patient for services appropriately provided through telemedicine, subject to certain contracts or policies. Existing law provides that health care service plans and health insurers shall not be required to pay for consultations provided by telephone or facsimile machines. Existing law provides that a willful violation of the provisions governing health care service plans is a crime.

This bill would delete the provisions regarding telemedicine as described above, and would instead set forth provisions relating to telehealth, as defined. This bill would require a health care provider, as defined, to, prior to the delivery health care via telehealth, verbally inform the patient that telehealth may be used and obtain verbal consent from the patient. This bill would provide that failure to comply with this provision constitutes unprofessional conduct. This bill would also set forth provisions for the payment of telehealth services by health care service plans and health insurers. By changing the definition of a crime applicable to health care service plans, the bill would impose a state-mandated local program.

(2) Existing law prohibits a requirement of face-to-face contact between a health care provider and a patient under the Medi-Cal program for services appropriately provided through telemedicine, subject to reimbursement policies developed by the Medi-Cal program to compensate licensed health care providers who provide health care services, that are otherwise covered by the Medi-Cal program, through telemedicine.

This bill would, instead, prohibit 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.

(3) Existing law, until January 1, 2013, and to the extent that federal financial participation is available, authorizes, under the Medi-Cal program, teleophthalmology and teledermatology by store and forward, as defined.

This bill would delete the repeal of the above-described authorization.

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

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

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

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

SECTION 1. This act shall be known, and may be cited, as the Telehealth Advancement Act of 2011.

SEC. 2. The Legislature finds and declares all of the following:

(a) Lack of primary care providers, specialty providers, and transportation continue to be significant barriers to access to health services in medically underserved rural and urban areas.

(b) Parts of California have difficulty attracting and retaining health professionals, as well as supporting local health facilities to provide a continuum of health care.

(c) Many health care providers in medically underserved areas are isolated from mentors, colleagues, and the information resources necessary to support them personally and professionally.

(d) It is the intent of the Legislature to create a parity of telehealth with other health care delivery modes, to actively promote telehealth as a tool to advance stakeholders' goals regarding health status and health system improvement, and to create opportunities and flexibility for telehealth to be used in new models of care and system improvements.

(e) Telehealth is a mode of delivering health care services and public health utilizing information and communication technologies to enable the diagnosis, consultation, treatment, education, care management, and self-management of patients at a distance from health care providers.

(f) Telehealth is part of a multifaceted approach to address the problem of inadequate provider distribution and the development of health systems in medically underserved areas by improving communication capabilities and providing convenient access to up-to-date information, consultations, and other forms of support.

(g) The use of information and telecommunication technologies to deliver health services has the potential to reduce costs, improve

quality, change the conditions of practice, and improve access to health care, particularly in rural and other medically underserved areas.

(h) Telehealth will assist in maintaining or improving the physical and economic health of medically underserved communities by keeping the source of medical care in the local area, strengthening the health infrastructure, and preserving health care-related jobs.

(i) Consumers of health care will benefit from telehealth in many ways, including expanded access to providers, faster and more convenient treatment, better continuity of care, reduction of lost work time and travel costs, and the ability to remain with support networks.

(j) It is the intent of the Legislature that the fundamental health care provider-patient relationship cannot only be preserved, but can also be augmented and enhanced, through the use of telehealth as a tool to be integrated into practices.

(k) Without the assurance of payment and the resolution of legal and policy barriers, the full potential of telehealth will not be realized.

SEC. 3. Section 2290.5 of the Business and Professions Code is repealed.

SEC. 4. Section 2290.5 is added to the Business and Professions Code, to read:

2290.5. (a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications ~~system or where the asynchronous store and forward transfer occurs.~~ *system or where the asynchronous store and forward service originates.*

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

~~(5)~~

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via telehealth, the health care provider *at the originating site* shall verbally inform the patient that telehealth may be used and obtain verbal consent from the patient for this use. The verbal consent shall be documented in the patient's medical record.

(c) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(d) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(e) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to telehealth interactions.

SEC. 5. Section 1374.13 of the Health and Safety Code is repealed.

SEC. 6. Section 1374.13 is added to the Health and Safety Code, to read:

1374.13. (a) For the purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the health care provider.

(c) No health care service plan shall require that in-person contact occur between a health care provider and a patient before payment is made for the covered services appropriately provided through ~~telehealth, and every health care service plan shall adopt payment policies consistent with this section to compensate health care providers who provide covered health care services through~~ telehealth, subject to the terms and conditions of the contract entered into between the enrollee or subscriber and the health care service plan, *and between the health care service plan and its participating providers or provider groups.*

(d) For the purposes of payment for covered treatment or services provided through telehealth, the health care service plan shall not limit the type of setting where services are provided for the patient or by the health care provider.

(e) The requirements of this subdivision shall also be operative for health care service plan contracts with the department pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.81 (commencing ~~with Section 14089), or Chapter 8 (commencing with Section 14200).~~ *with Section 14087.96), or Article 2.91 (commencing with Section 14089) of Chapter 7, or Chapter 8 (commencing with Section 14200) of, Part 3 of Division 9 of the Welfare and Institutions Code.*

(f) Nothing in this section shall be interpreted to authorize a health care service plan to require the use of telehealth when the health care provider has determined that it is not appropriate.

SEC. 7. Section 10123.85 of the Insurance Code is repealed.

SEC. 8. Section 10123.85 is added to the Insurance Code, to read:

10123.85. (a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the health care provider.

(c) No health insurer shall require that in-person contact occur between a health care provider and a patient before payment is made for the services appropriately provided through telehealth, ~~and every health insurer shall adopt payment policies consistent~~

~~with this section to compensate health care providers who provide covered health care services through telehealth,~~ subject to the terms and conditions of the contract entered into between the policyholder or contractholder and the insurer, *and between the insurer and its participating providers or provider groups*.

(d) For the purposes of payment for covered treatment or services provided through telehealth, the health insurer shall not limit the type of setting where services are provided for the patient or by the health care provider.

(e) Nothing in this section shall be interpreted to authorize a health insurer to require the use of telehealth when the health care provider has determined that it is not appropriate.

SEC. 9. Section 14132.72 of the Welfare and Institutions Code is amended to read:

14132.72. (a) For purposes of this section, the definitions in subdivision (a) of Section 2290.5 of the Business and Professions Code shall apply.

(b) It is the intent of the Legislature to recognize the practice of telehealth as a legitimate means by which an individual may receive health care services from a health care provider without in-person contact with the provider.

(c) In-person contact between a health care provider and a patient shall not be required under the Medi-Cal program for services appropriately provided through telehealth, subject to reimbursement policies adopted by the department to compensate a licensed health care provider who provides health care services through telehealth that are otherwise reimbursed pursuant to the Medi-Cal program. *Nothing in this section or the Telehealth Advancement Act of 2011 shall be construed to conflict with or supersede the provisions of Section 14091.3 of this code or any other existing state laws or regulations related to reimbursement for services provided by a noncontracted provider.*

(d) The department shall not require a health care provider to document a barrier to an in-person visit for Medi-Cal coverage of services provided via telehealth.

(e) For the purposes of payment for covered treatment or services provided through telehealth, the department shall not limit the type of setting where services are provided for the patient or by the health care provider.

(f) Nothing in this section shall be interpreted to authorize the department to require the use of telehealth when the health care provider has determined that it is not appropriate.

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

SEC. 10. Section 14132.725 of the Welfare and Institutions Code is amended to read:

14132.725. (a) Commencing July 1, 2006, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by the department.

(b) For purposes of this section, "teleophthalmology and teledermatology by store and forward" means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by an optometrist who is licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, where the physician or optometrist at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician or optometrist, and shall receive an interactive communication with the distant specialist physician or optometrist, upon request. If requested, communication with the distant specialist physician or optometrist may occur either at the time of the consultation, or within 30 days of the patient's notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.

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

(d) On or before January 1, 2008, the department shall report to the Legislature the number and type of services provided, and the payments made related to the application of store and forward telemedicine as provided, under this section as a Medi-Cal benefit.

SEC. 11. 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.

O

AB 507

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AB 507
Author: Hayashi
Bill Date: July 1, 2011, Amended
Subject: Pain Management
Sponsor: American Cancer Society
Position: Support

STATUS OF BILL:

This bill is currently in Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would repeal existing law that allows the Department of Justice (DOJ) employ physicians for interviewing and examining patients related to prescription possession and use of controlled substances. This bill would also make changes to existing law related to severe chronic intractable pain.

This bill was amended to make changes to existing law affecting the Pharmacy Board; these changes do not impact the Board's analysis or recommended position.

This bill was recently amended to take out the provisions impacting the Pharmacy Board and to no longer require a physician who refuses to prescribe opiate medication for patients who request the treatment for "pain or a condition causing pain" to refer patients to physicians who treat pain or a condition causing pain, with methods that include the use of opiates. This bill now goes back to existing law that requires a physician to inform the patient that there are physicians who treat pain and whose methods include the use of opiates.

ANALYSIS:

Existing law allows DOJ to employ physicians in order to examine patients related to prescription possession and use of controlled substances. This bill would repeal this law.

> DOJ may have issues with this law being repealed; however, these issues have not been relayed to the Medical Board of California (the Board).

Existing law also allows physicians to refuse to prescribe opiate medication for patients who request the treatment for severe chronic intractable pain, but requires physicians to inform patients that there are physicians who specialize in the treatment of severe chronic intractable pain with methods that include the use of opiates.

This bill would continue to allow physicians to refuse to prescribe opiate medication for patients who request the treatment for "pain or a condition causing pain". This bill would have required physicians to refer patients to physicians who treat pain or a condition causing pain, with methods that include the use of opiates.

> This would have been problematic because it requires a physician to refer the patient to another physician. If the physician does not know of another physician to refer the patient to, the physician would be in violation of law. This bill should be amended to be permissive, to provide an exclusion for physicians who do not know of another physician to refer their patient to, or to provide a referral to a Web site that would contain a list of physicians such as one or more of the American Board of Medical Specialties certified physician sites (see attached). The other changes in this bill are technical in nature.

The April 27th amendments make changes to existing law affecting the Pharmacy Board; these changes do not impact the Board's analysis or recommended position.

The June 20th amendments take out the take out the provisions impacting the Pharmacy Board. The June 20th and the July 1st amendments also address the Board's concerns and this bill no longer requires a physician who refuses to prescribe opiate medication for patients who request the treatment for "pain or a condition causing pain" to refer patients to physicians who treat pain or a condition causing pain, with methods that include the use of opiates. This bill now goes back to existing law and only requires a physician to inform the patient that there are physicians who treat pain and whose methods include the use of opiates. As such, the Board now has a support position on this bill.

According to the author, this bill seeks to fix ambiguities and inconsistencies in existing law surrounding pain practice that unduly restrict health care practice and interfere with patient access to effective pain treatment. The author states that this bill will remove remaining legal barriers to optimal pain management for patients with cancer, HIV/AIDS, and other diseases or conditions causing pain.

SUPPORT: American Cancer Society (Sponsor); American Chronic Pain Association; American Society for Pain Management Nursing; California Academy of Physician Assistants; Feinberg Medical Group; For Grace; Hollywood Presbyterian Medical Center; Medical Board of California; Southern California Cancer Pain Initiative; and USC/Keck School of Medicine CARE Team/ Palliative Medicine Department

OPPOSITION: None on file

FISCAL: None

July 6, 2011

AMENDED IN SENATE JULY 1, 2011

AMENDED IN SENATE JUNE 20, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY APRIL 13, 2011

AMENDED IN ASSEMBLY MARCH 21, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 507

Introduced by Assembly Member Hayashi

February 15, 2011

An act to amend Sections 124960 and 124961 of, and to repeal Section 11453 of, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 507, as amended, Hayashi. Pain management.

(1) Existing law authorizes the Department of Justice to employ a physician to interview and examine any patient in connection with the prescription, possession, or use of a controlled substance, requires the patient to submit to the interview and examination, and authorizes the physician to testify in prescribed administrative proceedings.

This bill would repeal that provision.

(2) Existing law, the Medical Practice Act, provides for the licensing and regulation of physicians and surgeons by the Medical Board of California~~, and the~~. *The* violation of specified provisions of the act is a crime. Existing law authorizes a physician and surgeon to prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition, drugs or prescription controlled substances for the

treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

This bill would conform findings and declarations and other references to severe chronic intractable pain and to the California Intractable Pain Treatment Act.

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 11453 of the Health and Safety Code is repealed.

SEC. 2. Section 124960 of the Health and Safety Code is amended to read:

124960. The Legislature finds and declares all of the following:

(a) The state has a right and duty to control the illegal use of opiate drugs.

(b) Inadequate treatment of acute and chronic pain originating from cancer or noncancerous conditions is a significant health problem.

(c) For some patients, pain management is the single most important treatment a physician can provide.

(d) A patient suffering from pain or a condition causing pain, including, but not limited to, intractable pain should have access to proper treatment of his or her pain.

(e) Due to the complexity of their problems, many patients suffering from pain or a condition causing pain, including, but not limited to, intractable pain may require referral to a physician with expertise in the treatment of pain or a condition causing pain, including, but not limited to, intractable pain. In some cases, pain or a condition causing pain, including, but not limited to, intractable pain is best treated by a team of clinicians in order to address the associated physical, psychological, social, and vocational issues.

(f) In the hands of knowledgeable, ethical, and experienced pain management practitioners, opiates administered for pain or a condition causing pain, including, but not limited to, intractable pain can be safe.

(g) Opiates can be an accepted treatment for patients in pain or a condition causing pain, including, but not limited to, intractable

pain who have not obtained relief from any other means of treatment.

(h) A patient suffering from pain or a condition causing pain, including, but not limited to, intractable pain has the option to request or reject the use of any or all modalities to relieve his or her pain.

(i) A physician treating a patient who suffers from pain or a condition causing pain, including, but not limited to, intractable pain may prescribe a dosage deemed medically necessary to relieve pain as long as the prescribing is in conformance with Section 2241.5 of the Business and Professions Code.

(j) A patient who suffers from pain or a condition causing pain, including, but not limited to, intractable pain, has the option to choose opiate medication for the treatment of the severe chronic intractable pain as long as the prescribing is in conformance with the provisions of Section 2241.5 of the Business and Professions Code.

(k) The patient's physician may refuse to prescribe opiate medication for a patient who requests the treatment for pain or a condition causing pain, including, but not limited to, intractable pain. However, that physician shall ~~refer the patient to~~ *inform the patient that there are* physicians who treat pain or a condition causing pain, including, but not limited to, intractable pain with methods that include the use of opiates.

SEC. 3. Section 124961 of the Health and Safety Code is amended to read:

124961. Nothing in this section shall be construed to alter any of the provisions set forth in Section 2241.5 of the Business and Professions Code. This section shall be known as the Pain Patient's Bill of Rights.

(a) A patient suffering from pain or a condition causing pain, including, but not limited to, intractable pain has the option to request or reject the use of any or all modalities in order to relieve his or her pain.

(b) A patient who suffers from pain or a condition causing pain, including, but not limited to, intractable pain has the option to choose opiate medications to relieve that pain without first having to submit to an invasive medical procedure, which is defined as surgery, destruction of a nerve or other body tissue by manipulation, or the implantation of a drug delivery system or

device, as long as the prescribing physician acts in conformance with the provisions of the California Intractable Pain Treatment Act, Section 2241.5 of the Business and Professions Code.

(c) The patient's physician may refuse to prescribe opiate medication for the patient who requests a treatment for pain or a condition causing pain, including, but not limited to, intractable pain. However, that physician shall inform the patient that there are physicians who treat pain and whose methods include the use of opiates.

(d) A physician who uses opiate therapy to relieve pain or a condition causing pain, including, but not limited to, intractable pain may prescribe a dosage deemed medically necessary to relieve the patient's pain, as long as that prescribing is in conformance with Section 2241.5 of the Business and Professions Code.

(e) A patient may voluntarily request that his or her physician provide an identifying notice of the prescription for purposes of emergency treatment or law enforcement identification.

(f) Nothing in this section shall do either of the following:

(1) Limit any reporting or disciplinary provisions applicable to licensed physicians and surgeons who violate prescribing practices or other provisions set forth in the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or the regulations adopted thereunder.

(2) Limit the applicability of any federal statute or federal regulation or any of the other statutes or regulations of this state that regulate dangerous drugs or controlled substances.

O

AB 536

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 536
Author:	Ma
Bill Date:	June 14, 2011, amended
Subject:	Physicians and Surgeons
Sponsor:	Union of American Physician and Dentists
Position:	Opposition Removed

STATUS OF BILL:

This bill is currently in the Senate.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would have required the Medical Board of California (the Board) to remove misdemeanor or felony convictions posted by the Board on the Internet within 90 days of receiving a certified copy of an expungement order from the licensee.

This bill was amended, as suggested by the Board, to instead require the Board to post notification of the expungement order and date of expungement on its Internet Web site within six months of the receipt of the certified expungement order.

ANALYSIS:

Current law requires the Board to post information regarding licensed physicians and surgeons on its Internet Web site, including all felony convictions reported to the Board after January 3, 1991 and any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

According to the author's office, the Board has kept criminal misdemeanor or felony convictions that have been legally expunged on its Web site. The author's office believes this leads the public to assume the physician is guilty of the described behavior, which can be economically disastrous for the physician and disrupt the delivery of health care services to consumers.

This bill would require the Board to remove the misdemeanor or felony convictions within 90 days of receiving a certified copy of the expungement order.

The Board took an Oppose Unless Amended position on this bill at its May Board Meeting. The Board does not believe expunged convictions should be removed from the Board's Internet Web site, as they are still required to be reported to the Board and maintained in the licensee's file. The Board suggested amendments to instead require the Board to include information on its Internet Web site for expunged convictions, the fact

that the conviction has been expunged and the date of expungement. These amendments will ensure that the public has information on the conviction, but will also inform the public of the fact that the conviction has been expunged. This will give the public access to accurate information and ensure that public protection is maintained.

The June 14th version of the bill incorporated the Board's suggested amendments; as such, the Board's opposition was removed. Since the Board's amendments were taken, staff is suggesting a Support position on this bill.

SUPPORT: Union of American Physicians and Dentists (Sponsor)
American Federation of State, County and Municipal Employees
California Medical Association

OPPOSITION: None on file

FISCAL: None

POSITION: Recommendation: Support

AMENDED IN SENATE JUNE 14, 2011

AMENDED IN ASSEMBLY APRIL 11, 2011

AMENDED IN ASSEMBLY MARCH 7, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 536

Introduced by Assembly Member Ma

February 16, 2011

An act to ~~add Section 2027.1 to~~ *amend Section 2027 of* the Business and Professions Code, relating to physicians and surgeons.

LEGISLATIVE COUNSEL'S DIGEST

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

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

This bill would require the board to ~~remove expunged misdemeanor or felony convictions posted pursuant to those provisions~~ *post notification of an expungement order and the date of the order* within ~~90 days~~ *6 months* of receiving a certified copy of the expungement order from the licensee.

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

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

SECTION 1. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) The board shall post on the Internet the following information in its possession, custody, or control regarding licensed physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), subject to an interim suspension order (ISO), or subject to any of the enforcement actions set forth in Section 803.1.

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board or by the board of another state or jurisdiction, as described in Section 803.1.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" shall mean an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the Medical Board of California unless an appeal of that decision is pending.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason. The posting shall also provide a link to any additional explanatory or exculpatory information submitted electronically by the licensee pursuant to subdivision (f) of Section 805.

(7) Any misdemeanor conviction that results in a disciplinary action or an accusation that is not subsequently withdrawn or dismissed.

(8) 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.

(9) Any information required to be disclosed pursuant to Section 803.1.

(b) Upon receipt of a certified copy of an expungement order granted pursuant to Section 1203.4 of the Penal Code from a licensee, the board shall, within six months of receipt of the expungement order, post notification of the expungement order and the date thereof on its Internet Web site.

~~(b)~~

(c) (1) From January 1, 2003, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to January 1, 2003, shall be posted for a period of 10 years from January 1, 2003. Settlement information shall be posted as described in paragraph (2) of subdivision (b) of Section 803.1.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the board's Internet Web site.

(3) Notwithstanding paragraph (2) and except as provided in paragraph (4), if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(4) Notwithstanding paragraph (2), if a court finds, in a final judgment, that peer review resulting in a hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding, the information concerning that hospital disciplinary action posted pursuant to paragraph (6) of subdivision (a) shall be immediately removed from the board's Internet Web site. For purposes of this paragraph, "peer review" has the same meaning as defined in Section 805.

~~(c)~~

(d) The board shall also post on the Internet a factsheet that explains and provides information on the reporting requirements under Section 805.

~~(d)~~

(e) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

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

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

O

AB 584

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 584
Author:	Fong
Bill Date:	April 6, 2011, Amended
Subject:	Workers' Compensation: Utilization Review
Sponsor (s):	American Federation of State, County, and Municipal Employees California Society of Industrial Medicine and Surgery California Society of Physical Medicine and Rehabilitation Union of American Physicians and Dentists

STATUS OF BILL:

This bill is in Senate Appropriations Committee, on the suspense file.

DESCRIPTION OF CURRENT LEGISLATION:

This bill clarifies current law to provide that physicians performing utilization review for injured workers must be licensed in California. Other provisions included in this bill do not affect the Medical Board of California (the Board).

ANALYSIS:

Current law does not require physicians who perform utilization reviews of workers' compensation claims to be license in California as long as the physicians are licensed in another state. However, current law does state that performing an evaluation that leads to the modification, delay, or denial of medical treatment is an act of diagnosing for the purpose of providing a different mode of treatment for the patient. Only a licensed physician is allowed to override treatment decisions.

The author and proponents of this bill believe that out-of-state physicians are making inappropriate decisions regarding these utilization reviews in part because there is no regulatory agency holding them accountable.

This bill would ensure that any physician performing a utilization review in California would be regulated by the Board by requiring all physicians performing these reviews to be licensed in California.

This bill is similar to AB 933 (Fong, 2009) and AB 2969 (Lieber, 2008) which were both vetoed. The Board has supported this legislation in the past.

SUPPORT: American Federation of State, County, and Municipal Employees (Co-sponsor); California Society of Industrial Medicine and Surgery (Co-sponsor); California Society of Physical Medicine and Rehabilitation (Co-

sponsor); Union of American Physicians and Dentists (Co-sponsor); Association for Los Angeles Deputy Sheriffs; California Applicants' Attorneys Association; California Chiropractic Association; California Medical Association; California Nurses Association; California Physical Therapy Association; International Chiropractors Association of California; Peace Officers Research Association of California; Pfizer; and one individual.

OPPOSITION: Acclamation Insurance Management Services; Allied Managed Care; Alpha Fund; American Insurance Association; Association of California Insurance Companies; Association of California Water Agencies; California Association of Joint Powers Authority; California Coalition on Workers Compensation; California Special Districts Association; California State Association of Counties; CSAC Excess Insurance Authority; League of California Cities; Liberty Mutual Group; and Regional Council of Rural Counties.

FISCAL: None to the Board

POSITION: Recommendation: Support

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 584

Introduced by Assembly Member Fong

February 16, 2011

An act to amend Sections 3209.3 and 4610 of the Labor Code, *and to amend Section 2708 of the Unemployment Insurance Code,* relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 584, as amended, Fong. Workers' compensation: utilization review.

Existing workers' compensation law generally requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law, for purposes of workers' compensation, defines "psychologist" to mean a licensed psychologist with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology, as specified, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

This bill would require the psychologist to be licensed by California state law.

Existing law requires every employer to establish a medical treatment utilization review process, in compliance with specified requirements, either directly or through its insurer or an entity with which the employer or insurer contracts for these services. Existing law provides that no

person other than a licensed physician who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

This bill would require the physician to be licensed by California state law.

Existing law authorizes the Employment Development Department to administer the disability compensation program. Existing law requires a claim for disability benefits to be supported by a certification of a treating physician or practitioner. Existing law defines physician by reference to the above provision and defines a practitioner as a person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or nurse practitioner, as specified, or, as to normal pregnancy or childbirth, a midwife, nurse midwife, or a nurse practitioner.

This bill would provide that claim for disability benefits may also be supported by a health professional as defined, and as specified.

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

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

SECTION 1. Section 3209.3 of the Labor Code is amended to read:

3209.3. (a) "Physician" means physicians and surgeons holding an M.D. or D.O. degree, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners licensed by California state law and within the scope of their practice as defined by California state law.

(b) "Psychologist" means a psychologist licensed by California state law with a doctoral degree in psychology, or a doctoral degree deemed equivalent for licensure by the Board of Psychology pursuant to Section 2914 of the Business and Professions Code, and who either has at least two years of clinical experience in a recognized health setting or has met the standards of the National Register of the Health Service Providers in Psychology.

(c) When treatment or evaluation for an injury is provided by a psychologist, provision shall be made for appropriate medical collaboration when requested by the employer or the insurer.

(d) "Acupuncturist" means a person who holds an acupuncturist's certificate issued pursuant to Chapter 12 (commencing with Section 4925) of Division 2 of the Business and Professions Code.

(e) Nothing in this section shall be construed to authorize acupuncturists to determine disability for the purposes of Article 3 (commencing with Section 4650) of Chapter 2 of Part 2~~, or under Section 2708 of the Unemployment Insurance Code~~.

SEC. 2. Section 4610 of the Labor Code is amended to read:

4610. (a) For purposes of this section, "utilization review" means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to Section 4600.

(b) Every employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services.

(c) Each utilization review process shall be governed by written policies and procedures. These policies and procedures shall ensure that decisions based on the medical necessity to cure and relieve of proposed medical treatment services are consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines. These policies and procedures, and a description of the utilization process, shall be filed with the administrative director and shall be disclosed by the employer to employees, physicians, and the public upon request.

(d) If an employer, insurer, or other entity subject to this section requests medical information from a physician in order to determine whether to approve, modify, delay, or deny requests for

authorization, the employer shall request only the information reasonably necessary to make the determination. The employer, insurer, or other entity shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 or Section 2450 of the Business and Professions Code. The medical director shall ensure that the process by which the employer or other entity reviews and approves, modifies, delays, or denies requests by physicians prior to, retrospectively, or concurrent with the provision of medical treatment services, complies with the requirements of this section. Nothing in this section shall be construed as restricting the existing authority of the Medical Board of California.

(e) No person other than a physician licensed by California state law who is competent to evaluate the specific clinical issues involved in the medical treatment services, and where these services are within the scope of the physician's practice, requested by the physician may modify, delay, or deny requests for authorization of medical treatment for reasons of medical necessity to cure and relieve.

(f) The criteria or guidelines used in the utilization review process to determine whether to approve, modify, delay, or deny medical treatment services shall be all of the following:

(1) Developed with involvement from actively practicing physicians.

(2) Consistent with the schedule for medical treatment utilization adopted pursuant to Section 5307.27. Prior to adoption of the schedule, these policies and procedures shall be consistent with the recommended standards set forth in the American College of Occupational and Environmental Medicine Occupational Medical Practice Guidelines.

(3) Evaluated at least annually, and updated if necessary.

(4) Disclosed to the physician and the employee, if used as the basis of a decision to modify, delay, or deny services in a specified case under review.

(5) Available to the public upon request. An employer shall only be required to disclose the criteria or guidelines for the specific procedures or conditions requested. An employer may charge members of the public reasonable copying and postage expenses related to disclosing criteria or guidelines pursuant to this paragraph. Criteria or guidelines may also be made available

through electronic means. No charge shall be required for an employee whose physician's request for medical treatment services is under review.

(g) In determining whether to approve, modify, delay, or deny requests by physicians prior to, retrospectively, or concurrent with the provisions of medical treatment services to employees all of the following requirements must be met:

(1) Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination.

(2) When the employee's condition is such that the employee faces an imminent and serious threat to his or her health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, delay, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.

(3) (A) Decisions to approve, modify, delay, or deny requests by physicians for authorization prior to, or concurrent with, the provision of medical treatment services to employees shall be communicated to the requesting physician within 24 hours of the decision. Decisions resulting in modification, delay, or denial of all or part of the requested health care service shall be communicated to physicians initially by telephone or facsimile, and to the physician and employee in writing within 24 hours for concurrent review, or within two business days of the decision for prospective review, as prescribed by the administrative director. If the request is not approved in full, disputes shall be resolved in

accordance with Section 4062. If a request to perform spinal surgery is denied, disputes shall be resolved in accordance with subdivision (b) of Section 4062.

(B) In the case of concurrent review, medical care shall not be discontinued until the employee's physician has been notified of the decision and a care plan has been agreed upon by the physician that is appropriate for the medical needs of the employee. Medical care provided during a concurrent review shall be care that is medically necessary to cure and relieve, and an insurer or self-insured employer shall only be liable for those services determined medically necessary to cure and relieve. If the insurer or self-insured employer disputes whether or not one or more services offered concurrently with a utilization review were medically necessary to cure and relieve, the dispute shall be resolved pursuant to Section 4062, except in cases involving recommendations for the performance of spinal surgery, which shall be governed by the provisions of subdivision (b) of Section 4062. Any compromise between the parties that an insurer or self-insured employer believes may result in payment for services that were not medically necessary to cure and relieve shall be reported by the insurer or the self-insured employer to the licensing board of the provider or providers who received the payments, in a manner set forth by the respective board and in such a way as to minimize reporting costs both to the board and to the insurer or self-insured employer, for evaluation as to possible violations of the statutes governing appropriate professional practices. No fees shall be levied upon insurers or self-insured employers making reports required by this section.

(4) Communications regarding decisions to approve requests by physicians shall specify the specific medical treatment service approved. Responses regarding decisions to modify, delay, or deny medical treatment services requested by physicians shall include a clear and concise explanation of the reasons for the employer's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity.

(5) If the employer, insurer, or other entity cannot make a decision within the timeframes specified in paragraph (1) or (2) because the employer or other entity is not in receipt of all of the information reasonably necessary and requested, because the employer requires consultation by an expert reviewer, or because

the employer has asked that an additional examination or test be performed upon the employee that is reasonable and consistent with good medical practice, the employer shall immediately notify the physician and the employee, in writing, that the employer cannot make a decision within the required timeframe, and specify the information requested but not received, the expert reviewer to be consulted, or the additional examinations or tests required. The employer shall also notify the physician and employee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the employer, the employer shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2).

(h) Every employer, insurer, or other entity subject to this section shall maintain telephone access for physicians to request authorization for health care services.

(i) If the administrative director determines that the employer, insurer, or other entity subject to this section has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the administrative director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected. The administrative penalties shall not be deemed to be an exclusive remedy for the administrative director. These penalties shall be deposited in the Workers' Compensation Administration Revolving Fund.

SEC. 3. Section 2708 of the Unemployment Insurance Code is amended to read:

2708. (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician, *health professional,* or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim,

a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician, *health professional,* or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, where no diagnosis has yet been obtained, a detailed statement of symptoms.

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

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

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

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

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician, *health professional,* or practitioner believes the employee is needed to care for the child, parent, spouse, or domestic partner.

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

(B) "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging

"third party" care for the child, parent, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

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

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

(e) For purposes of this part:

(1) "Health professional" means a psychologist, optometrist, dentist, podiatrist, or chiropractor, provided that he or she is duly licensed on any state or foreign country, or in a territory or possession of a country, in which care and treatment was provided to the employee or the employee's family member with a serious health condition. The care and treatment shall be within the scope of his or her practice, as defined by the laws of the licensing jurisdiction. For purposes of this part, all references to a physician shall be also deemed to apply to a health professional.

~~(1)~~

(2) "Physician" ~~has the same meaning as defined in Section 3209.3 of the Labor Code~~ *means a physician and surgeon holding an M.D. or D.O. degree, provided that he or she is duly licensed in any state or foreign country, or in a territory or possession of any country, in which care and treatment was provided to the*

employee or the employee's family member with a serious health condition. The care and treatment shall be within the scope of his or her practice, as defined by the laws of the licensing jurisdiction.

~~(2)~~

(3) (A) "Practitioner" means a ~~person duly licensed or certified in California acting within the scope of his or her license or certification who is a dentist, podiatrist, or a nurse practitioner, and in the case of a nurse practitioner, after performance of a physical examination by a nurse practitioner and collaboration with a physician and surgeon, or as to normal pregnancy or childbirth, a midwife or nurse midwife, or nurse practitioner~~ *nurse practitioner who is duly licensed or certified in any state or foreign country, or in a territory or possession of any country, in which he or she has provided care and treatment to the employee or the employee's family member with a serious health condition. The care and treatment shall be within the scope of his or her practice, as defined by the laws of the licensing or certifying jurisdiction and the nurse practitioner shall have performed a physical examination and collaborated with a physician and surgeon holding an M.D. or D.O. degree.*

(B) For purposes of normal pregnancy or childbirth, "practitioner" means a midwife, nurse midwife, or a nurse practitioner operating within the scope of his or her practice, as determined by the laws of the licensing or certifying jurisdiction, who is duly licensed or certified in any state or foreign country, or a territory or possession of a country, in which he or she has provided care to the employee or the employee's family member with a serious health condition.

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

(g) ~~Nothing in this~~ *This* section shall *not* be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

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

(A) The physician, *health professional,* or practitioner treating the claimant.

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

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

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AB 589

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 589
Author:	Perea
Bill Date:	July 12, 2011, amended
Subject:	Medical School Scholarships
Sponsor:	California Medical Association
Position:	Support

STATUS OF BILL:

This bill is currently in Senate Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would create the Steven M. Thompson Medical School Scholarship Program (STMSSP) within the Health Professions Education Foundation (HPEF).

This bill was amended and no longer funds the STMSSP from funds transferred from the Managed Care Administrative Fines and Penalties Fund. As amended, STMSSP is funded by private or federal funds and will only be implemented if HPEF determines that sufficient funds are available.

Recent amendments specify that Steven M. Thompson Loan Repayment Program funds shall not be used to fund the STMSSP.

ANALYSIS:

The Steven M. Thompson Loan Repayment Program (STLRP) was created in 2002 via legislation which was co-sponsored by the Medical Board of California (the Board). The STLRP encourages recently licensed physicians to practice in underserved locations in California by authorizing a plan for repayment of their student loans (up to $105,000) in exchange for a minimum three years of service. In 2006, the administration of STLRP was transitioned from the Board to HPEF. Since 1990, HPEF has administered statewide scholarship and loan repayment programs for a wide range of health professions students and recent graduates and is funded through grants and contributions from public and private agencies, hospitals, health plans, foundations, corporations, as well as through a surcharge on the renewal fees of various health professionals, including a $25 fee paid by physicians and surgeons.

AB 589 would create the STMSSP in HPEF. STMSSP participants must commit in writing to three years of full-time professional practice in direct patient care in an eligible setting. The maximum amount per total scholarship is $105,000 to be distributed over the course of medical school.

The committee charged with selecting scholarship recipients must use guidelines that provide priority consideration to applicants who are best suited to meet the cultural and linguistic needs and demands of patients from medically underserved populations and who meet one or more of the following criteria:

- Speak a Medi-Cal threshold language.
- Come from an economically disadvantaged background.
- Have experience working in medically underserved areas or with medically underserved populations.

The selection committee must give preference to applicants who have committed to practicing in a primary specialty and who will serve in a practice setting in a super-medically underserved area. The selection committee must also include a factor ensuring geographic distribution of placements.

The STMSSP would have originally been funded by funds transferred from the Managed Care Administrative Fines and Penalties Fund that are in excess of the first $1,000,000, including accrued interest, as the first $1,000,000 funds the STLRP (this bill would not reduce the funding to the current STLRP).

The May 27th amendments remove all references to the STMSSP being funded by the Managed Care Administrative Fines and Penalties Fund. As amended, the STMSSP would be funded by federal or private funds and the bill shall only be implemented if HPEF determines that there are sufficient funds available in order to implement STMSSP.

The July 12th amendments specify that STLRP funds shall not be used to fund the STMSSP.

According to the author's office, this bill will address shortages of physician services that exist in over 200 regions in California identified as medically underserved areas. The purpose of this bill is to make medical school more financially accessible for students who are willing to pursue careers in primary care. According to the author's office, this bill will help to address the geographical disparity of physician supply in California, as well as the increasing cost of medical education, which is a barrier to entry for students from economically disadvantaged backgrounds. The author's office believes this bill will provide underserved communities with greater access to medical care. This bill is consistent with the mission of the Medical Board of promoting access to care.

SUPPORT:	California Medical Association (Sponsor); Association of California Healthcare Districts; California Primary Care Association; Children's Hospital Central California; City of Kernan; Community Clinic Association of Los Angeles County; and Medical Board of California
OPPOSITION:	None on file
FISCAL:	None

July 18, 2011

AMENDED IN SENATE JULY 12, 2011

AMENDED IN ASSEMBLY MAY 27, 2011

AMENDED IN ASSEMBLY APRIL 11, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 589

Introduced by Assembly Member Perea
(Principal coauthors: Senators Alquist and Rubio)

February 16, 2011

An act to add Article 6 (commencing with Section 128560) to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, relating to health professions.

LEGISLATIVE COUNSEL'S DIGEST

AB 589, as amended, Perea. Medical school scholarships.

Existing law establishes the Medically Underserved Account for Physicians within the Health Professions Education Fund that is managed by the Health Professions Education Foundation and the Office of Statewide Health Planning and Development. Under existing law, the primary purpose of the account is to fund the Steven M. Thompson Physician Corps Loan Repayment Program, which provides for the repayment of prescribed educational loans, not to exceed $105,000, obtained by a physician and surgeon who practices in a medically underserved area of the state.

This bill would establish within the Health Professions Education Foundation the Steven M. Thompson Medical School Scholarship Program (STMSSP), managed by the foundation and the Office of Statewide Health Planning and Development to promote the education of medical doctors and doctors of osteopathy, as specified. This bill

would provide up to $105,000 in scholarships to selected participants who agree in writing prior to entering an accredited medical or osteopathic school to serve in an eligible setting.

This bill would establish the Steven M. Thompson Medical School Scholarship Account within the Health Professions Education Fund to receive federal or private funds for the STMSSP. This bill would provide that the STMSSP will be implemented only to the extent that the account contains sufficient funds as determined by the foundation.

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. Article 6 (commencing with Section 128560) is added to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 6. Steven M. Thompson Medical School Scholarship Program

128560. (a) There is hereby established within the Health Professions Education Foundation, the Steven M. Thompson Medical School Scholarship Program.

(b) It is the intent of this article that the foundation and the office provide the ongoing program management for the program.

128565. For purposes of this article, the following definitions shall apply:

(a) "Account" means the Steven M. Thompson Medical School Scholarship Account established within the Health Professions Education Fund pursuant to this article.

(b) "Foundation" means the Health Professions Education Foundation.

(c) "Medi-Cal threshold languages" means primary languages spoken by limited-English-proficient (LEP) population groups meeting a numeric threshold of 3,000 LEP individuals eligible for Medi-Cal residing in a county, 1,000 LEP individuals eligible for Medi-Cal residing in a single ZIP Code, or 1,500 LEP individuals eligible for Medi-Cal residing in two contiguous ZIP Codes.

(d) "Medically underserved area" means an area defined as a health professional shortage area in Part 5 (commencing with Sec.

5.1) of Subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the California Healthcare Workforce Policy Commission pursuant to Section 128225.

(e) "Medically underserved population" means the persons served by the Medi-Cal program, the Healthy Families Program, and uninsured populations.

(f) "Office" means the Office of Statewide Health Planning and Development (OSHPD).

(g) "Practice setting" means either of the following:

(1) A community clinic as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, each of which is located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(2) A medical practice located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(h) "Primary specialty" means family practice, internal medicine, pediatrics, or obstetrics/gynecology.

(i) "Program" means the Steven M. Thompson Medical School Scholarship Program.

(j) "Selection committee" means the advisory committee of not more than seven members established pursuant to subdivision (b) of Section 128551.

(k) "Super-medically underserved area" means an area defined as medically underserved pursuant to subdivision (d) that also meets a heightened criteria of physician shortage as determined by the foundation.

128570. (a) Persons participating in the program shall be persons who agree in writing prior to entering an accredited medical or osteopathic school to serve in an eligible practice setting, pursuant to subdivision (g) of Section 128565, for at least three years. The program shall be used only for the purpose of promoting the education of medical doctors and doctors of osteopathy and related administrative costs.

(b) A program participant shall commit to three years of full-time professional practice once the participant has achieved full licensure pursuant to Article 4 (commencing with Section 2080) of Chapter 5 or Section 2099.5 of the Business and Professions Code and after completing an accredited residency program. The obligated professional service shall be in direct patient care in an eligible practice setting pursuant to subdivision (g) of Section 128565.

(1) Leaves of absence shall be permitted for serious illness, pregnancy, or other natural causes. The selection committee shall develop the process for determining the maximum permissible length of an absence and the process for reinstatement. Awarding of scholarship funds shall be deferred until the participant is back to full-time status.

(2) Full-time status shall be defined by the selection committee. The selection committee may establish exemptions from this requirement on a case-by-case basis.

(c) The maximum allowable amount per total scholarship shall be one hundred five thousand dollars ($105,000). These moneys shall be distributed over the course of a standard medical school curriculum. The distribution of funds shall increase over the course of medical school, increasing to ensure that at least 45 percent of the total scholarship award is distributed upon matriculation in the final year of school.

(d) In the event the program participant does not complete the minimum three years of professional service pursuant to the contractual agreement between the foundation and the participant, the office shall recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

128575. (a) The selection committee shall use guidelines that meet all of the following criteria to select scholarship recipients:

(1) Provide priority consideration to applicants who are best suited to meet the cultural and linguistic needs and demands of patients from medically underserved populations and who meet one or more of the following criteria:

(A) Speak a Medi-Cal threshold language.

(B) Come from an economically disadvantaged background.

(C) Have experience working in medically underserved areas or with medically underserved populations.

(2) Give preference to applicants who have committed to practicing in a primary specialty.

(3) Give preference to applicants who will serve in a practice setting in a super-medically underserved area.

(4) Include a factor ensuring geographic distribution of placements.

(b) The selection committee may award up to 20 percent of the available scholarships to program applicants who will practice specialties outside of a primary specialty.

(c) The foundation, in consultation with the selection committee, shall develop a process for outreach to potentially eligible applicants.

128580. (a) The Steven M. Thompson Medical School Scholarship Account is hereby established within the Health Professions Education Fund for the purposes of receiving federal or private funds.

(b) Funds in the account shall be used to fund scholarships pursuant to agreements made with recipients and as follows:

(1) Scholarships shall not exceed one hundred five thousand dollars ($105,000) per recipient.

(2) Scholarships shall not exceed the amount of the educational expenses incurred by the recipient.

(c) Funds placed in the account for purposes of this article shall, upon appropriation by the Legislature, be used for the purposes of this article. *Funds supporting the Steven M. Thompson Physician Corps Loan Repayment Program established pursuant to Article 5 (commencing with Section 128550) shall not be used for the purposes of this article.*

(d) The account shall be used to pay for the cost of administering the program, not to exceed 5 percent of the total appropriation for the program.

(e) The office and the foundation shall manage the account established by this section prudently in accordance with other provisions of law.

(f) This article shall be implemented only to the extent that the account contains sufficient funds as determined by the foundation.

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AJR 13

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: AJR 13
Author: Lara
Bill Date: June 2, 2011, introduced
Subject: Graduate Medical Education
Sponsor: California Medical Association

STATUS OF BILL:

This bill is currently in the Senate.

DESCRIPTION OF CURRENT LEGISLATION:

This resolution urges the President and U.S. Congress to continue to provide funding to increase the physician supply in California and encourages consideration of solutions in order to increase the number of graduate medical education (GME) slots in California.

ANALYSIS:

In 2010 President Obama signed the Patient Protection and Affordable Care Act (PPACA), otherwise known as Health Care Reform, into law. The PPACA contains provisions that are intended to address the growing shortage of physicians. The author believes that the supply of physicians in California is inadequate, especially in underserved areas serving ethnic populations. This resolution was introduced to bring these important physician workforce supply issues to the attention of the President and U.S. Congress.

This resolution would urge the President and the U.S. Congress to continue to provide resources to increase the supply of physicians in California, in order to improve access to care, particularly for Californians in rural areas and members of underrepresented ethnic groups. This resolution would also encourage the President and U.S. Congress to consider solutions that would increase the number of graduate medical education (GME) residency positions to keep pace with the growing number of medical school graduates and the growing need for physicians in California.

The Board is supportive of any measure that will help to address workforce issues, especially since the shortage of physicians may be exacerbated by the implementation of PPACA or Health Care Reform. Increasing the supply of physicians and the number of GME residency slots will help to address this shortage and help to increase access to care, which is consistent with the mission of the Board of promoting access to care.

SUPPORT: California Medical Association (Sponsor)
Latino Coalition for a Healthy California

OPPOSITION: None on file

FISCAL: None

POSITION: Recommendation: Support

June 21, 2011

Assembly Joint Resolution No. 13

Introduced by Assembly Member Lara
(Coauthors: Assembly Members Alejo, Allen, Bradford, Butler, Campos, Carter, Cedillo, Davis, Eng, Fong, Furutani, Hueso, Mendoza, Mitchell, Pan, Perea, V. Manuel Pérez, Solorio, Swanson, Torres, Williams, and Yamada)

June 2, 2011

Assembly Joint Resolution No. 13—Relative to health care.

LEGISLATIVE COUNSEL'S DIGEST

AJR 13, as introduced, Lara. Graduate medical education.

This measure would urge the President and the Congress of the United States to continue to provide resources to increase the supply of physicians in California and to consider solutions that would increase the number of graduate medical education residency positions.

Fiscal committee: no.

WHEREAS, Congress approved, and President Barack Obama signed, the federal Patient Protection and Affordable Care Act (PPACA) of 2010 (Public Law 111-148), to expand health insurance coverage, reduce health care costs, and address the growing shortage of physicians; and

WHEREAS, The PPACA aims to specifically address shortages in primary care through adjustments to the Medicare and Medicaid fee schedules, reallotment of unused graduate medical education slots, and a suite of grants, scholarships, loans, and loan forgiveness programs; and

WHEREAS, Forty-two of California's 58 counties fall below the Council on Graduate Medical Education's recommendations for minimum primary care physician supply, and of these 42 counties, 16 have a Latino population that exceeds 30 percent; and

WHEREAS, The PPACA encourages more physicians to practice in rural settings, where Latinos can constitute 50 percent of the population, through Rural Physician Training Grants for medical schools; and

WHEREAS, California's rural counties suffer from particularly low physician practice rates, of the rural counties with the lowest number of primary care physicians, three have a Latino population over 50 percent; and

WHEREAS, The PPACA endeavors to create a more diverse and culturally competent physician workforce by funding scholarships, educational assistance, and loan repayment programs for minority medical students, as well as by building diversity training curricula for medical schools and continuing medical education programs; and

WHEREAS, California is a diverse state that demands a culturally competent and multiethnic physician workforce. According to the 2010 Census, of the state's residents 40 percent are non-Hispanic White, 38 percent are Hispanic, 13 percent are Asian, 6 percent are African American, 3 percent are multiracial, and approximately 1 percent are American Indian; and

WHEREAS, Currently Latinos, African Americans, Samoans, Cambodians, Hmong, and Laotians are underrepresented in California's physician workforce. The underrepresentation of Latino physicians is particularly dire: Latinos represent over one-third of the state's population, but account for only 5 percent of the state's physicians; and

WHEREAS, The majority of the state's ethnic communities enjoys a ratio of 361 physicians per 100,000 residents, but African American communities have only 178 physicians per 100,000 residents and Latino communities have only 56 physicians per 100,000 residents; and

WHEREAS, The number of physicians retiring currently outpaces the number of physicians entering the workforce in California, where, in the last 15 years, the number of medical school graduates in California has been at a plateau even though there has been a population growth in the state of 20 percent; and

WHEREAS, The magnitude of this physician shortage will only increase the cost of public health care in the health care institutions of the state given that Latinos will constitute the majority of Californians by the year 2040. Currently, to reach parity with the non-Latino patient population, there would need to be approximately 27,309 more Latino physicians in California; and

WHEREAS, The PPACA reforms graduate medical education by expanding the scope of Medicare-recognized patient care settings, creating funding for community-based graduate medical education training, and establishing Teaching Health Centers development grants; and

WHEREAS, The increase of medical school debt is one of the primary factors for a student not to pursue medical school because the average medical student now graduates with about $150,000 in debt. If that trend continues at the average rate, medical school debt will amount to $750,000 by 2033; and

WHEREAS, It was reported that in 2009 there were over 45,500 applications to California's eight medical schools but that these schools only offered a total of 1,084 spots; and

WHEREAS, The primary bottleneck in the United States' physician training pipeline is at residency. California is host to 12 percent of the United States' population, but only has 8.3 percent of the country's medical residents. This means that in 2008, California had 9,200 medical residents, which was significantly below the national average; and

WHEREAS, California is able to meet only 25 percent of its current physician workforce needs with physicians who undergo graduate medical education in-state; and

WHEREAS, The PPACA demonstrates an ongoing commitment to evaluation and assessment of the physician workforce by establishing the National Health Care Workforce Commission, Centers for Health Care Workforce Analysis at the national, state, and regional levels, and funding state health care workforce development grants; and

WHEREAS, The expansion of health insurance coverage under the PPACA will further increase the need for physicians. Nearly 4.7 million nonelderly adults and children who were uninsured in all or part of 2009 will qualify for coverage under the PPACA; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature urges the President and the Congress of the United States to continue to provide resources to increase the supply of physicians in California, in order to improve access to care, particularly for Californians in rural areas and members of underrepresented ethnic groups; and be it further

Resolved, That the Legislature encourages the President and the Congress of the United States to consider solutions that would increase the number of graduate medical education residency positions to keep pace with the growing numbers of medical school graduates and the growing need for physicians in California and the United States; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.

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SB 100

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 100
Author: Price
Bill Date: July 12, 2011, amended
Subject: Healing Arts
Sponsor: Author
Board Position: Support

STATUS OF BILL:

This bill is in the Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill covers a variety of subjects. This bill will allow outpatient settings to be licensed by the California Department of Public Health (CDPH) or accredited by an accreditation agency approved by the Medical Board of California (the Board). This bill also contains new requirements for outpatient setting accreditation and licensing and for information sharing between CDPH and the Board. In addition, this bill includes requirements on the supervision of laser and intense pulse laser device procedures, advertising, and disclosing outpatient setting information to the public.

The April 25th amendments make significant changes to this bill. First, they take out all provisions regarding licensing of outpatient settings by the California Department of Public Health (CDPH). They also take out all provisions related to advertising. Lastly, they add to requirements for accreditation agencies, outpatient settings and the Board.

Recent amendments delete the provision in existing law that allows outpatient settings with multiple service sites to have only a sample of the sites inspected and now requires all of the sites to be inspected. The amendments also specify that only final inspection reports are public records and require the final inspection reports to include specified information. The amendments require accreditation agencies to ensure that outpatient settings, whose accreditation has been denied or revoked, correct those deficiencies and that an onsite inspection be completed before accrediting that outpatient setting. The amendments also specify that inspections shall be onsite. The amendments require the Board to bring action to enjoin an outpatient setting when appropriate, through, or in conjunction with, the local district attorney. The amendments make other technical changes.

ANALYSIS:

The June 23rd and July 12th amendments address the concerns raised by the Board. The below sections in bold outline the recent changes to the bill:

Amends H&S Code Section 1248.15

This section was amended to do the following:

- Require outpatient settings to submit for approval by an accreditation agency at the time accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations. The plan must include, at a minimum, that when a patient is being transferred to a local accredited or licensed acute care hospital, the outpatient setting must: (1) notify the individual designated by the patient to be notified in case of an emergency; (2) ensure that the mode of transfer is consistent with the patient's medical condition; (3) ensure that all relevant clinical information is documented and accompanies the patient at the time of transfer, and (4) continue to provide appropriate care to the patient until the transfer can be effectuated.

  This language has been added to address concerns that detailed procedures are not in place at these settings.

- Allow the Board to adopt regulations to specify procedures that should be performed in an accredited setting for facilities or clinics that are outside the definition of an outpatient setting.

  This is to address the concern that some procedures are being performed in facilities that do not have to be accredited.

- Require the accrediting agency as part of the accreditation process to conduct a reasonable investigation of the prior history of the outpatient setting, including all licensed physicians and surgeons who have an ownership interest therein, to determine whether there have been any adverse accreditation decisions rendered against them. "Conducting a reasonable investigation" for the purposes of this section means querying the Medical Board of California and the Osteopathic Medical Board of California to ascertain if either the outpatient setting has, or if its owners are licensed physicians and surgeons, if those physicians and surgeons have, been subject to an adverse accreditation decision.

  This will proactively help to ensure that outpatient settings have not had adverse actions and are not owned by physicians that have adverse actions, which will promote consumer protection.

- An outpatient setting shall be subject to the reporting requirements in Section 1279.1 and the penalties for failure to report specified in Section 1280.4

  This subjects the outpatient setting to the never events reporting requirements and fines associated.

- **Delete the provision in existing law that allows outpatient settings with multiple service sites to have only a sample of the sites inspected and now requires all of the sites to be inspected.**

  This will require all outpatient setting service sites to be inspected, this will help to ensure consumer protection.

Amends H&S Code Section 1248.2

This section was amended to require that the listing of information that the Board must obtain and maintain to be posted on the Board's Internet Web site. In addition, the list now must include any owner's medical license number and also requires accrediting agencies to provide and update the Board on all outpatient settings that are accredited.

This will ensure that the Board is provided this information and that consumers have access to this information.

Amends H&S Code Section 1248.25

This section now requires the accrediting agency to report to the Board within three business days (instead of immediately) when an outpatient settings' accreditation has been revoked.

Amends H&S Code Section 1248.35

This section was amended to do the following:

- Require outpatient settings to correct identified deficiencies within a set time and specify that failure to comply results in the accrediting agency issuing a reprimand or suspending or revoking the accreditation.

- Require an outpatient setting to comply with a corrective action within a timeframe specified by the accrediting agency, if the outpatient setting does not comply, the accrediting agency shall issue a reprimand, and may either place the outpatient setting on probation, suspend or revoke the accreditation of an outpatient setting, and shall notify the board of its action.

- Require the accreditation agency, upon receipt of a complaint from the Board that an outpatient setting poses an immediate risk to public safety, to inspect an outpatient setting and report its findings within five business days. Accreditation agencies shall investigate any other complaints received by the Board and report its findings to the Board within 30 days.

  This will help to ensure than inspections are done timely and will promote consumer protection.

- Require the inspection results to be kept on file with the Board and the accreditation agency along with the plan of correction and comments. It also specifies that

inspection reports, lists of deficiencies, and plans of corrections are public records open to public inspection.

The inspection reports should be confidential until the final report is done. If there is an issue that the accrediting agency is working with the outpatient setting on to correct, it should not be made public until the final report and results are complete.

Recent amendments amend this section to address the Board's concern. The bill now only makes the final report a public document. The bill also requires the final report to include the lists of deficiencies, plans of correction or requirements for improvement, and notes when corrective action is completed.

This amendment will ensure that the final reports include valuable information and make this information available to the public.

- Require that if one accrediting agency denies, revokes, or suspends accreditation, the action shall apply to all other accreditation agencies. Recent amendments allow an outpatient setting to re-apply for accreditation with the same agency, or with another agency if the outpatient setting discloses the full accreditation report. It is the responsibility of the outpatient setting to disclose the accreditation report.

  This is to prohibit "accreditation shopping"; however, the recent amendments allow the outpatient setting to possibly be accredited if the full accreditation report is disclosed.

  Recent amendments require the new accrediting agency to ensure that all deficiencies in the accreditation report have been corrected and require the new accreditation agency to conduct a new onsite inspection before accrediting the outpatient setting.

  These amendments will help to prevent accreditation shopping and will help to ensure consumer protection by requiring deficiencies to be corrected and the completion of a new onsite inspection.

- Require an accreditation agency that has suspended, revoked or denied accreditation for an outpatient setting to do the following:
  - Notify the Board.
  - Send a notification letter to the outpatient setting stating that the setting is no longer allowed to perform procedures that require accreditation.
  - Require the outpatient setting to remove its accreditation certification and post the notification letter in a conspicuous location, accessible to public view.

  This will help to ensure that both the Board and consumers are notified and made aware when an outpatient setting is no longer accredited.

- Allow the Board to take any appropriate action it deems necessary if an outpatient settings accreditation has been suspended, revoked, or denied.

Amend H&S Code Section 1248.7

This section will require the Board to investigate all complaints concerning a violation of this chapter. Requires the Board, upon discovery that an outpatient setting in operation but not accredited, the Board or the local district attorney (DA) must bring an action to enjoin the outpatient setting's operation. This bill would specify that if an outpatient setting is operating without accreditation, it shall be prima facie evidence that a violation of law has occurred and additional proof shall not be necessary to enjoin the outpatient setting's operation.

This bill was amended on July 12th to only require the Board to bring an action to enjoin the outpatient setting's operation when appropriate, and specifies that the action to enjoin be done through, or in conjunction with, the local DA.

Currently, if the Board receives this type of complaint, it would be forwarded to the local DA. This bill now requires the Board to investigate these complaints, which will add to the Board's workload. This workload would be given to the Board's Operation Safe Medicine Unit, which will be dissolved beginning July of 2011 if it is not included in the budget.

The Board had a concern related to the requirement that the local DA or the Board must bring an action to enjoin the outpatient setting because it was in place regardless of the outcome of the investigation or if the action is appropriate. The July 12th amendments address this concern by only requiring an action when it is appropriate, and they also more accurately reflect the board's role in working with the local DA.

Amends H&S Code Section 1248.85

Lastly, this bill specifies that a survey shall not constitute an inspection.

This should be amended to say that a physical inspection is required. According to the accrediting agencies, they call their inspections surveys, and they are always done in person, never by paper only, which is the situation this provision is trying to address.

This bill was amended to address the Board's concern. Instead saying a survey shall not constitute an inspection, the bill now specifies that the inspection shall be an onsite inspection, which has been the intent of this language.

FISCAL: The newly required evaluations that must be performed by the Board every three years will result in additional workload for the Board, as will the requirement for the Board to investigate all complaints related to outpatient settings in operation that are not accredited, but should be. This workload is absorbable.

SUPPORT: California Medical Association
California Society of Anesthesiologists
California Society of Dermatology and Dermatologic Surgery
The Board

OPPOSITION: None on File

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 23, 2011

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL No. 100

Introduced by Senator Price

January 11, 2011

An act to amend Section 2023.5 of the Business and Professions Code, and to amend Sections 1248, 1248.15, 1248.2, 1248.25, 1248.35, 1248.5, 1248.7, and 1248.85 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 100, as amended, Price. Healing arts.

(1) Existing law provides for the licensure and regulation of various healing arts practitioners by boards under the Department of Consumer Affairs. Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by their respective licensees.

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

(2) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of

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

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

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

This bill would, instead, require the board to obtain and maintain the list for all accredited outpatient settings, and to notify the public, by placing the information on its Internet Web site, whether the setting is accredited or the setting's accreditation has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

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

This bill would require the accreditation agency to report within 3 business days to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied. Because a willful violation of this requirement would be a crime, the bill would impose a state-mandated local program. The bill would also apply the denial of accreditation, or the revocation or suspension of accreditation by one accrediting agency, to all other accrediting agencies.

Existing law authorizes the Medical Board of California, as successor to the Division of Medical Quality of the Medical Board of California,

or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any accredited outpatient setting to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the notice and identification requirements. The bill would require that every outpatient setting that is accredited be inspected by the accreditation agency, as specified, and would specify that it may also be inspected by the board and the department, as specified. The bill would require the board to ensure that accreditation agencies inspect outpatient settings.

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

This bill would make that evaluation mandatory.

Existing law authorizes the board or the local district attorney to bring an action to enjoin a violation or threatened violation of the licensing provisions for outpatient settings in the superior court in and for the county in which the violation occurred or is about to occur.

This bill would require the board to investigate all complaints concerning a violation of these provisions and, with respect to any complaints relating to a violation of a specified provision, or upon discovery that an outpatient setting is not in compliance with that specified provision, would require the board ~~or~~ *to investigate and, where appropriate, the board, through or in conjunction with* the local district attorney, to bring an action to enjoin the outpatient setting's operation, as specified.

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

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

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

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

SECTION 1. Section 2023.5 of the Business and Professions Code is amended to read:

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

(1) The appropriate level of physician supervision needed.

(2) The appropriate level of training to ensure competency.

(3) Guidelines for standardized procedures and protocols that address, at a minimum, all of the following:

(A) Patient selection.

(B) Patient education, instruction, and informed consent.

(C) Use of topical agents.

(D) Procedures to be followed in the event of complications or side effects from the treatment.

(E) Procedures governing emergency and urgent care situations.

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

(c) On or before January 1, 2013, the board shall adopt regulations regarding the appropriate level of physician availability needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures. However, these regulations shall not apply to laser or intense pulse light devices approved by the federal Food and Drug Administration for over-the-counter use by a health care practitioner or by an unlicensed person on himself or herself.

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

SEC. 2. Section 1248 of the Health and Safety Code is amended to read:

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

(a) "Division" means the Medical Board of California. All references in this chapter to the division, the Division of Licensing of the Medical Board of California, or the Division of Medical Quality shall be deemed to refer to the Medical Board of California pursuant to Section 2002 of the Business and Professions Code.

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

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

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

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

SEC. 3. Section 1248.15 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

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

(iii) Submit for approval by an accrediting agency a detailed procedural plan for handling medical emergencies that shall be reviewed at the time of accreditation. No reasonable plan shall be disapproved by the accrediting agency.

(D) In addition to the requirements imposed in subparagraph (C), the outpatient setting shall submit for approval by an accreditation agency at the time of accreditation a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery that would place a patient at high risk for injury or harm or to govern emergency and urgent care situations. The plan shall include, at a minimum, that if a patient is being transferred to a local accredited or licensed acute care hospital, the outpatient setting shall do all of the following:

(i) Notify the individual designated by the patient to be notified in case of an emergency.

(ii) Ensure that the mode of transfer is consistent with the patient's medical condition.

(iii) Ensure that all relevant clinical information is documented and accompanies the patient at the time of transfer.

(iv) Continue to provide appropriate care to the patient until the transfer is effectuated.

(E) All physicians and surgeons transferring patients from an outpatient setting shall agree to cooperate with the medical staff peer review process on the transferred case, the results of which shall be referred back to the outpatient setting, if deemed appropriate by the medical staff peer review committee. If the

medical staff of the acute care facility determines that inappropriate care was delivered at the outpatient setting, the acute care facility's peer review outcome shall be reported, as appropriate, to the accrediting body or in accordance with existing law.

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

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

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

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

(B) Members of the medical staff and other practitioners who are granted clinical privileges shall be professionally qualified and appropriately credentialed for the performance of privileges granted. The outpatient setting shall grant privileges in accordance with recommendations from qualified health professionals, and credentialing standards established by the outpatient setting.

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

(7) Outpatient settings regulated by this chapter that have multiple service locations shall have all of the sites inspected.

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

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

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

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

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

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

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

(f) The board may adopt regulations it deems necessary to specify procedures that should be performed in an accredited outpatient setting for facilities or clinics that are outside the definition of outpatient setting as specified in Section 1248.

(g) As part of the accreditation process, the accrediting agency shall conduct a reasonable investigation of the prior history of the outpatient setting, including all licensed physicians and surgeons who have an ownership interest therein, to determine whether there have been any adverse accreditation decisions rendered against them. For the purposes of this section, "conducting a reasonable investigation" means querying the Medical Board of California and the Osteopathic Medical Board of California to ascertain if either the outpatient setting has, or, if its owners are licensed physicians and surgeons, if those physicians and surgeons have, been subject to an adverse accreditation decision.

(h) An outpatient setting shall be subject to the reporting requirements in Section 1279.1 and the penalties for failure to report specified in Section 1280.4.

SEC. 4. Section 1248.2 of the Health and Safety Code is amended to read:

1248.2. (a) Any outpatient setting may apply to an accreditation agency for a certificate of accreditation. Accreditation shall be issued by the accreditation agency solely on the basis of compliance with its standards as approved by the board under this chapter.

(b) The board shall obtain and maintain a list of accredited outpatient settings from the information provided by the accreditation agencies approved by the board, and shall notify the public, by placing the information on its Internet Web site, whether an outpatient setting is accredited or the setting's accreditation has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

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

(1) Name, address, and telephone number of any owners, and their medical license numbers.

(2) Name and address of the facility.

(3) The name and telephone number of the accreditation agency.

(4) The effective and expiration dates of the accreditation.

(d) Accrediting agencies approved by the board shall notify the board and update the board on all outpatient settings that are accredited.

SEC. 5. Section 1248.25 of the Health and Safety Code is amended to read:

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

SEC. 6. Section 1248.35 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

(1) Require correction of any identified deficiencies within a set timeframe. Failure to comply shall result in the accrediting agency issuing a reprimand or suspending or revoking the outpatient setting's accreditation.

(2) Issue a reprimand.

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

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

(d) (1) Except as is otherwise provided in this subdivision, before suspending or revoking a certificate of accreditation under this chapter, the accreditation agency shall provide the outpatient setting with notice of any deficiencies and the outpatient setting shall agree with the accreditation agency on a plan of correction that shall give the outpatient setting reasonable time to supply

information demonstrating compliance with the standards of the accreditation agency in compliance with this chapter, as well as the opportunity for a hearing on the matter upon the request of the outpatient setting. During the allotted time to correct the deficiencies, the plan of correction, which includes the deficiencies, shall be conspicuously posted by the outpatient setting in a location accessible to public view. Within 10 days after the adoption of the plan of correction, the accrediting agency shall send a list of deficiencies and the corrective action to be taken to the board. The accreditation agency may immediately suspend the certificate of accreditation before providing notice and an opportunity to be heard, but only when failure to take the action may result in imminent danger to the health of an individual. In such cases, the accreditation agency shall provide subsequent notice and an opportunity to be heard.

(2) If an outpatient setting does not comply with a corrective action within a timeframe specified by the accrediting agency, the accrediting agency shall issue a reprimand, and may either place the outpatient setting on probation or suspend or revoke the accreditation of the outpatient setting, and shall notify the board of its action. This section shall not be deemed to prohibit an outpatient setting that is unable to correct the deficiencies, as specified in the plan of correction, for reasons beyond its control, from voluntarily surrendering its accreditation prior to initiation of any suspension or revocation proceeding.

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

(f) The accreditation agency, upon receipt of a complaint from the board that an outpatient setting poses an immediate risk to public safety, shall inspect the outpatient setting and report its findings of inspection to the board within five business days. If an accreditation agency receives any other complaint from the board, it shall investigate the outpatient setting and report its findings of investigation to the board within 30 days.

(g) Reports on the results of any inspection shall be kept on file with the board and the accreditation agency along with the plan of correction and the comments of the outpatient setting. The

inspection report may include a recommendation for reinspection. All final inspection reports, which include the lists of deficiencies, plans of correction or requirements for improvements and correction, and corrective action completed, shall be public records open to public inspection.

(h) If one accrediting agency denies accreditation, or revokes or suspends the accreditation of an outpatient setting, this action shall apply to all other accrediting agencies. An outpatient setting that is denied accreditation is permitted to reapply for accreditation with the same accrediting agency. The outpatient setting also may apply for accreditation from another accrediting agency, but only if it discloses the full accreditation report of the accrediting agency that denied accreditation. Any outpatient setting that has been denied accreditation shall disclose the accreditation report to any other accrediting agency to which it submits an application. The new accrediting agency shall ensure that all deficiencies have been corrected and conduct a new onsite inspection consistent with the standards specified in this chapter.

(i) If an outpatient setting's certification of accreditation has been suspended or revoked, or if the accreditation has been denied, the accreditation agency shall do all of the following:

(1) Notify the board of the action.

(2) Send a notification letter to the outpatient setting of the action. The notification letter shall state that the setting is no longer allowed to perform procedures that require outpatient setting accreditation.

(3) Require the outpatient setting to remove its accreditation certification and to post the notification letter in a conspicuous location, accessible to public view.

(j) The board may take any appropriate action it deems necessary pursuant to Section 1248.7 if an outpatient setting's certification of accreditation has been suspended or revoked, or if accreditation has been denied.

SEC. 7. Section 1248.5 of the Health and Safety Code is amended to read:

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

indicates noncompliance by the agency with the standards approved by the board.

SEC. 8. Section 1248.7 of the Health and Safety Code is amended to read:

1248.7. (a) The board shall investigate all complaints concerning a violation of this chapter. With respect to any complaints relating to a violation of Section 1248.1, or upon discovery that an outpatient setting is not in compliance with Section 1248.1, the board ~~or~~ *shall investigate and, where appropriate, the board, through or in conjunction with* the local district attorney, shall bring an action to enjoin the outpatient setting's operation. The board or the local district attorney may bring an action to enjoin a violation or threatened violation of any other provision of this chapter in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the Division of Medical Quality shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss.

(b) With respect to any and all actions brought pursuant to this section alleging an actual or threatened violation of any requirement of this chapter, the court shall, if it finds the allegations to be true, issue an order enjoining the person or facility from continuing the violation. For purposes of Section 1248.1, if an outpatient setting is operating without a certificate of accreditation, this shall be prima facie evidence that a violation of Section 1248.1 has occurred and additional proof shall not be necessary to enjoin the outpatient setting's operation.

SEC. 9. Section 1248.85 of the Health and Safety Code is amended to read:

1248.85. This chapter shall not preclude an approved accreditation agency from adopting additional standards consistent with Section 1248.15, establishing procedures for the conduct of onsite inspections, selecting onsite inspectors to perform accreditation onsite inspections, or establishing and collecting reasonable fees for the conduct of accreditation onsite inspections.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB 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.

O

SB 233

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number: SB 233
Author: Pavley
Bill Date: July 14, 2011, amended
Subject: Emergency Services and Care
Sponsor: California Academy of Physician Assistants
Position: Support

STATUS OF BILL:

This bill is currently in Assembly Appropriations Committee

DESCRIPTION OF CURRENT LEGISLATION:

This bill would explicitly clarify that a physician assistant (PA) can provide treatment and consultation in an emergency care setting.

This bill was amended to specifically clarify that appropriate licensed persons (including PAs) acting within their scope of licensure can provide treatment and consultation in an emergency care setting. This bill further specifies that it does not expand the scope of licensure for licensed persons providing services under this bill.

Recent amendments make changes to the definition of "consultation". These changes are consistent with the Federal Emergency Medical Treatment and Labor Act (EMTALA) and the interpretive guidelines.

ANALYSIS:

Existing law allows PAs to provide evaluation, consultation, and treatment, as long as these services are performed pursuant to a PA's scope of practice and delegation of services agreement and under the supervision of a physician and surgeon.

The existing definition of "emergency services and care" in the health and safety code does not specifically list a PA as being allowed to give this treatment. Existing law says, "other appropriate personnel under the supervision of a physician". According to the author's office, an issue recently arose at Mission Hospital in Orange County, in which a PA was prohibited by the hospital from providing a "consult" in the emergency room. The hospital pointed to the existing law that this bill is proposing to amend as the reasoning because it does not explicitly authorize a PA to perform consulting and treatment in an emergency room setting.

This bill would have clarified existing law to explicitly authorize PAs to perform consulting and treatment, which is also in line with the Federal Emergency Medical Treatment and Labor Act (EMTALA), which permits PAs to provide consults in the emergency department.

As amended on May 4th and May 18th, instead of only applying to PAs, the bill now applies to all appropriate licensed persons. The bill now specifically clarifies that appropriate licensed persons (including PAs) acting within their scope of licensure can provide treatment and consultation in an emergency care setting. This bill further specifies that it does not expand the scope of licensure for licensed persons providing services under this bill. The purpose of these amendments is to not limit other mid-range practitioners in emergency departments from providing appropriate services. This bill would still make state law consistent with federal law.

The June 28th amendments make changes to the definition of "consultation". They add "other appropriate personnel acting pursuant to their scope of practice" to the definition, in addition to the "licensed persons acting within their scope of licensure" that was already in the bill.

Board staff and legal counsel have concerns with this language because all individuals that are consulting in an emergency room should be licensed individuals

The June 28th amendments also add to the definition of "consultation" and allow the treating physician to request to communicate directly with the consulting physician, when determined to be medically necessary jointly by both the treating and consulting physicians. The amendments also require the consulting physician to examine and treat the patient in person and state that the consulting physician is ultimately responsible for providing the necessary consultation to the patient, regardless of who makes the in-person appearance.

These changes are consistent with federal law and do not affect existing law in the Medical Practice Act as the bill specifies that they only apply to this article of the Health and Safety Code.

The July 11th amendments are clarifying and technical in nature and do not affect the Board or its support position.

The July 14th amendments strike "other appropriate personnel acting pursuant to their scope of practice" in the definition of consultation, which addresses the concern raised by Board staff and legal counsel.

SUPPORT: California Academy of Physician Assistants (Sponsor); Medical Board of California; and United Nurses Associations of California/Union of Healthcare Professionals

OPPOSITION: California Nurses Association

FISCAL: None

July 18, 2011

AMENDED IN ASSEMBLY JULY 14, 2011

AMENDED IN ASSEMBLY JULY 11, 2011

AMENDED IN ASSEMBLY JUNE 28, 2011

AMENDED IN SENATE MAY 18, 2011

AMENDED IN SENATE MAY 4, 2011

AMENDED IN SENATE MARCH 31, 2011

SENATE BILL No. 233

Introduced by Senator Pavley

February 9, 2011

An act to *repeal and* amend Section 1317.1 of the Health and Safety Code, relating to emergency services.

LEGISLATIVE COUNSEL'S DIGEST

SB 233, as amended, Pavley. Emergency services and care.

Existing law provides for the licensure and regulation of health facilities. A violation of these provisions is a crime. Existing law requires emergency services and care to be provided to any person requesting the services or care for any condition in which the person is in danger of loss of life, or serious injury or illness, at any licensed health facility. For the purposes of these provisions, emergency services and care is defined to include medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine the care, treatment, and surgery by a physician necessary to relieve or eliminate the emergency medical condition or active labor, within the capability of the facility. Existing law defines consultation

as the rendering of an opinion, advice, or prescribing treatment by telephone and, when determined to be medically necessary jointly by the emergency and specialty physicians, includes review of the patient's record, examination, and treatment of the patient in person by a specialty physician who is qualified to give an opinion or render the necessary treatment in order to stabilize the patient. Existing law also defines when stabilization of a patient has occurred.

This bill would recast the definition of emergency services and care to include other appropriate licensed persons acting within their scope of licensure under the supervision of a physician and surgeon. This bill would expand the definition of consultation to also mean the rendering of a decision regarding hospitalization or transfer and would provide that consultation includes review of the patient's medical record, examination, and treatment of the patient in person by a consulting physician and surgeon when determined to be medically necessary jointly by the treating physician and surgeon and the consulting physician and surgeon, or by other appropriate personnel acting within their scope of ~~practice or~~ licensure under the supervision of a treating physician and surgeon. The bill would authorize the treating physician and surgeon to request to communicate directly with the consulting physician and surgeon, and would require the consulting physician and surgeon to examine and treat the patient in person when it is determined to be medically necessary, as specified. This bill would expand the definition of when stabilization of a patient has occurred to include the opinion of other appropriate licensed persons acting within their scope of licensure under the supervision of a treating physician and surgeon.

By expanding the definition of a crime, this bill would impose a state-mandated local program.

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

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

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

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

SECTION 1. Section 1317.1 of the Health and Safety Code, as amended by Section 91 of Chapter 886 of the Statutes of 1989, is repealed.

~~1317.1. Unless the context otherwise requires, the following definitions shall control the construction of this article:~~

~~(a) "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment, and surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the capability of the facility.~~

~~(b) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:~~

~~(1) Placing the patient's health in serious jeopardy.~~

~~(2) Serious impairment to bodily functions.~~

~~(3) Serious dysfunction of any bodily organ or part.~~

~~(c) "Active labor" means a labor at a time at which either of the following would occur:~~

~~(1) There is inadequate time to effect safe transfer to another hospital prior to delivery.~~

~~(2) A transfer may pose a threat to the health and safety of the patient or the unborn child.~~

~~(d) "Hospital" means all hospitals with an emergency department licensed by the state department.~~

~~(e) "State department" means the State Department of Health Services.~~

~~(f) "Medical hazard" means a material deterioration in, or jeopardy to, a patient's medical condition or expected chances for recovery.~~

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

~~(h) "Within the capability of the facility" means those capabilities which the hospital is required to have as a condition of its emergency medical services permit and services specified~~

~~on Services Inventory Form 7041 filed by the hospital with the Office of Statewide Health Planning and Development.~~

~~(i) "Consultation" means the rendering of an opinion, advice, or prescribing treatment by telephone and, when determined to be medically necessary jointly by the emergency and the specialty physicians, includes review of the patient's medical record, examination and treatment of the patient in person by a specialty physician who is qualified to give an opinion or render the necessary treatment in order to stabilize the patient.~~

~~SECTION 1.~~

SEC. 2. Section 1317.1 of the Health and Safety Code, as amended by Section 1 of Chapter 423 of the Statutes of 2009, is amended to read:

1317.1. Unless the context otherwise requires, the following definitions shall control the construction of this article and Section 1371.4:

(a) (1) "Emergency services and care" means medical screening, examination, and evaluation by a physician and surgeon, or, to the extent permitted by applicable law, by other appropriate licensed persons acting within their scope of licensure under the supervision of a physician and surgeon, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment, and surgery, if within the scope of that person's license, necessary to relieve or eliminate the emergency medical condition, within the capability of the facility.

(2) (A) "Emergency services and care" also means an additional screening, examination, and evaluation by a physician, or other personnel to the extent permitted by applicable law and within the scope of their licensure and clinical privileges, to determine if a psychiatric emergency medical condition exists, and the care and treatment necessary to relieve or eliminate the psychiatric emergency medical condition, within the capability of the facility.

(B) The care and treatment necessary to relieve or eliminate a psychiatric emergency medical condition may include admission or transfer to a psychiatric unit within a general acute care hospital, as defined in subdivision (a) of Section 1250, or to an acute psychiatric hospital, as defined in subdivision (b) of Section 1250, pursuant to subdivision (k). Nothing in this subparagraph shall be construed to permit a transfer that is in conflict with the

Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code).

(C) For the purposes of Section 1371.4, emergency services and care as defined in subparagraph (A) shall not apply to Medi-Cal managed care plan contracts entered into with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000), Chapter 8 (commencing with Section 14200), and Chapter 8.75 (commencing with Section 14590) of Part 3 of Division 9 of the Welfare and Institutions Code, to the extent that those services are excluded from coverage under those contracts.

(D) This paragraph does not expand, restrict, or otherwise affect the scope of licensure or clinical privileges for clinical psychologists or other medical personnel.

(b) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction of any bodily organ or part.

(c) "Active labor" means a labor at a time at which either of the following would occur:

(1) There is inadequate time to effect safe transfer to another hospital prior to delivery.

(2) A transfer may pose a threat to the health and safety of the patient or the unborn child.

(d) "Hospital" means all hospitals with an emergency department licensed by the state department.

(e) "State department" means the State Department of Public Health.

(f) "Medical hazard" means a material deterioration in medical condition in, or jeopardy to, a patient's medical condition or expected chances for recovery.

(g) "Board" means the Medical Board of California.

(h) "Within the capability of the facility" means those capabilities that the hospital is required to have as a condition of its emergency medical services permit and services specified on Services Inventory Form 7041 filed by the hospital with the Office of Statewide Health Planning and Development.

(i) "Consultation" means the rendering of an opinion, advice, prescribing treatment, or decision regarding hospitalization or transfer by telephone or other means of communication. When determined to be medically necessary, jointly by the treating physician and surgeon, or by other appropriate ~~personnel acting pursuant to their scope of practice and~~ licensed persons acting within their scope of licensure, under the supervision of a physician and surgeon, and the consulting physician and surgeon, "consultation" includes review of the patient's medical record, examination, and treatment of the patient in person by a consulting physician and surgeon, or by other appropriate licensed persons acting within their scope of licensure under the supervision of a consulting physician and surgeon, who is qualified to give an opinion or render the necessary treatment in order to stabilize the patient. A request for consultation shall be made by the treating physician and surgeon, or by other appropriate licensed persons acting within their scope of licensure under the supervision of a treating physician and surgeon, provided the request is made with the contemporaneous approval of the treating physician and surgeon. The treating physician and surgeon may request to communicate directly with the consulting physician and surgeon, and when determined to be medically necessary, jointly by the treating physician and surgeon and the consulting physician and surgeon, the consulting physician and surgeon shall examine and treat the patient in person. The consulting physician and surgeon is ultimately responsible for providing the necessary consultation to the patient, regardless of who makes the in-person appearance.

(j) A patient is "stabilized" or "stabilization" has occurred when, in the opinion of the treating physician and surgeon, or other appropriate licensed persons acting within their scope of licensure under the supervision of a treating physician and surgeon, the patient's medical condition is such that, within reasonable medical probability, no material deterioration of the patient's condition is likely to result from, or occur during, the release or transfer of the patient as provided for in Section 1317.2, Section 1317.2a, or other pertinent statute.

(k) (1) "Psychiatric emergency medical condition" means a mental disorder that manifests itself by acute symptoms of sufficient severity that it renders the patient as being either of the following:

(A) An immediate danger to himself or herself or to others.

(B) Immediately unable to provide for, or utilize, food, shelter, or clothing, due to the mental disorder.

(2) This subdivision does not expand, restrict, or otherwise affect the scope of licensure or clinical privileges for clinical psychologists or medical personnel.

(*l*) This section shall not be construed to expand the scope of licensure for licensed persons providing services pursuant to this section.

~~SEC. 2.~~

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

SB 380

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 380
Author:	Wright
Bill Date:	June 20, 2011, amended
Subject:	Continuing Medical Education
Sponsor:	California Academy of Preventive Medicine

STATUS OF BILL:

This bill is in the Assembly.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require specified physicians and surgeons to complete a one-time continuing medical education (CME) course within a four year period in the subject of nutrition and lifestyle behavior for the prevention and treatment of chronic diseases.

This bill was amended and no longer requires mandated CME. The current version of this bill would authorize the Medical Board of California (the Board) to set content standards for any educational activity concerning a chronic disease that includes appropriate information on the impact, prevention, and cure of the chronic disease by the application of changes in nutrition and lifestyle behavior.

Recent amendments require the Board to periodically disseminate information and educational material regarding the prevention and treatment of chronic disease by the application of changes in nutrition and lifestyle behavior to each licensed physician and surgeon and to each general acute care hospital in California. Recent amendments also require the Board to convene a working group of interested parties to discuss nutrition and lifestyle behavior for the prevention and treatment of chronic disease at a quarterly board meeting within three years of the effective date of this bill.

ANALYSIS:

Existing law requires physicians and surgeons to complete at least 50 hours of approved CME during each two year license renewal cycle. Currently, physicians and surgeons only have a mandatory one-time CME requirement of 12 credit hours in the subject of pain management and the treatment of the terminally ill. There is also a mandate in existing law that requires general internists and family physicians who have a patient population of which over 25 percent are 65 years of age or older to complete at least 20 percent of all mandatory CME in a course in the field of geriatric medicine or the care of older patients.

This bill would have required practicing primary care physicians and all other physicians and surgeons who provide care or consultation for chronic disease to complete a mandatory continuing education course in the subject of nutrition and lifestyle behavior for the prevention and treatment of chronic diseases. This would have been a one-time requirement of seven credit hours that must be completed by December 31, 2016. Physicians licensed on and after January 1, 2012 must have completed the requirement within four years or by their second renewal date. This bill would have allowed the Board to verify completion of the requirement on the annual renewal form. This bill does not apply to physicians and surgeons practicing in pathology or radiology specialty areas or who do not reside in California.

This bill makes findings and declarations related to health care costs for chronic disease treatment and the last World Health Organization Report that concluded diet was a major factor in the cause of chronic diseases. The findings also state that practicing physicians rate their nutrition knowledge and skills as inadequate. Every physician has the opportunity to treat patients at risk for chronic disease or that suffer from poor nutrition or lifestyle choices. According to the author's office, chronic conditions are avoidable, but responsible for 7 out of 10 deaths among Americans each year. The author's office believes that education is the key in prevention and reducing health care costs, but states that medical students receive fewer than 20 contact hours of nutrition instruction during their entire medical school careers. One of the Board's medical consultants confirmed this to be true. The Board's medical consultant also stated the little emphasis is put on nutrition and lifestyle behavior as it relates to preventing and treating chronic diseases in medical schools and residencies.

The April 27th amendments were made to address opposition's concerns related to mandating CME; this bill no longer mandates CME. This bill would now authorize the Board to set content standards for any educational activity concerning a chronic disease that includes appropriate information on the impact, prevention, and cure of the chronic disease by the application of changes in nutrition and lifestyle behavior. It is important to note that this bill only allows the board to set content standards; it does not require the Board to do so.

The June 20th amendments would require the Board to periodically disseminate information and educational material regarding the prevention and treatment of chronic disease by the application of changes in nutrition and lifestyle behavior to each licensed physician and surgeon and to each general acute care hospital in California. This could be done through articles in the newsletter and this information could be provided to GACHs through a joint effort with the California Department of Public Health.

The June 20th amendments also would require the Board to convene a working group of interested parties to discuss nutrition and lifestyle behavior for the prevention and treatment of chronic disease at a quarterly board meeting within three years of the effective date of this bill.

There is a noted prevalence of preventable chronic diseases in California and it is true that medical students do not receive much training in nutrition instruction. The language recently added to the bill will help to ensure that physicians receive educational material on the prevention and treatment of chronic disease by the application of changes in nutrition and lifestyle behavior and also open up this topic for discussion at one of the Board's quarterly meetings. As such, the Board is suggesting a neutral position on this bill.

SUPPORT: California Academy of Preventive Medicine (Sponsor); American College for Lifestyle Medicine; Center for Science in the Public Interest; Physicians Committee for Responsible Medicine; and several individuals.

OPPOSITION: None on file

FISCAL: Minimal and absorbable

POSITION: Recommendation: Neutral

June 21, 2011

AMENDED IN ASSEMBLY JUNE 20, 2011

AMENDED IN SENATE APRIL 27, 2011

AMENDED IN SENATE APRIL 7, 2011

AMENDED IN SENATE MARCH 23, 2011

SENATE BILL No. 380

Introduced by Senator Wright

February 15, 2011

An act to amend Section 2190 of, *and to add Sections 2196.6 and 2196.7 to,* the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

SB 380, as amended, Wright. Continuing medical education.

Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. Under that act, the board is required to adopt and administer standards for the continuing education of physicians and surgeons. Existing law requires physicians and surgeons to complete a mandatory continuing education course in the subjects of pain management and the treatment of terminally ill and dying patients, except that it does not apply to physicians and surgeons practicing in pathology or radiology specialty areas. *Existing law also requires the board to periodically disseminate information and educational material regarding detection of spousal or partner abuse to physicians and surgeons and acute care hospitals.*

This bill would authorize the board to also set content standards for an educational activity concerning chronic disease, as specified. *The bill would require the board to periodically disseminate information and educational material regarding nutritional and lifestyle behavior*

for prevention and treatment of chronic disease to physicians and surgeons and acute care hospitals. The bill would require the board to convene a working group regarding nutrition and lifestyle behavior, as specified.

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

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

SECTION 1. The Legislature finds and declares all of the following:

(a) In 2008, U.S. health care spending was about $7,681 per resident and accounted for 16.2 percent of the nation's gross domestic product; this is among the highest of all industrialized countries. Expenditures in the United States on health care surpassed $2.3 trillion in 2008, more than three times the $714 billion spent in 1990, and over eight times the $253 billion spent in 1980.

(b) It is estimated that health care costs for chronic disease treatment account for over 75 percent of national health expenditures.

(c) Seven out of 10 deaths among Americans each year are from chronic diseases. Heart disease, cancer, and stroke account for more than 50 percent of all deaths each year.

(d) The last major report from the World Health Organization in March 2003 concluded diet was a major factor in the cause of chronic diseases.

(e) Dramatic increases in chronic diseases have been seen in Asian countries since the end of WWII with the increase in the gross national product and change to the western diet.

(f) Only 19 percent of students believed that they had been extensively trained in nutrition counseling. Fewer than 50 percent of primary care physicians include nutrition or dietary counseling in their patient visits.

(g) Practicing physicians continually rate their nutrition knowledge and skills as inadequate. More than one-half of graduating medical students report that the time dedicated to nutrition instruction is inadequate.

SEC. 2. Section 2190 of the Business and Professions Code is amended to read:

2190. In order to ensure the continuing competence of licensed physicians and surgeons, the board shall adopt and administer standards for the continuing education of those licensees. The board may also set content standards for any educational activity concerning a chronic disease that ~~includes appropriate information on the impact, prevention, and cure of the chronic disease by the application of changes in~~ *includes appropriate information on prevention of the chronic disease, and on treatment of patients with the chronic disease, by the application of changes in* nutrition and lifestyle behavior. The board shall require each licensed physician and surgeon to demonstrate satisfaction of the continuing education requirements at intervals of not less than four nor more than six years.

SEC. 3. Section 2196.6 is added to the Business and Professions Code, to read:

2196.6. The board shall periodically disseminate information and educational material regarding the prevention and treatment of chronic disease by the application of changes in nutrition and lifestyle behavior to each licensed physician and surgeon and to each general acute care hospital in the state.

SEC. 4. Section 2196.7 is added to the Business and Professions Code, to read:

2196.7. The board shall convene a working group of interested parties to discuss nutrition and lifestyle behavior for the prevention and treatment of chronic disease at one of its quarterly meetings within three years after the operative date of this section.

O

SB 824

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 824
Author:	Negrete McLeod
Bill Date:	June 23, 2011, amended
Subject:	Opticians: Regulation
Sponsor:	LensCrafters (co-sponsor), Target Optical (co-sponsor), and Sears Optical (co-sponsor)
Position:	Support

STATUS OF BILL:

This bill is currently in the Assembly.

DESCRIPTION OF CURRENT LEGISLATION:

This bill would require a registered dispensing optician (RDO) acquiring ownership of a business to file the notice with the Medical Board of California (the Board) within 10 days of the completion of the transfer of ownership. This bill would also make the RDO selling or transferring the ownership interest responsible for complying with all laws relating to the place of business until the cancellation notice is received by the Board.

This bill was amended and now only puts the 10 day time line on the RDO assuming ownership of the business. The amendments also make a technical change.

ANALYSIS:

Existing law requires individuals, corporations, and firms to apply to the Board for registration as a dispensing optician. When the Board approves an application, it issues a certificate of dispensing optician to the applicant. Each certificate shall be displayed at all times in a conspicuous place at the certified place of business.

According to the sponsors, the requirement that the certificate be posted is hard to comply with during a change of ownership, as the registration documents must be furnished to the Board. This can leave an RDO without a certificate for a period of time while the registration is being processed. Recently Sears and Target Optical went through an internal change of ownership. Their interpretation of the law required each store to file new registrations the same day the switch in ownership occurred, which was time consuming. They believe this bill will provide a process that allows the RDO to remain open while the documents are being processed.

Currently, the Board sometimes has issues receiving both the new RDO application and the notice of cancellation for the RDO selling or transferring the

ownership in the same time period. The Board first has to process the notice of cancellation before the new certificate of dispensing optician can be issued to the applicant. The Board believes that putting a 10 day timeline on both parties to get their required paper work in to the Board will make this process run more smoothly and effectively for the Board. This bill also makes it clear that the RDO selling or transferring ownership is the responsible party until the notice of cancellation is received by the Board.

The June 23rd amendments now only put the 10 day time line on the RDO assuming ownership of the business. This does affect the Board's Support position because the bill no longer puts the 10 time line on both parties and will no longer help make the Board's process run more smoothly and effectively. As such, staff is recommending that the Board take a Neutral position on this bill.

SUPPORT: LensCrafters (co-sponsor); Target Optical (co-sponsor); and Sears Optical (co-sponsor).

OPPOSITION: None on file

FISCAL: None

POSITION: Recommendation: Neutral

July 8, 2011

AMENDED IN ASSEMBLY JUNE 23, 2011

SENATE BILL No. 824

Introduced by Senator Negrete McLeod

February 18, 2011

An act to add Section 2553.1 to the Business and Professions Code, relating to opticians.

LEGISLATIVE COUNSEL'S DIGEST

SB 824, as amended, Negrete McLeod. Opticians: regulation.

Existing law requires that dispensing opticians register with the ~~Division of Licensing of the~~ Medical Board of California *prior to engaging in the practice of a dispensing optician.* Under existing law, a registered dispensing optician is required to obtain and display a separate certificate of registration at each location where his or her business is conducted. Existing law makes a violation of laws regulating a registered dispensing optician a misdemeanor.

This bill would require a registered dispensing optician acquiring ownership of a business to file a notice with the board within 10 days of the completion of the transfer of ownership to him or her. The bill would specify that until receipt of the notice by the board, the registered dispensing optician selling or transferring the interest remains responsible for complying with all laws regulating the business.

Because a violation of laws regulating registered dispensing opticians is a crime, this bill would impose a state-mandated local program by creating a new crime.

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

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

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

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

SECTION 1. Section 2553.1 is added to the Business and Professions Code, to read:

2553.1. If a registered dispensing optician sells or transfers in any ~~matter on~~ *manner an* ownership interest in his or her place of business, the registered dispensing optician assuming the ownership of the business shall record with the board a written notice of the change of ownership, providing all information required by the board. The registered dispensing optician *assuming the ownership of the business* shall file the notice with the board no later than 10 calendar days after the change of ownership is completed. The registered dispensing optician selling or transferring the ownership interest in his or her business shall be responsible for complying with all laws relating to the place of business until the notice is received by the board. This section does not apply to a change of location of business by a registered dispensing optician.

SEC. 2. 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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SB 943

MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	SB 943
Author:	Senate Business, Professions and Economic Development Committee
Bill Date:	July 12, 2011, amended
Subject:	Omnibus/Polysomnography
Sponsor:	Committee

STATUS OF BILL:

This bill is in Assembly Appropriations Committee.

DESCRIPTION OF CURRENT LEGISLATION:

This bill is the vehicle by which omnibus legislation has been carried by the Senate Business and Professions Committee. This analysis will only cover the portion of the bill that impacts the Medical Board of California (the Board).

This omnibus bill clarifies the grandfathering provisions in existing law related to polysomnographic technologists. This bill would authorize current practitioners to be grandfathered in by allowing them to apply for registration as a certified polysomnographic technologist if they submit proof to the Board of five years of experience in practicing polysomnography in a manner that is acceptable to the Board. The grandfathering provision language would allow current practitioners three years to meet the new requirements for certification as a polysomnographic technologist.

Recent amendments do not affect the portion of the bill that impacts the Board.

ANALYSIS

SB 132 (Denham), Chapter 635, Statutes of 2009 established a certification program for sleep professionals assisting physicians in the practice of sleep medicine. The Board is responsible for administering this Polysomnography program. In order to prevent a flood of applications for initial certification, a grandfathering provision was added to grandfather in current practitioners with practice experience.

However, the grandfathering provision was drafted in a manner that is ambiguous and can be interpreted as meaning that there in effect is no grandfathering provision because the granfathering language was added to existing paragraph (3), as opposed to being drafted to add a new paragraph. This created the ambiguity that the grandfathering provision potentially only applies to the requirements of paragraph (3). Under this interpretation, there would in effect be no grandfathering provision.

When SB 132 was being drafted and discussed, it was the intent of the Legislature and interested parties that the grandfathering language be included in order to allow time for current practitioners to meet the new requirements and to make the workload for the Board more manageable by ensuring that the Board does not receive a flood of new applicants for certification.

This bill would clarify existing law and allow practitioners applying for certification as polysomnographic technologists to satisfy the qualifications for certification by submitting proof to the board that he or she has been practicing polysomnography for at least five years in a manner that is acceptable to the Board.

This clarifying language will reflect the original intent of SB 132 and allow the Board to correctly implement the grandfathering provision. Further, this provision will help to ensure that there is not a disruption in patient access to sleep medicine services from the lack of a grandfathering provision and will prevent hospitals and clinics from experiencing a shortage of health professionals assisting physicians in the practice of sleep medicine. Staff recommends that he Board support the provision in this bill related to the Polysomnography program.

FISCAL: None to the Board

SUPPORT: California Sleep Society

OPPOSITION: None on file

POSITION: Recommendation: Support provisions related to the Polysomnography Program.

AMENDED IN SENATE MAY 11, 2011

SENATE BILL No. 943

Introduced by Committee on Business, Professions and Economic Development (Senators Price (Chair), Corbett, Correa, Emmerson, Hernandez, Negrete McLeod, Vargas, Walters, and Wyland)

March 31, 2011

An act to amend Sections 1916, 1918, 1922, 1927, 1950, 1952, 1955, 1957, 1959, 1961, 1962, 1963, 1966.1, 2736.5, 2836.2, 2936, *3519, 3575,* 4200, *4836.1,* 4980.36, 4980.37, 4980.40.5, 4980.42, ~~4980.43,~~ 4980.45, 4982.25, 4989.54, 4990.38, 4992.3, 4992.36, 4996.13, 4996.24, 4999.12, and 4999.90 of, to add Sections 1902.1, 4999.91, and 4999.455 to, and to repeal Section 1945 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 943, as amended, Committee on Business, Professions and Economic Development. Healing arts.

Existing law provides for the licensure and regulation of various healing arts licensees by boards within the Department of Consumer Affairs.

(1) Existing law, the Dental Practice Act, provides for the licensure and regulation of registered dental hygienists, registered dental hygienists in alternative practice, and registered dental hygienists in extended functions by the Dental Hygiene Committee of California within the Dental Board of California.

Existing law requires applicants for licensure to provide fingerprint images for submission to governmental agencies, in order to, among other things, establish the identity of the applicant. Existing law requires

questions or complaints, you may contact the board on the Internet at www.psychboard.ca.gov, by calling 1-866-503-3221, or by writing to the following address:

Board of Psychology

2005 Evergreen Street, Suite 1400
Sacramento, California 95815-3894"

SEC. 19. Section 3519 of the Business and Professions Code is amended to read:

3519. The committee shall issue under the name of the Medical Board of California a license to all physician assistant applicants who meet all of the following requirements:

(a) Provide evidence of ~~one of the following:~~

~~(1) Successful~~ *successful* completion of an approved program.

~~(2) Successful completion in a medical school approved by the Division of Licensing of a resident course of professional instruction which meets the requirements of Sections 2088 and 2089.~~

(b) Pass any examination required under Section 3517.

(c) Not be subject to denial of licensure under Division 1.5 (commencing with Section 475) or Section 3527.

(d) Pay all fees required under Section 3521.1.

SEC. 20. Section 3575 of the Business and Professions Code is amended to read:

3575. (a) For the purposes of this chapter, the following definitions shall apply:

(1) "Board" means the Medical Board of California.

(2) "Polysomnography" means the treatment, management, diagnostic testing, control, education, and care of patients with sleep and wake disorders. Polysomnography shall include, but not be limited to, the process of analysis, monitoring, and recording of physiologic data during sleep and wakefulness to assist in the treatment of disorders, syndromes, and dysfunctions that are sleep-related, manifest during sleep, or disrupt normal sleep activities. Polysomnography shall also include, but not be limited to, the therapeutic and diagnostic use of oxygen, the use of positive airway pressure including continuous positive airway pressure (CPAP) and bilevel modalities, adaptive servo-ventilation, and

maintenance of nasal and oral airways that do not extend into the trachea.

(3) "Supervision" means that the supervising physician and surgeon shall remain available, either in person or through telephonic or electronic means, at the time that the polysomnographic services are provided.

(b) *(1)* Within one year after the effective date of this chapter, the board shall promulgate regulations relative to the qualifications for the registration of individuals as certified polysomnographic technologists, polysomnographic technicians, and polysomnographic trainees. The qualifications for a certified polysomnographic technologist shall include all of the following:

~~(1)~~

(A) He or she shall have valid, current credentials as a polysomnographic technologist issued by a national accrediting agency approved by the board.

~~(2)~~

(B) He or she shall have graduated from a polysomnographic educational program that has been approved by the board.

~~(3)~~

(C) He or she shall have passed a national certifying examination that has been approved by the board~~, or in the alternative, may submit~~.

(2) An applicant for registration as a certified polysomnographic technologist may satisfy the qualifications described in paragraph (1) by submitting proof to the board that he or she has been practicing polysomnography for at least five years in a manner that is acceptable to the board. However, beginning three years after the effective date of this chapter, all individuals seeking to obtain certification as a polysomnographic technologist shall have passed a national certifying examination that has been approved by the board.

(c) In accordance with Section 144, any person seeking registration from the board as a certified polysomnographic technologist, a polysomnographic technician, or a polysomnographic trainee shall be subject to a state and federal level criminal offender record information search conducted through the Department of Justice as specified in paragraphs (1) to (5), inclusive, of this subdivision.

(1) The board shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all polysomnographic technologist, technician, or trainee certification candidates for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal.

(2) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this subdivision. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the board.

(3) The Department of Justice shall provide state and federal responses to the board pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(4) The board shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for persons described in this subdivision.

(5) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this subdivision. The individual seeking registration shall be responsible for this cost.

(d) An individual may use the title "certified polysomnographic technologist" and may engage in the practice of polysomnography only under the following circumstances:

(1) He or she is registered with the board and has successfully undergone a state and federal level criminal offender record information search pursuant to subdivision (c).

(2) He or she works under the supervision and direction of a licensed physician and surgeon.

(3) He or she meets the requirements of this chapter.

(e) Within one year after the effective date of this chapter, the board shall adopt regulations that establish the means and circumstances in which a licensed physician and surgeon may employ polysomnographic technicians and polysomnographic trainees. The board may also adopt regulations specifying the scope

of services that may be provided by a polysomnographic technician or polysomnographic trainee. Any regulation adopted pursuant to this section may specify the level of supervision that polysomnographic technicians and trainees are required to have when working under the supervision of a certified polysomnographic technologist or licensed health care professional.

(f) This section shall not apply to California licensed allied health professionals, including, but not limited to, respiratory care practitioners, working within the scope of practice of their license.

(g) Nothing in this chapter shall be interpreted to authorize a polysomnographic technologist, technician, or trainee to treat, manage, control, educate, or care for patients other than those with sleep disorders or to provide diagnostic testing for patients other than those with suspected sleep disorders.

~~SEC. 19.~~

SEC. 21. Section 4200 of the Business and Professions Code is amended to read:

4200. (a) The board may license as a pharmacist an applicant who meets all the following requirements:

(1) Is at least 18 years of age.

(2) (A) Has graduated from a college of pharmacy or department of pharmacy of a university recognized by the board; or

(B) If the applicant graduated from a foreign pharmacy school, the foreign-educated applicant has been certified by the Foreign Pharmacy Graduate Examination Committee.

(3) Has completed at least 150 semester units of collegiate study in the United States, or the equivalent thereof in a foreign country. No less than 90 of those semester units shall have been completed while in resident attendance at a school or college of pharmacy.

(4) Has earned at least a baccalaureate degree in a course of study devoted to the practice of pharmacy.

(5) Has completed 1,500 hours of pharmacy practice experience or the equivalent in accordance with Section 4209.

(6) Has passed the North American Pharmacist Licensure Examination and the California Practice Standards and Jurisprudence Examination for Pharmacists on or after January 1, 2004.

(b) Proof of the qualifications of an applicant for licensure as a pharmacist shall be made to the satisfaction of the board and shall

TRACKER II

Medical Board of California
Tracker II - Legislative Bills
7/18/2011

BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 70	Monning	CHHS: Public Health: Federal Grant Opportunities	2-year	
AB 127	Logue	Regulations: Effective Date	2-year	
AB 137	Portantino	Health Care Coverage: Mammographies	2-year	
AB 172	Eng	Public Contracts: Information: Web site	Senate	07/13/11
AB 174	Monning	Health Information Exchange	2-year	03/21/11
AB 186	Williams	Reportable Diseases and Conditions	Sen. Approps - Susp.	03/30/11
AB 242	Rev. & Tax	Income Taxes: Federal Health Care	Sen. Approps	06/29/11
AB 273	Valadao	Regulations: Economic Impacts Review	2-year	
AB 300	Ma	Safe Body Art Act	Senate	06/30/11
AB 377	Solorio	Pharmacy	Sen. Approps	04/14/11
AB 386	Galgiani	Prisons: Telehealth Systems	2-year	05/11/11
AB 389	Mitchell	Bleeding Disorders	Sen. Approps	03/30/11
AB 393	Wagner	APA: Legislative Intent	2-year	
AB 425	Nestande	State Regulations: Review	2-year	
AB 428	Portantino	Health Care Coverage: Fertility Preservation	2-year	04/27/11
AB 439	Skinner	Health Care Information	2-year	06/28/11
AB 499	Atkins	Minors: Medical Care: Consent	Sen. Approps	
AB 530	Smyth	Regulations: Economic and Technical Information	2-year	03/31/11
AB 655	Hayashi	Healing Arts: Peer Review	Senate	07/06/11
AB 673	Perez, J.	Office of Multicultural Health: LGBT Communities	Sen. Approps - Susp.	06/01/11

Medical Board of California
Tracker II - Legislative Bills
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BILL	AUTHOR	TITLE	STATUS	AMENDED
AB 675	Hagman	Continuing Education	2-year	04/05/11
AB 678	Pan	Medi-Cal: Supplemental Provider Reimbursement	Sen. Approps - Susp.	05/27/11
AB 714	Atkins	Health Care Coverage: California Health Benefit Exchange	Sen. Approps	06/30/11
AB 740	Blumenfield	Personal Services Contracts	Sen. Approps	
AB 778	Atkins	Health Care Service Plans: Vision Care	2-year	06/21/11
AB 847	Lowenthal, B.	Pharmacy: Clinics	2-year	
AB 916	Perez, M.	Promotores: Medically Underserved Communities: Federal Grants	Senate	05/27/11
AB 917	Olsen	State Agencies: Sunset Review	2-year	
AB 922	Monning	Office of Health Consumer Assistance	Sen. Approps	06/20/11
AB 951	Perea	State Employees: Memorandum of Understanding	Assembly	06/13/11
AB 991	Olsen	State Gov't: Licenses: California Licensing & Permit Center	2-year	04/13/11
AB 1003	Smyth	Professional and Vocational Licenses	2-year	
AB 1078	Grove	Legislature: Former Members: State Boards and Commissions	2-year	
AB 1088	Eng	State Agencies: Collection of Demographic Data	Sen. Approps	06/21/11
AB 1192	Garrick	Immunization Information: Pertussis	2-year	04/25/11
AB 1213	Nielsen	Regulations	2-year	04/12/11
AB 1217	Fuentes	Assisted Reproductive Technology: Parentage	2-year	06/20/11
AB 1280	Hill	Ephedrine: Retail Sale	Sen. Approps	05/26/11
AB 1296	Bonilla	Health Care Eligibilty, Enrollment, and Retention Act	Sen. Approps	07/13/11
AB 1322	Bradford	Regulations: Principles of Regulation	2-year	04/15/11
AB 1328	Pan	Clinical Laboratories	2-year	03/31/11
AB 1424	Perea	Franchise Tax Board: Delinquent Tax Debt	Sen. Approps	07/12/11
ABX1 3	Logue	Regulations: 5-Year Review and Report	Assembly	

Medical Board of California
Tracker II - Legislative Bills
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BILL	AUTHOR	TITLE	STATUS	AMENDED
ABX1 4	Logue	Regulations: Effective Date	Assembly	
ABX1 5	Logue	Regulations: Legislative Notice	Assembly	
ABX1 6	Logue	Regulations: Economic Impacts Review	Assembly	
AJR 10	Brownley	School-Based Health Centers	Enrollment	05/02/11
SB 38	Padilla	Radiation Control: Health Facilities and Clinics: Records	Enrollment	03/29/11
SB 41	Yee	Hypodermic Needles and Syringes	Assembly	06/28/11
SB 103	Liu	State Government: Meetings	Asm. Approps	07/12/11
SB 173	Simitian	Healing Arts: Mammograms	Asm. Approps	05/31/11
SB 227	Wyland	Business and Professions: Licensure	2-year	
SB 231	Emmerson	Regulatory Boards: Healing Arts	2-year	
SB 236	Anderson	California Public Records Act	2-year	
SB 252	Vargas	Public Contracts: Personal Services	2-year	05/31/11
SB 347	Rubio	Graduate Medical Education Payments: Medi-Cal	2-year	03/21/11
SB 360	DeSaulnier	Controlled Substance Utilization Review and Eval. System	Asm. Approps	07/07/11
SB 393	Hernandez	Medical Homes	2-year	05/31/11
SB 396	Huff	Regulations: Review Process	2-year	04/07/11
SB 399	Huff	Healing Arts: Advertising	2-year	
SB 411	Price	Home Care Services Act of 2011	Asm. Approps	07/12/11
SB 442	Calderon	Hospitals: Interpreters	Asm. Approps	04/26/11
SB 538	Price	Nursing	Asm. Approps	06/27/11
SB 553	Fuller	Regulations: Effective Date	2-year	04/05/11
SB 616	DeSaulnier	Medi-Cal: Grants	2-year	04/26/11
SB 628	Yee	Acupuncture: Regulation	2-year	06/29/11

Medical Board of California
Tracker II - Legislative Bills
7/18/2011

BILL	AUTHOR	TITLE	STATUS	AMENDED
SB 667	Runner	Naturopathic Doctor	2-year	03/31/11
SB 728	Hernandez	Health Care Coverage	2-year	05/31/11
SB 742	Yee	Medicine	2-year	
SB 746	Lieu	Tanning Facilities	Asm. Approps	03/22/11
SB 747	Kehoe	Continuing Education: LGBT Patients	Asm. Approps - Susp.	06/13/11
SB 850	Leno	Medical Records: Confidential Information	Asm. Approps	06/22/11
SB 924	Walters	Physical Therapists: Direct Access	2-year	05/24/11
SB 946	Heath Comm.	Public Health	Asm. Approps	05/10/11
SJR 6	Kehoe	Survivors of Torture	Chapter, #45	6/22/2011