STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov

NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of the Dental Board of California will be held as follows:

Thursday, February 23, 2012

Holiday Inn on the Bay
1355 North Harbor Drive
San Diego, CA 92101
619-232-3861 or 916-263-2300

Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the President. For verification of the meeting, call (916) 263-2300 or access the Board's Web Site at ***www.dbc.ca.gov****. This Board meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Richard DeCuir, Executive Officer at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation*

Thursday, February 23, 2012

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources.

8:30 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD - OPEN SESSION

ROLL CALL ..... Establishment of a Quorum

***CLOSED SESSION - FULL BOARD**

(a)Deliberate and Take Action on Disciplinary Matters
*The Board will meet in closed session as authorized by Government Code Section 11126(c)(3)

(b)Receive Advice from Counsel on Litigation
Shahab Ebrahimian et al. v. Dental Board of California, Los Angeles County Sup. Ct., Case No. BS131882
*The Board will meet in closed session as authorized by Government Code Section 11126(e)

***CLOSED SESSION – LICENSING, CERTIFICATION, AND PERMITS COMMITTEE**

Issuance of New License(s) to Replace Cancelled License(s)
*The Committee will meet in closed session as authorized by Government Code Section 11126(c)(2) to deliberate on applications for issuance of new license(s) to replace cancelled license(s)

***CLOSED SESSION – EXAMINATION APPEALS COMMITTEE (IF NECESSARY)**

Grant/Deny Appeals from California Examination candidates
*The Committee will meet in closed session as authorized by Government Code Section 11126(c)(1)

LUNCH BREAK – Approximately Noon or upon completion of Closed Session

OPEN SESSION RESUMES AT APPROXIMATELY 1:00 p.m.

AGENDA ITEM 1 ..... Update on Pending Regulatory Packages:

A. Consumer Protection Enforcement Initiative *(Cal. Code of Regs., Title 16, Sections 1018.05 and 1020)*
B. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines *(Cal. Code of Regs., Title 16, Sections 1018 and 1020.5)*
C. Sponsored Free Health Care Events *(Cal. Code of Regs., Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18)*
D. Notice to Consumers of Licensure by the Dental Board (Cal. Code of Regs., Title 16, Section 1065)

AGENDA ITEM 2 ..... Discussion and Possible Action Regarding:

(A) Comments Received During the 45-day Public Comment Period for the Board's Proposed Rulemaking to Amend Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines and

(B) Adoption of Proposed Amendments to Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

AGENDA ITEM 3 ..... Discussion and Possible Action Regarding:

(A) Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to Add Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events; and

(B) Adoption of Proposed Additions to Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

COMMITTEE MEETINGS – SEE ATTACHED AGENDAS

- EXAMINATION COMMITTEE

See attached Examination Committee agenda

- LICENSING, CERTIFICATION, AND PERMITS COMMITTEE

See attached Licensing, Certification, and Permits Committee agenda

- DENTAL ASSISTING COMMITTEE

See attached Dental Assisting Committee agenda

- LEGISLATIVE AND REGULATORY COMMITTEE

See attached Legislative and Regulatory Committee agenda

- ENFORCEMENT COMMITTEE

See attached Enforcement Committee agenda

FULL BOARD MEETING RESUMES

AGENDA ITEM 4 ..... Subcommittee Update of Universidad De La Salle's Renewal and Site Review

AGENDA ITEM 5 ..... Discussion and Possible Action Regarding a Response to the American Dental Association's (ADA) Formal Request to Allow Out-of-State Licensed Dentists to Conduct Live-Patient Continuing Education Classes at the 2012 ADA Annual Session as Permitted by Business and Professions Code 1626(d)

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

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

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MEMORANDUM

DATE	February 3, 2012
TO	Dental Board Members
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 1:** Update on Pending Regulatory Packages:

A. Consumer Protection Enforcement Initiative *(Cal. Code of Regs., Title 16, Sections 1018.05 and 1020)*:

At its November 5, 2010 meeting, the Dental Board of California (Board) reviewed proposed regulatory amendments to improve the Board's enforcement process in an effort to address public concern. The Board directed staff to initiate a rulemaking to further define unprofessional conduct and to permit the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency.

The initial rulemaking file was submitted to the Office of Administrative Law (OAL) on February 7, 2011. The proposed action was published on February 18, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on February 18, 2011 and ended on April 4, 2011. A regulatory hearing was held on April 4, 2011. The Board received a comment from the California Dental Association.

Recommendations and comments received during the 45-day public comment period and at the April 4, 2011 regulatory hearing were considered by the Board at its May 19, 2011 meeting. A number of modifications were made to the Consumer Protection Enforcement Initiative proposed regulations based upon comments received. The modified text was noticed on the Board's web site and mailed on May 25, 2011. The 15-day public comment period began on May 26, 2011 and ended on June 10, 2011. The Board did not receive comments in response to the modified text. Since there were no adverse comments received in response to the modified text, the Board adopted the final text as noticed in the modified text at its May 19, 2011 meeting.

Staff submitted the final rulemaking file to the Director of the Department of Consumer Affairs (Department) on June 13, 2011. The final rulemaking file received approval from the Director of the Department, the Secretary of State and Consumer Services Agency (Agency), and the Director of the Department of Finance (DOF). The final rulemaking

was submitted to OAL on December 23, 2011. The Office of Administrative Law has 30 working days to review the file. Once approved, the rulemaking will be filed with the Secretary of State and will become effective 30 days later. The deadline to receive OAL's determination of approval or disapproval is February 8, 2012.

B. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines *(Cal. Code of Regs., Title 16, Sections 1018 and 1020.5)*:

At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to the uniform standards relating to substance abusing licensees and Disciplinary Guidelines. The Board directed staff to initiate a rulemaking.

The initial rulemaking file was submitted to the Office of Administrative Law on March 11, 2011. The proposed action was published on March 25, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on March 25, 2011 and ended on May 9, 2011. The regulatory hearing was held on May 10, 2011. The Board received oral testimony from the California Dental Association and written comments from the Center for Public Interest Law. The Substance Abuse Coordination Committee (SACC) met on April 11, 2011 and revised requirements contained in the *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*.

At its August 11, 2011 meeting, the Board tabled response to comments until further legal clarification was received regarding the Board's discretion regarding ordering conditions of probation relative to the uniform standards.

At its November 7, 2011 meeting, the Board reviewed legal opinions from both Board Legal Counsel and Legislative Counsel regarding the Board's discretion regarding the use of the Uniform Standards. The Board tabled action until further clarity could be obtained regarding the need for the the need for the Department and the SACC formal rulemaking or at the discretion of the Executive Officer to bring this issue back to the Board if necessary. The motion carried unanimously. The Board was advised by staff that the rulemaking was due to expire on March 24, 2012 and that if the rulemaking deadline expired, the Board would have to begin the regulatory hearing process again. The Board will be discussing this proposed regulation during the Full Board meeting on February 23, 2012.

C. Sponsored Free Health Care Events *(Cal. Code of Regs., Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18)*

At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to sponsored free health care events. The Board directed staff to initiate a rulemaking. The proposed regulatory language regarding Sponsored Free Health Care Events was noticed on the Board's website and mailed on October 7, 2011 for the 45-day public comment period. The comment period began on October 7, 2011 and ended on November 21, 2011. A regulatory hearing was held on November 22, 2011 in Sacramento. The Board received comments from the California Association of Oral and Maxillofacial Surgeons, the California Dental Association, and California Academy of General Dentists. The Board will be discussing this proposed regulation and the comments received during the Full Board meeting on February 23, 2012.

D. Notice to Consumers of Licensure by the Dental *Board (Cal. Code of Regs., Title 16, Section 1065)*

At its November 7, 2011 meeting, the Board directed staff to initiate a rulemaking to implement, interpret, and make specific the provisions of Business and Professions Code Sections 138 and 1611.3 relative to providing conspicuous notification to consumers that dentists are licensed and regulated by the Board, require that the notice include a statement to that effect, and contain the Board's toll-free telephone number and its web site address.

The initial rulemaking file was submitted to OAL on January 10, 2012. The proposed action was published on January 20, 2012 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on January 20, 2012 and will end on March 5, 2012. A regulatory hearing is scheduled for March 5, 2012 in Sacramento.

Action Requested:

No action necessary.

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MEMORANDUM

DATE	February 14, 2012
TO	Dental Board Members
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 2(A):** Discussion and Possible Action Regarding Comments Received During the 45-day Public Comment Period for the Board's Proposed Rulemaking to Amend Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

Background:

At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to the uniform standards relating to substance abusing licensees and Disciplinary Guidelines. The Board directed staff to initiate a rulemaking.

The initial rulemaking file was submitted to the Office of Administrative Law on March 11, 2011. The proposed action was published on March 25, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on March 25, 2011 and ended on May 9, 2011. The regulatory hearing was held on May 10, 2011. The Board received oral testimony from the California Dental Association and written comments from the Center for Public Interest Law.

The Substance Abuse Coordination Committee (SACC) met on April 11, 2011 and revised requirements contained in the *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*. The amendments were related to drug testing requirements and facilitated group support meetings. A copy of the April 11, 2011 document is included in the meeting packet.

At its August 11, 2011 meeting, the Board discussed comments received during the 45-day public comment period and the changes that were made by the SACC. Board staff presented recommendations to the Board for response to comments, as well as Legal Counsel's interpretation relating to the Board's discretion in using the Uniform Standards. The Board discussed the issue of the Board's discretionary authority in using the uniform standards as conditions of probation for substance abusing licensees. The Board tabled any action until it received more information regarding the Board's discretion; specifically a written legal opinion from the Legislative Counsel's Office.

On October 27, 2011 a written Legislative Counsel opinion was received by Board staff. At its November 7, 2011 meeting, the Board reviewed the Legislative Counsel's opinion and Board Legal Counsel advised the Board that the Legislative Counsel opinion had only been received a few days prior to the Board meeting, and there had been little time for an in-depth review and analysis. Upon tentative review, Board Legal Counsel found that Legislative Counsel opined that the Uniform Standards for Substance Abusing Licensees are not legally enforceable until adopted via a formal rulemaking process; and that the Substance Abuse Coordination Committee (SACC) is a State agency with the power to adopt regulations. Once properly adopted by the SACC, the Healing Arts Boards of the Department of Consumer Affairs would have no discretion to disregard the standards.

Board Legal Counsel agreed with Legislative Counsel's opinion that the standards have to be legally adopted via a formal rulemaking process in order to be enforceable, but did not agree with the opinion that the SACC has any power to adopt these standards as rules. During the meeting, it was pointed out that the Department of Consumer Affairs had not had the opportunity to disclose its position regarding Legislative Counsel's opinion.

At the November 2011, the Board tabled action on the Board's proposed rulemaking relative to Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines until further clarity was obtained from the Department of Consumer Affairs regarding the need for the Substance Abuse Coordination Committee to conduct a formal rulemaking and left the issue at the discretion of the Board's Executive Officer to bring the rulemaking back to the Board if necessary.

To date, the Board has not received further clarification from the Department of Consumer Affairs regarding Legislative Counsel's opinion. This rulemaking file is set to expire on March 24, 2012. If this rulemaking file expires on that date, the Board would need to begin the regulatory process again.

Action Requested:

Staff requests the Board respond to comments received during the 45-day public comment period and direct staff on how to proceed with the rulemaking package.

Staff has included a summary of comments received and staff recommended responses in this memo. A copy of Legislative Counsel's opinion is also available in the meeting packet. During discussion and consideration of comments received, the Board may do one of the following:

- Accept the comments from the Center for Public Interest Law, reject the Board's discretionary authority for this rulemaking, and incorporate all provisions of the Substance Abuse Coordination Committee's *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees (Revised April 2011)*; or
- Reject the comments from the Center for Public Interest Law, and maintain the Board's discretionary authority for this rulemaking.

If the Board rejects the comments received from the Center for Public Interest Law, and votes to maintain discretionary authority for this rulemaking, staff recommends that the

Board review and discuss each proposed change in this regulation, and determine if the Board concurs with the currently proposed language or wishes to further modify the text.

Staff has prepared the following information for the Board's review at this meeting:

1. Recommended responses to the comments received during the 45-day public comment period and at the public regulatory hearing;
2. Recommended modifications to the originally proposed text to use the amendments made by the SACC on April 11, 2011; and
3. Additional recommended modifications to the originally proposed text based on a number of issues that arose after the original text was noticed.

COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD AND STAFF RECOMMENDED RESPONSE TO COMMENTS:

Comments Received from the California Dental Association:
Bill Lewis, California Dental Association (CDA), delivered verbal testimony at the regulatory hearing on May 10, 2011 in response to the proposed regulatory action. Mr. Lewis indicated CDA's overall support of the proposed regulations as drafted. Mr. Lewis thanked the Dental Board of California and staff for finding a balance between implementing the Uniform Standards, as created by the Substance Abuse Coordination Committee, and recognizing the distinction between the appropriate roll of the Board's Diversion Program and disciplinary action. Mr. Lewis stated that it is important that the Board maintain flexibility and discretion while treating individuals self-referred into the Diversion Program and not in a one-size fits all approach.

Staff Recommendation:
Since this was not an adverse comment, there is no Board action required in response to the California Dental Association's comment.

Comments Received from the Center for Public Interest Law:
Julianne D'Angelo Fellmeth, Administrative Director, for the Center for Public Interest Law submitted a letter (copy enclosed) in response to the proposed regulations.

First, Ms. Fellmeth stated that the proposed regulation does not incorporate the correct version of the Uniform Standards developed by the Department of Consumer Affairs' Substance Abuse Coordination Committee (SACC). The letter further explained that the SACC finalized its Uniform Standards in April 2011, and that the new version should be incorporated into the DBC's Disciplinary Guidelines.

Secondly, Ms. Fellmeth commented that the Dental Board of California does not have discretion to order individual conditions. Ms. Fellmeth commented that the Baord is required to apply any applicable standard developed by the SACC as finalized in April 2011. She stated that Business and Professions Code Section 315 states: "…the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program…" and that there is nothing discretionary in this language. Ms. Fellmeth further stated that the language was intended to ensure consistency across all the healing arts boards when dealing with substance-abusing licensees and that no healing arts board is allowed to pick and choose among the SB 1441 standards and decide which to follow and which to ignore.

Staff Recommendation:
Staff recommends rejection of these comments. The Dental Board ("Board") incorporated the original terms of the probationary standards recommended by the Substance Abuse Coordination Committee (SACC) into its originally noticed text, which was filed before the SACC amended its standards in April 2011. The Board intends to modify its proposed text to reflect these new amendments as of April 2011.

However, the Board staff disagrees with the commenter that the Board has no discretion. Rulemaking is a discretionary act that has been specifically delegated to the

Board by law, not to the SACC. The SACC has been given no power to enact rules or regulations by Section 315 of the Business and Professions Code and the SACC's proposed standards are not exempt from the APA. As a result, any standards the SACC proposes do not have the force of law (statute or regulation) and do not set standards for the Board's licensees unless adopted by the Board through the rulemaking process. In addition, Section 315 of the Business and Professions Code does not restrict the Board's discretion to determine how and when to use the standards, or divest it of its rulemaking authority. The statute merely states that the boards "shall use" the standards formulated by the SACC in dealing with substance-abusing licensees. The Board has done this by proposing to add the standards as written by the SACC to its guidelines. However, the Board has made it clear that it still has authority to determine how and whether to apply the standards. The analysis in support of these conclusions follows.

The Board has been expressly delegated the authority to make rules by the Legislature.

Section 108 of the Business and Professions Code states, in pertinent part, that:

"**Each of the boards** comprising the department **exists as a separate unit**, and has the functions of **setting standards**, … passing upon applicants, conducting investigations of violations of laws under its jurisdiction, … holding hearings for the revocation of licenses, and the imposing of penalties following those hearings, insofar as these powers are given by statute to each respective board." (Emphasis added.)

In particular, Section 1611 of the Business and Professions Code charges the Board with carrying out the purposes of and enforcing the provisions of the Dental Practice Act. This includes adopting rules necessary to issue and renew a license and administer and enforce the Dental Practice Act (Bus.&Prof.Code, § 1614.). Section 1628.7 of the Business and Professions Code states that the Board has "sole discretion" to determine whether an applicant should be issued a probationary license and the Board "may" determine what term or condition of a probationary license may be imposed. Further, Section 1628.7 requires any rules regarding the terms and conditions of probation, including those for abstention of alcohol, to "be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act." Further, Section 1695.5 of the Business and Professions Code states that the "Board shall establish criteria for the acceptance, denial or termination of licentiates in a diversion program." As a result, the Board has been specifically delegated the authority to decide what standards to adopt and when those standards will be applied.

Section 315 neither divests the Board of its rulemaking authority nor restricts its rulemaking authority. Later enacted statutes support this conclusion.

The first step "is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d 999.) "If the statutory language is clear and unambiguous, there is no need for construction." (*Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 606, 257 Cal.Rptr. 320, 770 P.2d 732.) "[T]he Legislature is presumed to have meant what it said, and the plain meaning of the statute governs." (*People v. Johnson* (2002) 28 Cal.4th 240, 244, 121 Cal.Rptr.2d 197, 47 P.3d 1064.) It is assumed that when

enacting a statute, the legislature is deemed to be aware of statutes already in existence and to have enacted new laws in light of the existing law with an intent to maintain a consistent body of statutes (*People v. Harrison* (1989) 48 Cal.3d 321, 329 citing *People v. Overstreet* (1986) 42 Cal.3d. 891,897; *Burlington Northern and Sante Fe Ry. Co. v. Public Utilities Com'n* (2003) 112 Cal.App.4th 881, 889.)

Looking at the plain language of section 315, the statute merely states that each board "shall use" the standards proposed by the SACC. It says nothing about the SACC's power to either adopt rules that must be adopted by the boards or that the boards have no discretion but to apply these terms in every case, regardless of the facts of the case. On the contrary, the failure of the Board to exercise its discretion in every case could subject the Board to legal challenges for any decision it issues when it has expressly been delegated the authority to exercise its discretion. (See, e.g., *Ventimiglia v. Board of Behavioral Sciences* (2008)168 Cal.App.4th 296, 300-301.)

Further, the Legislature presumptively knew that the Board had been delegated "sole discretion" to determine probationary conditions, but instead only chose to require the Board to "use" the standards proposed by the SACC. Later statutory enactments at Sections 315.2 and 315.4 of the Business and Professions Code further support this conclusion. Section 315.4 of the Business and Professions Code, which was enacted after Section 315, reinforces that the Board has discretion when it states that "a board, as described in Section 315, **may** adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice…when the board orders a licensee to undergo a clinical diagnostic evaluation…" (Emphasis added.) The use of the word "may" is ordinarily permissive (*Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 133.)

However, when the Legislature intended to restrict the board's discretion, it did so clearly when it enacted Section 315.2 of the Business and Professions Code, which states that all boards: "shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program." As a result, a plain reading of the statute would indicate that the board must order a licensee to cease practice if the licensee tests positive for a banned substance. The Board's current proposal is consistent with this legislative mandate, and has been included in the Board's changes on page 33 of the proposed amendments.

In conclusion, the Dental Board has authority to set standards as authorized by the Dental Practice Act and other applicable statutes. The enactment of Section 315 of the Business and Professions Code did not remove the Board's authority to exercise its discretion in adopting rules applicable to the professions it regulates. The statute merely states that the boards shall "use" the standards. The statute does not state that the boards are not permitted to exercise their discretion in determining how and when to use the standards proposed by the SACC. Later enacted statutory provisions support this interpretation. As a result, the Board does indeed have discretion to determine whether a particular condition should be applied to a licensee in a given case.

ADDITIONAL STAFF RECOMMENDATIONS

In addition to responding to the comments received during the 45-day public comment period and reviewing the changes made to the proposed language to use the Substance Abuse Coordination Committee's (SACC) April 2011 amendments, the Board may wish to discuss and take action to further modify the text, based on the following issues:

Issue #1:
The Board's proposed language does not provide a definition for "substance-abusing licensee". The Board may wish to discuss the need for clarifying the proposed language to advise the Administrative Law Judge (ALJ) as to when the Uniform Standards for Substance Abusing Licensees and related conditions of probations would apply.

Issue #2:
Staff recommends interchanging the numbering for proposed conditions "(35) Facilitated Group Support Meetings" and "(36) Clinical Diagnostic Evaluation" to be "(35) Clinical Diagnostic Evaluation" and "(36) Facilitated Group Support Meetings". The condition for a clinical diagnostic evaluation should come before other conditions relating to the Uniform Standards. A clinical diagnostic evaluation must be performed to determine if a licensee has a substance abuse problem that would necessitate the order of other probationary conditions relating to substance abuse.

Issue #3:
When a clinical diagnostic evaluation is ordered as a condition of probation, the Board is responsible for determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment. When making that determination, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

The originally proposed language did not include a condition of probation relative to a treatment and rehabilitation program for substance abuse other than the Diversion Program. Since the Diversion Program probationary condition is separate from the Clinical Diagnostic Evaluation probationary condition, and the two conditions should not be included on the same probationary order, an order containing a Clinical Diagnostic Evaluation condition should also include a Treatment/Rehabilitation Program probationary condition in the case the evaluator and the Board determine the licensee should participate in an inpatient, outpatient, or any other type of treatment. Staff recommends adding the following probationary condition to ensure compliance with the Uniform Standards as developed by the SACC:

> **(37) TREATMENT/REHABILITATION PROGRAM FOR SUBSTANCE ABUSE**
> After a receipt of a clinical diagnostic evaluation, the Board or its designee may order that Respondent enter an inpatient or outpatient alcohol or other drug abuse recovery program or equivalent program as approved by the Board or its designee. If so ordered, then within seven (7) days from the date of the order, Respondent

shall enter an inpatient or outpatient alcohol or other drug abuse recovery program or an equivalent program as approved by the Board or its designee. Components of the treatment program shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. Respondent shall provide the Board or its designee with proof that the approved program was successfully completed. Terminating the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. All costs associated with the program shall be paid by Respondent.

However, if Respondent has already attended such an inpatient or outpatient alcohol or other drug abuse recovery program, as described above, commencing with the current period of sobriety, respondent shall provide the Board or its designee with proof that the program was successfully completed and this shall suffice to comply with this term of probation.

In determining whether inpatient or outpatient treatment is necessary, the Board or its designee shall consider the following factors: the recommendation of the clinical diagnostic evaluation, license type, licensee's history, documented length of sobriety or time that has elapsed since substance abuse, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse, and whether the licensee is a threat to himself or herself or the public.

Note: This term should be used in conjunction with the (35) Clinical Diagnostic Evaluation term. This term should also be used when Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No, (26) (Diversion Program) is not a term and condition of the probationary order.

The following is the full text of the proposed amendments identified in Issue #2 and Issue #3:

(~~36~~35) CLINICAL DIAGNOSTIC EVALUATION – Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board. The cost of such evaluation shall be paid by the Respondent.

Respondent shall cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No, (26) (Diversion Program) is not a term and condition of the probationary order.

RATIONALE: This condition gives the Board the ability to order a Respondent, at any time during the probation period, to undergo an evaluation to determine if he or she is currently safe to practice.

(~~35~~36) FACILITATED GROUP SUPPORT MEETINGS –
Within fifteen (15) days from the effective date of the decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more meeting facilitators. Respondent shall participate in facilitated group support meetings within fifteen (15) days after notification of the Board's approval of the meeting facilitator. When determining the type and frequency of required facilitated group support meeting attendance, the Board shall give consideration to the following:

- The licensee's history;
- The documented length of sobriety/time that has elapsed since substance abuse;
- The recommendation of the clinical evaluator;
- The scope and pattern of use;
- The licensee's treatment history; and ,
- The nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group support meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

1. The group meeting facilitator shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The group meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last ~~five (5)~~ years~~s~~.
3. The group facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

4. The group meeting facilitator shall report any unexcused absence to the Board within twenty-four (24) hours.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations.

RATIONALE: Alcohol and/or drug abuse treatment should be required in addition to other terms of probation in cases where the use of alcohol or other drugs by the Respondent has impaired the Respondent's ability to safely practice.

(37) TREATMENT/REHABILITATION PROGRAM FOR SUBSTANCE ABUSE After a receipt of a clinical diagnostic evaluation, the Board or its designee may order that Respondent enter an inpatient or outpatient alcohol or other drug abuse recovery program or equivalent program as approved by the Board or its designee. If so ordered, then within seven (7) days from the date of the order, Respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program or an equivalent program as approved by the Board or its designee. Components of the treatment program shall be relevant to the violation and to the Respondent's current status in recovery or rehabilitation. Respondent shall provide the Board or its designee with proof that the approved program was successfully completed. Terminating the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. All costs associated with the program shall be paid by Respondent.

However, if Respondent has already attended such an inpatient or outpatient alcohol or other drug abuse recovery program, as described above, commencing with the current period of sobriety, respondent shall provide the Board or its designee with proof that the program was successfully completed and this shall suffice to comply with this term of probation.

In determining whether inpatient or outpatient treatment is necessary, the Board or its designee shall consider the following factors: the recommendation of the clinical diagnostic evaluation, license type, licensee's history, documented length of sobriety or time that has elapsed since substance abuse, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse, and whether the licensee is a threat to himself or herself or the public.

Note: This term should be used in conjunction with the (35) Clinical Diagnostic Evaluation term. This term should also be used when Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No, (26) (Diversion Program) is not a term and condition of the probationary order.

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University of San Diego

May 9, 2011

Sarah Wallace
Legislative and Regulatory Analyst
Dental Board of California
2005 Evergreen Street, Suite 1550
Sacramento, CA 95815

re: DBC's Disciplinary Guidelines Regulations

Dear Ms. Wallace:

The Center for Public Interest Law (CPIL) has two comments on DBC's proposal to amend sections 1018 and 1020.5, Title 16 of the CCR, and its Disciplinary Guidelines.

First, the proposal does not incorporate the correct version of the Uniform Standards developed by the Department of Consumer Affairs' Substance Abuse Coordination Committee (SACC). The Committee finalized its standards in April 2011, and that version should be incorporated into DBC's guidelines.

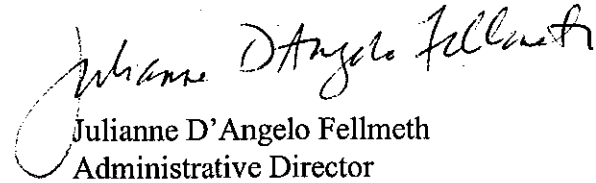
Secondly, page 3 of the disciplinary guidelines (under the heading "Uniform Standards Related to Substance Abuse") states: "The following standards should be followed in all cases in which a license is placed on probation due to a substance abuse problem. ***Whether individual conditions are ordered, however, is within the discretion of the Board.***"

We assume you are referring to the "uniform and consistent standards" developed by the SACC as directed by SB 1441 (Ridley-Thomas) (2008). Under that law (specifically Business and Professions Code section 315), the Dental Board has no discretion. It is required to apply any applicable standard developed by the SACC and finalized in April 2011. Section 315 specifically states: "...the committee shall formulate uniform and specific standards in each of the following areas that **each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program**..." (emphasis added). There is nothing discretionary about that language; it was intended to ensure consistency across all the healing arts boards in their dealings with substance-abusing licensees. No healing arts board is allowed to pick and choose among the SB 1441 standards and decide which to follow and which to ignore.

Center for Public Interest Law ■ Children's Advocacy Institute ■ Energy Policy Initiatives Center
5998 Alcalá Park, San Diego, CA 92110-2492 ■ Phone: (619) 260-4806 ■ Fax: (619) 260-4753
717 K Street, Suite 509, Sacramento, CA 95814-3408 ■ Phone: (916) 444-3875 ■ Fax: (916) 444-6611
www.cpil.org ■ www.caichildlaw.org ■ www.sandiego.edu/epic
Reply to: ☒ San Diego ☐ Sacramento

Thank you for your consideration of these comments.

Sincerely,



Julianne D'Angelo Fellmeth
Administrative Director
Center for Public Interest Law

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2187 F (916) 263-2140 www.dbc.ca.gov

REGULATORY HEARING

Dental Board of California
2005 Evergreen Street, Hearing Room
Sacramento, CA 95815
May 11, 2011
Minutes of Public Hearing for California Code of Regulations Sections 1018 and 1020.5 for Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines

Staff Present:
Denise Johnson, Assistant Executive Officer
Sarah Wallace, Legislative & Regulatory Analyst
Kristy Shellans, Senior Legal Counsel
Karen Fischer, Special Assistant to the Executive Officer

Title 16, California Code of Regulations, Amend Sections 1018 and 1020.5 for Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines

Sarah Wallace, Legislative and Regulatory Analyst, read the opening statement explaining the hearing process and opened the hearing for testimony at approximately 10:00 a.m.

Mr. Bill Lewis, California Dental Association (CDA), delivered verbal testimony in response to the proposed regulatory action. Mr. Lewis indicated CDA's overall support of the proposed regulations as drafted. Mr. Lewis thanked the Dental Board of California and staff for finding a balance between implementing the Uniform Standards, as created by the Substance Abuse Coordination Committee, and recognizing the distinction between the appropriate roll of the Board's Diversion Program and disciplinary action. Mr. Lewis stated that it is important that the Board maintain flexibility and discretion while treating individuals self-referred into the Diversion Program and not in a one-size fits all approach.

There were no other comments, and the hearing was adjourned at 10:15 a.m.

Changes made to the Standards from April 2010 – April 2011 are underlined for additions and strikeout for deletions

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee

Brian J. Stiger, Director
~~April 2010~~April 2011

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

Elinore F. McCance-Katz, M.D., Ph. D.
CA Department of Alcohol & Drug Programs

Janelle Wedge
Acupuncture Board

Kim Madsen
California Board of Behavioral Sciences

Robert Puleo
Board of Chiropratic Examiners

Lori Hubble
Dental Hygiene Committee of California

Richard De Cuir
Dental Board of California

~~Joanne Allen~~
~~**Hearing Aid Dispensers**~~

Linda Whitney
Medical Board of California

Heather Martin
California Board of Occupational Therapy

Mona Maggio
California State Board of Optometry

Teresa Bello-Jones
Board of Vocational Nursing and Psychiatric Technicians

Donald Krpan, D.O.
Osteopathic Medical Board of California

Francine Davies
Naturopathic Medicine Committee

Virginia Herold
California State Board of Pharmacy

Steve Hartzell
Physical Therapy Board of California

Elberta Portman
Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

Robert Kahane
Board of Psychology

Louise Bailey
Board of Registered Nursing

Stephanie Nunez
Respiratory Care Board of California

Annemarie Del Mugnaio
Speech-Language Pathology & Audiology & Hearing Aid Dispenser Board

Susan Geranen
Veterinary Medical Board

~~Staff Working Group~~

~~Susan Lancara, DCA, Legislative & Policy Review~~
~~LaVonne Powell, DCA Legal Counsel~~
~~Laura Edison Freedman, DCA Legal Counsel~~
~~Katherine Demos, DCA, Legislative & Policy Review~~
~~Kristine Brothers, Acupuncture Board~~
~~Kim Madsen, Board of Behavioral Sciences~~
~~April Alameda. Board of Chiropractic Examiners~~
~~Richard DeCuir, Dental Board of California~~
~~Kimberly Kirchmeyer, Medical Board of CA~~
~~Jeff Hanson, Board of Occupational Therapy~~
~~Margie McGavin, Board of Optometry~~
~~Felisa Scott, Osteopathic Medical Board~~
~~Anne Sodergren, Board of Pharmacy~~
~~Glenn Mitchell, Physician Assistant Committee~~
~~Debi Mitchell, Physical Therapy Board of CA~~
~~Carol Stanford, Board of Registered Nursing~~
~~Liane Freels, Respiratory Care Board~~
~~Amy Edelen, Veterinary Medical Board~~
~~Marilyn Kimble, Board of Vocational Nursing & Psychiatric Technicians~~

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#1 SENATE BILL 1441 REQUIREMENT

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

#1 Uniform Standard

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:

    - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;

    - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,

    - is approved by the board.

2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

3. The clinical diagnostic evaluation report shall:

    - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;

    - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,

    - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

#2 SENATE BILL 1441 REQUIREMENT

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

#2 Uniform Standard

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.

2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

#3 SENATE BILL 1441 REQUIREMENT

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomnicity, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

The following ~~drug testing~~ standards shall ~~apply to each licensee subject to drug testing~~ govern all aspects of testing required to determine abstention from alcohol and drugs for any person whose license is placed on probation or in a diversion program due to substance use:

~~Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.~~

TESTING FREQUENCY SCHEDULE

A board may order a licensee to drug test at anytime. Additionally, each licensee shall be tested RANDOMLY in accordance with the schedule below:

Level	Segments of Probation/Diversion	Minimum Range of Number of Random Tests
I	Year 1	52-104 per year
II*	Year 2+	36-104 per year

*The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter~~.~~,up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

Nothing precludes a board from increasing the number of random tests for any reason. Any board who finds or has suspicion that a licensee has committed a violation of a board's testing program or who has committed a Major Violation, as identified in Uniform Standard 10, may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY
In cases where a board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT
An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD
A board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the ~~a~~ licensee shall notify and secure the approval of the licensee's board. Prior to returning to any healthcare employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING
A board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the board upon the licensee's return to California and shall be subject to testing as provided in this standard. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED
In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.

OTHER DRUG STANDARDS

Drug testing may be required on any day, including weekends and holidays.

The scheduling of drug tests shall be done on a random basis, preferably by a computer program, so that a licensee can make no reasonable assumption of when he/she will be tested again. Boards should be prepared to report data to support back-to-back testing as well as, numerous different intervals of testing.

Licensees shall be required to make daily contact to determine if drug testing is required.

Licensees shall be drug tested on the date of notification as directed by the board.

Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

Collection of specimens shall be observed.

Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

A board may use other testing methods in place of, or to supplement biological fluid testing, if the alternate testing method is appropriate.

PETITIONS FOR REINSTATEMENT

Nothing herein shall limit a board's authority to reduce or eliminate the standards specified herein pursuant to a petition for reinstatement or reduction of penalty filed pursuant to Government Code section 11522 or statutes applicable to the board that

contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

For purposes of measuring outcomes and effectiveness, each board shall collect and report historical and post implementation data as follows:

Historical Data - Two Years Prior to Implementation of Standard
Each board should collect the following historical data (as available), for a period of two years, prior to implementation of this standard, for each person subject to testing for banned substances, who has 1) tested positive for a banned substance, 2) failed to appear or call in, for testing on more than three occasions, 3) failed to pay testing costs, or 4) a person who has given a dilute or invalid specimen.

Post Implementation Data- Three Years
Each board should collect the following data annually, for a period of three years, for every probationer and diversion participant subject to testing for banned substances, following the implementation of this standard.

Data Collection
The data to be collected shall be reported to the Department of Consumer Affairs and the Legislature, upon request, and shall include, but may not be limited to:

Probationer/Diversion Participant ~~ee~~ Unique Identifier
License Type
Probation/Diversion Effective Date
General Range of Testing Frequency by/for Each Probationer/Diversion Participant ~~ee~~
Dates Testing Requested
Dates Tested
Identify the Entity that Performed Each Test
Dates Tested Positive
Dates Contractor (if applicable) was informed of Positive Test
Dates Board was informed of Positive Test
Dates of Questionable Tests (e.g. dilute, high levels)
Date Contractor Notified Board of Questionable Test
Identify Substances Detected or Questionably Detected
Dates Failed to Appear
Date Contractor Notified Board of Failed to Appear
Dates Failed to Call In for Testing
Date Contractor Notified Board of Failed to Call In for Testing
Dates Failed to Pay for Testing
Date(s) Removed/Suspended from Practice (identify which)
Final Outcome and Effective Date (if applicable)

#5 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

#5 Uniform Standard

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee within the last ~~five (5) years(insert number)~~ year~~(s)~~.

3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

4. The facilitator shall report any unexcused absence within 24 hours**.**

#6 SENATE BILL 1441 REQUIREMENT

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

#6 Uniform Standard

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

#7 SENATE BILL 1441 REQUIREMENT

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

#7 Uniform Standard

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored, ~~or~~ be another health care professional if no monitor with like practice is available or, as approved by the board, be a person in a position of authority who is capable of monitoring the licensee at work.

3. If ~~T~~the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

5. The worksite monitor must adhere to the following required methods of monitoring the licensee:

    a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.

    b) Interview other staff in the office regarding the licensee's behavior, if applicable.

    c) Review the licensee's work attendance.

Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.

2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:

   - the licensee's name;
   - license number;
   - worksite monitor's name and signature;
   - worksite monitor's license number;
   - worksite location(s);
   - dates licensee had face-to-face contact with monitor;
   - staff interviewed, if applicable;
   - attendance report;
   - any change in behavior and/or personal habits;
   - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

#8 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee tests positive for a banned substance.

#8 Uniform Standard

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;

2. The board shall contact the licensee and instruct the licensee to leave work; and

3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;

2. Communicate with the licensee and/or any physician who is treating the licensee; and

3. Communicate with any treatment provider, including group facilitator/s.

#9 SENATE BILL 1441 REQUIREMENT

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

#10 SENATE BILL 1441 REQUIREMENT

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

#10 Uniform Standard

Major Violations include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

Consequences for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
   - ~~a)~~ the licensee must undergo a new clinical diagnostic evaluation, and
   - ~~b)~~ the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

Minor Violations include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

Consequences for minor violations include, but are not limited to**:**

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

#11 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

#11 Uniform Standard

"Petition" as used in this standard is an informal request as opposed to a "Petition for Modification" under the Administrative Procedure Act.

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.

2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.

3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

#12 SENATE BILL 1441 REQUIREMENT

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

#12 Uniform Standard

"Petition for Reinstatement" as used in this standard is an informal request (petition) as opposed to a "Petition for Reinstatement" under the Administrative Procedure Act.

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.

2. Demonstrated successful completion of recovery program, if required.

3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.

4. Demonstrated that he or she is able to practice safely.

5. Continuous sobriety for three (3) to five (5) year.

#13 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

#13 Uniform Standard

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.

2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

(a) Specimen Collectors:

~~a)~~ (1) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.

~~b)~~ (2) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.

~~c)~~ (3) The provider or subcontractor must provide collection sites that are located in areas throughout California.

~~d)~~ (4) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.

~~e)~~ (5) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.

~~f)~~ (6) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.

~~g)~~ (7) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.

~~h)~~ (8) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.

~~i)~~ (9) Must undergo training as specified in Uniform Standard #4 (6).

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

~~a)~~ (1) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;

~~b)~~ (2) must be licensed or certified by the state or other nationally certified organization;

~~c)~~ (3) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last ~~five (5)~~ year~~s~~;

~~d)~~ (4) shall report any unexcused absence within 24 hours to the board, and,

~~e)~~ (5) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

(c) Work Site Monitors:

1. The worksite monitor must meet the following qualifications:

~~a)~~ (1) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.

~~b)~~ (2) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored, be another health care professional, if no monitor with like practice is available, or, as approved by the board, be a

person in a position of authority who is capable of monitoring the licensee at work.

~~c)~~ (3) If~~T~~the worksite monitor is a licensed healthcare professional he or she shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

~~d)~~ (4) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.

2. The worksite monitor must adhere to the following required methods of monitoring the licensee:

   a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.

   b) Interview other staff in the office regarding the licensee's behavior, if applicable.

   c) Review the licensee's work attendance.

3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.

4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:

   - the licensee's name;
   - license number;
   - worksite monitor's name and signature;
   - worksite monitor's license number;
   - worksite location(s);
   - dates licensee had face-to-face contact with monitor;
   - staff interviewed, if applicable;
   - attendance report;

- any change in behavior and/or personal habits;
- any indicators that can lead to suspected substance abuse.

(d) Treatment Providers

~~1.~~Treatment facility staff and services must have:

~~a)~~ (1) Licensure and/or accreditation by appropriate regulatory agencies;

~~b)~~ (2) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;

~~c)~~ (3) Professional staff who are competent and experienced members of the clinical staff;

~~d)~~ (4) Treatment planning involving a multidisciplinary approach and specific aftercare plans;

~~e)~~ (5) Means to provide treatment/progress documentation to the provider.

(e) General Vendor Requirements

~~2.~~ The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:

~~a)~~ (1) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.

~~b)~~ (2) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.

~~c)~~ (3) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

#14 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

#14 Uniform Standard

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

#15 SENATE BILL 1441 REQUIREMENT

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

#15 Uniform Standard

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.

2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.

3. The board and the department shall respond to the findings in the audit report.

#16 SENATE BILL 1441 Requirement

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

#16 Uniform Standard

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.

- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

LEGISLATIVE COUNSEL BUREAU

A TRADITION OF TRUSTED LEGAL SERVICE TO THE CALIFORNIA LEGISLATURE

LEGISLATIVE COUNSEL BUREAU

October 27, 2011

Honorable Curren D. Price Jr.
Room 2053, State Capitol

HEALING ARTS BOARDS: ADOPTION OF UNIFORM STANDARDS - #1124437

Dear Senator Price:

You have asked two questions with regard to the adoption of uniform standards by the Substance Abuse Coordination Committee pursuant to Section 315 of the Business and Professions Code. You have asked whether the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.). You have also asked, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, whether the healing arts boards are required to implement them.

By way of background, Section 315 of the Business and Professions Code[1] provides as follows:

> "315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

[1] All further section references are to the Business and Professions Code, unless otherwise referenced.

"(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

"(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

"(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

"(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

"(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

"(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

"(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

"(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

"(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

"(8) Procedures to be followed when a licensee tests positive for a banned substance.

"(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

"(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a deferred prosecution stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

"(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

"(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

"(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

"(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

"(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor' performance in adhering to the standards adopted by the committee.

"(16) Measurable criteria and standards to determine whether each board' method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term." (Emphasis added.)

Thus, the Legislature has established in the Department of Consumer Affairs (hereafter department) the Substance Abuse Coordination Committee (subd. (a), Sec. 315; hereafter committee). The committee is comprised of the executive officers of each healing arts board within the department,[2] the State Board of Chiropractic Examiners, and the

[2] The department's healing arts boards are those boards established under Division 2 (commencing with Section 500) to license and regulate practitioners of the healing arts. Those boards include, among others, the Dental Board of California, the Medical Board of California, the Veterinary Medical Board, and the Board of Registered Nursing.

Osteopathic Medical Board of California (hereafter, collectively, healing arts boards), and a designee of the State Department of Alcohol and Drug Programs (Ibid.). The Director of Consumer Affairs chairs the committee and is authorized to invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee (Ibid.).

The committee is required to formulate uniform and specific standards in each of 16 areas provided by the Legislature, but otherwise has discretion to adopt the uniform standards each healing arts board shall use in dealing with substance-abusing licensees (subd. (c), Sec. 315). The committee adopted its initial set of uniform standards in April 2010, and revised those initial standards as recently as April 2011.[3] Although the committee has adopted the uniform standards pursuant to its own procedures, it has yet to adopt those standards pursuant to the rulemaking procedures of the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.; hereafter APA).

You have asked whether the committee is required to adopt the uniform standards pursuant to the rulemaking procedures of the APA.

The APA establishes basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations by state agencies (subd. (a), Sec. 11346, Gov. C.). The APA is applicable to the exercise of any quasi-legislative power conferred by any statute (Ibid.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 517; hereafter *California Advocates*). The APA may not be superseded or modified by any subsequent legislation except to the extent that the legislation does so expressly (subd. (a), Sec. 11346, Gov. C.).

The term "regulation" is defined for purposes of the APA to mean "<u>every</u> rule, regulation, order, or <u>standard of general application</u> or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency <u>to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure</u>" (Sec. 11342.600, Gov. C.; emphasis added). The APA provides that a state agency shall not issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation under the APA, unless properly adopted under the procedures set forth in the APA, and the Office of Administrative Law is empowered to determine whether any such guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule is a regulation under the APA (Sec. 11340.5, Gov. C.).

In *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571 (hereafter *Tidewater*), the California Supreme Court found as follows:

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[3] See http://www.dca.ca.gov/about_dca/sacc/index.shtml (as of September 20, 2011).

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"A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497 [272 Cal.Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630 [167 Cal.Rptr. 552].) Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.' (Gov. Code, § 11342, subd. (g).)"

If a policy or procedure falls within the definition of a "regulation" within the meaning of the APA, the adopting agency must comply with the procedures for formalizing the regulation, which include public notice and approval by the Office of Administrative Law (*County of Butte v. Emergency Medical Services Authority* (2010) 187 Cal.App.4th 1175, 1200). The Office of Administrative Law is required to review all regulations adopted pursuant to the APA and to make its determinations according to specified standards that include, among other things, assessing the necessity for the regulation and the regulation's consistency with the agency's statutory obligation to implement a statute (subd. (a), Sec. 11349.1, Gov. C.).

Applying these principles to the question presented, the uniform standards are subject to the rulemaking procedures of the APA if the following criteria are met: (1) Section 315 does not expressly preclude application of the APA, (2) the committee is a state agency under the APA, (3) the uniform standards are regulations subject to the APA, and (4) no exemption applies under the APA.

With respect to the first criterion, Section 315 is silent on the application of the APA. Thus, Section 315 does not expressly preclude application of the APA, and the APA will apply to any regulation adopted under Section 315.

We turn next to the second criterion, and whether the committee is an "agency" for purposes of the APA. The word "agency" is defined, for purposes of the APA, by several separate provisions of law. For purposes of the rulemaking procedures of the APA, "agency" is defined to mean a state agency (Sec. 11342.520, Gov. C.). That reference to state agency is defined elsewhere in the Government Code to include every state office, officer, department, division, bureau, board, and commission (subd. (a), Sec. 11000, Gov. C.). The APA does not apply to an agency in the judicial or legislative branch of the state government (subd. (a), Sec. 11340.9, Gov. C.).

Along those lines, the APA is applicable to the exercise of any quasi-legislative power conferred by any statute (subd. (a), Sec. 11346, Gov. C.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates*, supra, at p. 517). Thus, for purposes of our analysis, we think that an "agency" means any state office, officer, department, division, bureau, board, or commission that exercises quasi-legislative powers.

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Here, the committee is a state office comprised of executive officers of the healing arts boards and the Director of Consumer Affairs. Although the Legislature has set forth 16 areas in which the committee is required to adopt standards, the committee itself is required to exercise quasi-legislative powers and adopt uniform standards within those areas. Those standards shall have the force and effect of law, since the healing arts boards, as discussed more extensively below, are required to use the standards in dealing with substance-abusing licensees and the standards are required to govern matters such as when a licensee is temporarily removed from practice or subject to drug testing or work monitoring (paras. (2), (4), and (7), subd. (c), Sec. 315). Accordingly, we think the committee is an agency to which the APA applies.

As to the third criterion, two elements must be met for the uniform standards at issue to be a regulation: they must apply generally and they must implement, interpret, or make specific a law enforced or administered by the agency or that governs its procedures (*Tidewater*, supra, at p. 571; Sec. 11342.600, Gov. C.). Section 315 requires the committee to formulate uniform and specific standards in specified areas that each healing arts board within the department shall use when dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program. The uniform standards will not be limited in application to particular instances or individuals but, instead, will apply generally to those licensees. Further, under this statutory scheme, the uniform standards will implement Section 315 and will be enforced and administered by, and will govern the procedures of, each healing arts board that is a member of the committee. Thus, the uniform standards are, in our view, a regulation under the APA.

Lastly, we turn to the fourth criterion, and whether the regulation is exempt from the APA. Certain policies and procedures are expressly exempted by statute from the requirement that they be adopted as regulations pursuant to the APA. In that regard, Section 11340.9 of the Government Code provides as follows:

> "11340.9. This chapter does not apply to any of the following:
>
> "(a) An agency in the judicial or legislative branch of the state government.
>
> "(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.
>
> "(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.
>
> "(d) A regulation that relates only to the internal management of the state agency.
>
> "(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial

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arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

"(1) Enable a law violator to avoid detection.

"(2) Facilitate disregard of requirements imposed by law.

"(3) Give clearly improper advantage to a person who is in an adverse position to the state.

"(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

"(g) A regulation that establishes or fixes rates, prices, or tariffs.

"(h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

"(i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state."

None of the exemptions contained in the APA can be reasonably construed to apply to the committee or the uniform standards to be used by the healing arts boards. In addition, we are aware of no other applicable exemption.

Thus, because all four of the criteria are met, it is our opinion that the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.).

Having reached this conclusion, we next turn to whether the healing arts boards are required to use the uniform standards if those standards are properly adopted. In addressing that question, we apply certain established rules of statutory construction. To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers' Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). Significance should be given to every word, and construction making some words surplusage is to be avoided (*Lambert Steel Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1040). In addition, effect should be given to statutes according to the usual, ordinary import of the language employed in framing them (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388).

As set forth above, subdivision (c) of Section 315 provides that "the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board <u>shall</u> <u>use</u> in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program" (emphasis added). Section 19 provides that "shall" is mandatory and "may" is permissive. The word "may" is ordinarily construed as permissive, whereas the word "shall" is ordinarily construed as mandatory (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443).

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Here, in Section 315, the Legislature uses the term "shall" rather than "may" in providing that each healing arts board "shall use" the specific and uniform standards adopted by the committee when dealing with substance-abusing licensees. The Legislature uses the term "shall use" as compared to "shall consider," "may consider," or "may use." The Legislature's use of the term "shall" indicates that the healing arts boards are required to use the standards adopted by the committee rather than being provided the discretion to do so. Moreover, as employed in this context, the word "use" implies that the healing arts boards must implement and apply those standards rather than merely considering them. Finally, the use of the term "uniform" suggests that the Legislature intended each board to apply the same standards. If the healing arts boards were not required to use the standards as adopted by the committee, the standards employed by these boards would vary rather than being "uniform."

Notwithstanding the plain meaning of Section 315, one could argue that the enactment of Section 315.4 indicates that the Legislature intended that implementation of the uniform standards by the boards be discretionary. Section 315.4, which was added by Senate Bill No. 1172 of the 2009-10 Regular Session (Ch. 517, Stats. 2010; hereafter S.B. 1172), provides that a healing arts board "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." Section 315.4 could be read to imply that a healing arts board is not required to implement those uniform standards because the board was given discretion to adopt the regulations that would allow that board to implement the standards, if necessary.

It is a maxim of statutory construction that a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788). As discussed above, we believe that the plain meaning of Section 315 requires the healing arts boards to implement the uniform standards adopted by the committee. Thus, whether Section 315.4 indicates, to the contrary, that the Legislature intended the boards to have discretion in that regard depends upon whether there is a rational basis for harmonizing the two statutes.

In harmonizing Sections 315 and 315.4, we note that S.B. 1172 did not make any changes to Section 315, such as changing the term "shall" to "may" in subdivision (c) of Section 315 or deleting any subdivisions of Section 315. S.B. 1172 did not diminish the scope of the authority provided to the committee to adopt the uniform standards. In fact, the analysis of the Senate Committee on Business, Professions and Economic Development for S.B. 1172, dated April 19, 2010 (hereafter committee analysis), describes the purpose of S.B. 1172 and the enactment of Section 315.4, as follows:

> "The Author points out that pursuant to SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), the DCA was required to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. Although most of the adopted guidelines do not need additional statutes for

> implementation, there are a couple of changes that must be statutorily adopted to fully implement these standards. This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation." (Committee analysis, at p. 4.)

The committee analysis further provides that the purpose of S.B. 1172 was to grant specific authority to implement those standards and "provide for the full implementation of the Uniform Standards" (committee analysis, at p. 11). The committee analysis at no time implies that the Legislature intended the Section 315 uniform standards to be revised or repealed by S.B. 1172 or that, in enacting Section 315.4, the Legislature intended that the implementation of the uniform standards be subject to the discretion of each healing arts board.

Thus, in our view, Section 315.4 may be reasonably construed in a manner that harmonizes it with Section 315. Specifically, we think that the intent of the Legislature in enacting Section 315.4 was not to make the uniform standards discretionary but to "provide for the full implementation of the Uniform Standards" by providing the authority to adopt regulations where the Legislature believed that further statutory authority was needed. Accordingly, we think implementation by the various healing arts boards of the uniform standards adopted under Section 315 is mandatory.[4]

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[4] Although Section 108 and Division 2 (commencing with Section 500) authorize the healing arts boards to set standards and adopt regulations (see, for example, Secs. 1224, 1614, 2018, 2531.95, 2615, 2715, 2854, 2930, 3025, 3510, and 3546), it is an axiom of statutory construction that a particular or specific provision takes precedence over a conflicting general provision (Sec. 1859, C.C.P.; *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420, app. dism. *Kubo v. Agricultural Relations Bd.* (1976) 429 U.S. 802; see also Sec. 3534, Civ. C.). Thus, in our view, the specific requirement under Section 315 that the uniform standards be adopted supersedes any general provision authorizing the boards to set standards and adopt regulations.

Thus, it is our opinion that, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, the healing arts boards are required to implement them.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel

By
Lisa M. Plummer
Deputy Legislative Counsel

LMP:syl

TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

PROPOSED MODIFIED TEXT

The modified text shows changes made to the originally proposed language using double underline for new text and double strikeout for deleted text.

Amend Article 4.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read:

ARTICLE 4.5
UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE
AND DISCIPLINARY GUIDELINES

§ 1018. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.
In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Dental Board of California shall consider the ~~disciplinary guidelines entitled~~ "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines With Model Language", revised ~~08/30/2010 February 25, 2011~~February 23, 2012 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Dental Board of California, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating and aggravating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code; and Section~~s~~ 11400.20 ~~and 11400.21~~, Government Code. Reference: Section 11400.20 and 11425.50(e), Government Code~~.~~; and Sections 315, 315.2, and 315.4 of the Business and Professions Code.

Amend Section 1020.5 of Article 5.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read:

ARTICLE 5.5.
IMPAIRED LICENTIATES PROGRAM

§ 1020.5. Diversion Evaluation Committee Duties and Responsibilities.
A diversion evaluation committee shall have the following duties and responsibilities in addition to those set forth in Section 1695.6 of the Code:
(a) To consider recommendations of the program manager and any consultant to the committee;

(b) To set forth in writing for each licensee in a program a treatment and rehabilitation program established for that licensee with the requirements for supervision and surveillance.
(c) To consider the uniform standards contained within the "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines With Model Language", revised ~~February, 25, 2011~~ February 23, 2012 in creating a treatment rehabilitation plan for each licensee entering the impaired licentiates program.

Note: Authority cited: Sections 315, 315.2, 315.4, 1614 and 1695.6, Business and Professions Code. Reference: Sections 315, 315.2, 315.4 and 1695.6, Business and Professions Code.

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DENTAL BOARD OF CALIFORNIA

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES WITH MODEL LANGUAGE

Revised:
~~**August 30, 2010**~~
~~**February 25, 2011**~~
February 23, 2012

Issued by:
Dental Board of California
2005 Evergreen Street, Suite 1550
Sacramento, California 95815
Telephone (916) 263-2300
Fax (916) 263-2140

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

***** WORKING COPY *****

INTRODUCTION

In keeping with its obligation to protect the consumers of dental services from the unsafe, incompetent, negligent or impaired dentists and dental auxiliaries, the Dental Board of California ("Board") has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Dental Practice Act as well as Uniform Standards Related to Substance Abuse.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount and to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of the licensee. Consequently, the Board requests that the Administrative Law Judge ("ALJ") clearly state the factual basis for his or her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons for the deviation and to evaluate the appropriateness of the decision.

These guidelines are for use by administrative law judges, attorneys and any licensee involved in settlement of disciplinary actions or statement of issues proceedings. It is emphasized that these are guidelines and the Board acknowledges that there may be departures in individual cases depending upon mitigating or aggravating circumstances. Probation conditions are divided into two categories: (1) Standard conditions, to be used in all cases of probation; and (2) Optional conditions, to be imposed dependent upon the circumstances and nature of an individual case. Optional conditions will be used to define the extent of the disciplinary action if a given case warrants a penalty above the minimum established but below the established maximum. In a Statement of Issues, optional conditions should also be used if a probationary license is issued depending upon the nature and circumstances of the matter.

If, at the time of hearing, the ALJ finds that the Respondent, for any reason, is not capable of safe practice, the Board favors outright revocation of the license. If, however, the Respondent has demonstrated a capacity to practice dentistry safely, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the dentist or dental auxiliary is suspended in order to correct deficiencies in skills, education or rehabilitation.

LEGAL AUTHORITY

The legal authority for the "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines with Model Language", revised February 25, 2011, is contained in Section 1018 of Title 16 of the California Code of Regulations.

California Code of Regulations
Title. 16 Professional and Vocational Regulations
Division 10. Dental Board of California
Chapter 1. General Provisions Applicable To All Licensees
Article 4.5 Uniform Standards Related To Substance Abuse and Disciplinary Guidelines

§ 1018. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines. In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Dental Board of California shall consider the "Dental Board of California Uniform Standards Related to Substance Abuse and Disciplinary Guidelines With Model Language", revised ~~February 25, 2011~~ February 23, 2012 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Dental Board of California, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating and aggravating factors; the age of the case; evidentiary problems.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code; and Sections 11400.20 and 11400.21, Government Code. Reference: Section 11400.20 and 11425.50(e), Government Code; and Sections 315, 315.2, and 315.4 of the Business and Professions Code.

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

The following standards should be followed in all cases in which a license is placed on probation due to a substance abuse problem. Whether individual conditions are ordered, however, is within the discretion of the Board.

Clinical Diagnostic Evaluations:
Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license which authorizes the practitioner to conduct clinical diagnostic evaluations, and has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders. The evaluator shall be approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

Clinical Diagnostic Evaluation Report:
The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have had a financial, personal, business or other relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

Facilitated Group Support Meetings:
If the board requires a licensee to participate in facilitated group support meetings, either because it is the decision of the Board or it is within the discretion of the Board staff when determining the nature of group support meetings, the following shall apply:

1. When determining the frequency of required facilitated group meeting attendance, the board shall give consideration to the following:

- The licensee's history;
- The documented length of sobriety/time that has elapsed since substance use;
- The recommendation of the clinical evaluator;
- The scope and pattern of use;
- The licensee's treatment history; and,
- The nature, duration, and severity of substance abuse.

2. Group Meeting Facilitator Qualifications and Requirements:

a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

b. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee within the last ~~five (5)~~ year~~s~~.

c. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

d. The facilitator shall report any unexcused absence within 24 hours.

Supervised Practice (Work Site Monitor Requirements):
If the Board determines that supervised practice is necessary for a particular licensee, the supervisor must meet the following requirements to be considered for approval by the Board:

The supervisor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the

Board. If it is impractical for anyone but the licensee's employer to serve as the supervisor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's supervisor be an employee or supervisee of the licensee.

The supervisor's license scope of practice shall include the scope of practice of the licensee who is being monitored, ~~or~~ be another health care professional if no monitor with like scope of practice is available, or, as approved by the Board, be a person in a position of authority who is capable of monitoring the licensee at work.

The supervisor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The supervisor must adhere to the following required methods of monitoring the licensee:

a) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.

b) Interview other staff in the office regarding the licensee's behavior, if applicable.

c) Review the licensee's work attendance and behavior.

Reporting by the supervisor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The supervisor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; supervisor's name and signature; supervisor's license number; worksite location(s); dates licensee had face-to-face contact with supervisor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the supervisor and the Board to allow the Board to communicate with the supervisor.

Major and Minor Violations:

Major Violations include, but are not limited to, the following:

- Failure to complete a Board-ordered program;
- Failure to undergo a required clinical diagnostic evaluation;
- Multiple minor violations;
- Treating patients while under the influence of drugs or alcohol;
- Committing any drug or alcohol offense that is a violation of the Business and Professions Code or state or federal law;
- Failure to obtain biological testing for substance abuse;
- Testing positive for a banned substance; and
- Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a major violation, the Board shall:

1. Order the licensee to cease practice;
2. Inform the licensee that he or she has been so ordered and that he or she may not practice unless notified by the Board;
3. Require the licensee to undergo a new clinical diagnostic evaluation;
4. Terminate contract/agreement; and
5. Refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to:

- Failure to submit required documentation as required;
- Unexcused absence at required meetings;
- Failure to contact a monitor as required; and
- Any other violations that do not present an immediate threat to the licensee or to the public.

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Drug Testing Standards:

If a licensee tests positive for a banned substance, the Board shall order that the licensee cease any practice, and contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall also notify the licensee's employer that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall determine whether the positive alcohol or drug test is, in fact, evidence of prohibited use, a major violation. If not, the Board shall immediately lift the cease practice order. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, the licensee shall be automatically suspended

from practice pending the final decision on the petition to revoke probation or accusation.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. ~~Licensees shall be randomly alcohol or drug tested at least 104 times per year for the first year and at any time as directed by the Board. After the first year, licensees who are practicing, shall be randomly alcohol or drug tested at least 50 times per year, and at any time as directed by the Board.~~

   Licensees shall be tested randomly in accordance with the schedule below:

Level	**Segments of Probation/Diversion**	**Minimum Range of Number of Random Tests**
I	Year 1	52-104 per year
II*	Year 2 +	36-104 per year

   *The minimum range of 36-104 tests identified in level II, is for the second year of probation or diversion, and each year thereafter.,up to five (5) years. Thereafter, administration of one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion.

   Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or has suspicion that a licensee has committed a violation of the testing program or who has committed a Major Violation, the Board may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

2. Alcohol or drug testing may be required on any day, including weekends and holidays.

3. Except when directed, the scheduling of alcohol or drug tests shall be done on a random basis, preferably by a computer program.

4. Licensees shall be required to make daily contact as directed to determine if alcohol or drug testing is required.

5. Licensees shall be alcohol or drug tested on the date of notification as directed by the Board.

6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

9. Collection of specimens shall be observed.

10. Prior to vacation or absence, alternative alcohol or drug testing location(s) must be approved by the board.

11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

12. A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

I. PREVIOUS TESTING/SOBRIETY
In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the board, the board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard This means that credit may be given for testing that has already occurred in setting the frequency schedule of drug testing.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT
An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD
The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the Board. Prior to returning to any healthcare employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not

previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

The Board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this term. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the board, but not to be less than 24 times per year.completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

DISCIPLINARY GUIDELINES

FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation should be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration~~.~~;
2. Actual or potential harm to the public~~.~~ ;
3. Actual or potential harm to any patient~~.~~ ;
4. Prior disciplinary record~~.~~ ;
5. Number and variety of violations~~.~~ ;
6. Mitigation evidence~~.~~ ;
7. Aggravating evidence~~.~~ ;
8. Rehabilitation evidence~~.~~ ;
9. In case of a criminal conviction, compliance with conditions of sentence and court-ordered probation~~.~~ ;
10. Criminal record~~.~~ ;
11. Time passed since the act(s) or offense(s) occurred~~.~~; and
12. If applicable, evidence of expungement proceedings pursuant to Penal Code Section 1203.4.

Evidence of Rehabilitation:

The following documents are examples of evidence the Respondent may submit to demonstrate his or her rehabilitative efforts and dental competency:

- Successful completion of drug or alcohol treatment program
- Individual or group counseling

- Random, documented biological fluid screening
- Participation in dental support groups
- Education courses taken related to addictive disease
- Adherence to a 12-step recovery program philosophy, or equivalent
- Written documentation of participation in 12-step recovery groups, or equivalent
- Recent, dated letters from counselors regarding Respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the Respondent has attended, the counselor's diagnosis of Respondent's condition and current state of rehabilitation improvement, the counselor's basis for determining improvement, and the credentials of the counselor and records from a treatment facility.
- For licensees, statement from employers documenting that the employer is aware of the previous drug or alcohol abuse problems. Statement must also substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed dental functions in a safe and competent manner. Each statement should include the period of time and capacity in which the person worked with the Respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- Recent, dated laboratory analyses or drug screen reports, where appropriate.
- Recent, dated performance evaluations from Respondent's employer.
- Recent, dated physical examination reports by a licensed physician and surgeon, nurse practitioner, or physician assistant.
- Certificates or transcripts of courses related to dentistry that Respondent completed since the date of the violation. A dentist or dental auxiliary whose license has been revoked can use his or her former license number to obtain continuing education credit or hours or for any other purpose.

Mitigation Evidence:

- Length of time in practice
- No prior disciplinary action
- Illness or death of a family member or other personal circumstances affecting licensee's performance at the time of the incident
- Early admissions

~~OTHER~~ SITUATIONS IN WHICH REVOCATION IS THE RECOMMENDED PENALTY

- Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.
- Violation of a condition(s) of the Board's Probation Program.
- Substantiated evidence or convictions of physical abuse or sexual offenses.

PROBATIONARY TERMS AND CONDITIONS

The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

Probationary Term:
Generally, the Board recommends a minimum of three years of probation unless a longer or shorter term is warranted.

Probationary Conditions:
Conditions of probation are divided into two categories:
1. ***Standard*** conditions that are included in all probation orders; and
2. ***Additional*** conditions which are applicable to the nature of the violation(s).

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Dental Board of California or its designee.

LIST OF ~~STANDARD~~ PROBATIONARY TERMS AND CONDITIONS

Standard Probation Conditions:
Introductory Language and Standard Probation Conditions 1-14 are required as follows:

1. Obey all laws
2. Quarterly Reports
3. Comply with the Board's Probation Program
4. Address Change, Name Change, License Status
5. Meetings and Interviews
6. Status of Residency, Practice or Licensure Outside of State
7. Submit Documentation
8. Cost Recovery
9. Probation Monitoring Costs
10. License Surrender
11. Function as a Licensee
12. Continuance of Probationary Term/Completion of Probation
13. Sale or Closure of an Office or Practice

14. Notification to Employer

~~**LIST OF ADDITIONAL PROBATIONARY TERMS AND CONDITIONS**~~

Additional Probation Conditions:

15. Suspension of License
16. Remedial Education
17. Examination
18. Supervised Practice
19. Restricted Practice
20. Third Party Chaperone Monitor
21. Restitution
22. Community Service
23. Psychological Evaluation
24. Psychotherapy
25. Physical Evaluation
26. Diversion Program
27. Biological Testing
28. Abstain from Use of Alcohol, Controlled Substances, and Dangerous Drugs
29. Surrender/Partial Surrender of Drug Enforcement Agency Permit
30. Ethics Course
31. Billing Monitor
32. Solo Practice
33. Controlled Substance-Maintenance of Records and Inventory
34. Clinical Training Program
35. Facilitated Group Support Meetings
36. Clinical Diagnostic Evaluation

MODEL INTRODUCTORY LANGUAGE
TO BE USED FOR ALL PROBATIONARY ORDERS

The following introductory language is to be included in decisions that place the respondent's license on probation.

IT IS HEREBY ORDERED that (INSERT APPROPRIATE LICENSE CATEGORY) Number (INSERT LICENSE NUMBER) issued to Respondent is revoked. However, the revocation is stayed and Respondent's (INSERT LICENSE CATEGORY) is placed on probation for (INSERT NUMBER OF YEARS) years on the following conditions.

In order to provide clarity and consistency in its decisions, the following language should be used in proposed decisions or stipulated agreements for exam applicants, credential applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

Exam applicants who are placed on probation:
The application of respondent _____ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements including payment of all fees, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of-- _____ years on the following conditions:

Credential applicants who are placed on probation:
The application of respondent _____licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements including payment of all fees. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of _____ years on the following conditions:

Reinstatement of licensure with conditions of probation:
The application of respondent _____for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent's license placed on probation for a period of _____ years on the following conditions:

NOTE: If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by a petitioner, a probation condition requiring payment of the original cost recovery on a payment plan must be included in the reinstatement and decision.

Language for Additional Permits

It is further ordered that (INSERT TYPE OF ADDITIONAL LICENSE OR PERMIT) Number (INSERT LICENSE OR PERMIT NUMBER) issued to Respondent is revoked. However, the revocation is stayed and Respondent's (INSERT TYPE OF ADDITIONAL LICENSE OR PERMIT) name the certificates) is placed on probation for (INSERT NUMBER OF YEARS) years on the following conditions.

STANDARD PROBATION CONDITIONS FOR ALL DECISIONS AND ORDERS

SEVERABILITY CLAUSE – Each condition of probation is a separate and distinct condition. If any condition of this Decision and Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all other applications thereof, shall not be affected. Each condition of this Decision and Order shall separately be valid and enforceable to the fullest extent permitted by law.

RATIONALE: The severability clause is required for all decisions and orders and stipulated agreements where there are conditions of probation, to avoid the possibility of all probation conditions being invalidated upon a successful appeal.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws and all rules and regulations governing the practice of dentistry in California, and remain in full compliance with any court ordered criminal probation, payments and other requirements. A full and detailed account of all misdemeanor and felony arrests and convictions shall be reported by Respondent to the Board in writing within seven (7) days of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit a completed California Department of Justice state and federal Livescan fingerprint form, unless previously submitted as part of the licensure application process. Fingerprints shall be submitted within 15 calendar days of the effective date of the Decision and Order.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the orders are violated, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to any other disciplinary order from any other health-care related board or any professional licensing or certification regulatory agency in California or elsewhere, and violates any of the orders or conditions imposed by other agencies, this shall be deemed a violation of probation and may result in the filing of an accusation or petition to revoke probation or both.

RATIONALE: All licensees are responsible for abiding by federal, state,and local laws. Licensees are also responsible for complying with criminal court orders. If a licensee is subject to other health-care related board or regulatory agency orders, violations of

those orders may impact the status of his or her discipline by the Board. This condition emphasizes the Respondent's responsibility and specifies the Board's authority to take more immediate and severe action if other violations occur. If a licensee whose license is on probation violates other probationary conditions or order they may be unsafe to practice in this state.

(2) QUARTERLY REPORTS - Respondent shall submit quarterly reports signed under penalty of perjury stating whether there has been compliance with all the conditions of probation. Respondent shall submit a quarterly report no later than seven (7) calendar days from the beginning of the assigned quarter.

RATIONALE: This provides the Board with a mechanism for maintaining communication with the Respondents between meetings; gathering pertinent information from Respondent's; obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. This also allows coordination with other state agencies that discipline dentists and dental auxiliaries.

(3) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of probation established by the Board and all requirements necessary to implement the conditions of probation. Respondent shall cooperate with the Board in its monitoring and investigation of the Respondent's compliance with the conditions of probation. Respondent shall respond to all requests and inquiries from the Board within the time period specified by the Board.

Upon successful compliance with the conditions of probation, and completion of the probation term, Respondent's license shall be fully restored.

RATIONALE: Full compliance with conditions of probation demonstrate a Respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.

(4) ADDRESS CHANGE, NAME CHANGE, LICENSE STATUS - Respondent shall inform the Board in writing within 15 calendar days of any change in his or her address of record, physical employment address, physical residence address, and any legal name change. Respondent shall maintain an active, current license with the Board, including while suspended from practice of dentistry unless otherwise specified by the disciplinary orders.

Any misrepresentation by Respondent of his or her restricted license status to the public shall be a violation of the probation conditions.

RATIONALE: Informing the Board of address and name changes is necessary to ensure ongoing Board monitoring and contact with the Respondent.

(5) MEETINGS AND INTERVIEWS - Respondent shall appear in person for meetings and shall be available by telephone for interviews as directed by the Board.

RATIONALE: This provides a means for the Board representatives to make periodic assessments of the Respondent, to determine compliance with probation conditions and to give guidance and directions to licensees on probation.

(6) STATUS OF RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - In the event Respondent should leave California to reside or practice outside the state, Respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Period of practice outside of California will not apply to the reduction of the probationary period.

Respondent shall provide a list of all states, United States territories, and elsewhere in the world where he or she has ever been licensed as a dentist or dental auxiliary or held any health-care related professional license or certificate. Respondent shall further provide information regarding the status of each license and certificate and any changes in the license or certificate status during the term of probation. Respondent shall inform the Board if he or she applies for or obtains a dental or dental auxiliary license or certificate outside of California during the term of probation.

For purposes of this condition, non-practice due to Board ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

RATIONALE: Ensures that Respondents may not complete probation without being fully monitored for their period of probation in California. This further ensures that the Board is aware of all licensure outside of California as a dentist or dental auxiliary or in any health care related capacity.

(7) SUBMIT DOCUMENTATION - Upon request, Respondent shall submit documentation to the Board including, but not limited to the following: Livescan forms, quarterly reports, authorization for release of confidential information.

Such documentation shall be submitted under penalty of perjury, as required by the Board. On a case-by-case basis, documents shall be required to contain statements relative to Respondent's compliance with all the conditions of probation, and compliance with Board instructions.

RATIONALE: This provides the Board with a mechanism for maintaining communication with the Respondent between meetings; gathering pertinent information from the Respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis.

(8) COST RECOVERY – Respondent is hereby ordered to reimburse the Board the amount of $_____ within ninety (90) calendar days from the effective date of this decision for its investigative and prosecution costs up to the date of the hearing. Failure to reimburse the Board's cost of its investigation and prosecution shall constitute a violation of the probationary order, unless the Board or its designee agrees in writing to payment by an installment plan because of financial hardship. Any and all requests for a payment plan shall be submitted in writing by Respondent to the Board. However, full payment of any and all costs required by this condition must be received by the Board no later than one (1) year prior to the scheduled termination of probation. Periods of non-practice by Respondent shall not relieve Respondent of his or her obligation to reimburse the Board for its costs.

RATIONALE: The Board has statutory authority to collect probation monitoring costs and all orders should contain this provision.

(9) PROBATION MONITORING COSTS: All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Board and must be received by the dates specified.

If Respondent is unable to submit costs for any month, he or she shall be required, instead to submit an explanation of why he or she is unable to submit the costs, and the dates he or she will be able to submit the costs including payment amounts. Supporting documentation and evidence of why the Respondent is unable to make such payments must accompany this submission.

In addition to any other disciplinary action taken by the Board, the probationary period will be extended.

***RATIONALE*:** The Board has statutory authority to collect probation monitoring costs and all orders should contain this provision.

(10) LICENSE SURRENDER - If Respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender his or her license to the Board. The Board shall evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Such surrender shall be accomplished through a written stipulated agreement, without the filing of an accusation or petition to revoke probation, and without further hearing. Upon formal acceptance of the surrender, Respondent shall deliver his or her wallet and wall certificate to the Board or its designee and Respondent shall no longer practice dentistry or be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. If Respondent re-applies for a dental license, the application shall be treated as a petition for reinstatement of a revoked license.

(11) FUNCTION AS A LICENSEE – Respondent, during the period of probation, shall engage in the practice of [INSERT APPROPRIATE LICENSING CATEGORY, e.g. dentistry, dental hygiene, dental hygiene in extended functions, etc.] in California for a minimum of sixteen (16) hours per week or sixty-four (64) hours per calendar month. For the purpose of compliance with this section, "engaged in the practice of [INSERT APPROPRIATE LICENSING CATEGORY] may include, when approved by the Board, volunteer work in [INSERT APPROPRIATE LICENSING CATEGORY], or work in any non-direct patient position that requires licensure.

In the event Respondent should leave California to practice outside the state, Respondent must provide written notification to the Board of the dates of departure and anticipated return to the state. Respondent's probation is tolled, if and when he or she ceases practicing in California. Periods of practice outside of California will not apply to the reduction of the probationary period. In the event Respondent ceases to practice a minimum of sixteen (16) hours per calendar week or sixty-four hours per calendar month in California, Respondent must provide written notification of that fact to the Board. The period when the Respondent is not practicing, the minimum number of hours, will not apply to the reduction of the probationary period. Absence from practice

shall not relieve the Respondent from maintaining a current license or from fulfilling all of the terms and conditions of probation. For purposes of this condition, non-practice due to Board ordered suspension shall not be considered a period of non-practice. If Respondent stops practicing in California for a total of five (5) years, Respondent's license shall be automatically cancelled.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if Respondent is in compliance with all other probation conditions, the Board, in its sole discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply unless they have been modified by the Board via a petition for modification of probation.

RATIONALE: This provides the Board with an opportunity to monitor Respondents and determine if they can perform the functions and duties of his or her licensing category in a competent manner. It also prevents Respondents from merely "sitting out" the probation and avoiding the necessity of demonstrating competence and compliance with probation conditions.

(12) CONTINUANCE OF PROBATIONARY TERM/COMPLETION OF PROBATION - If Respondent violates the terms of this probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation or suspension of the Respondent's license. If, during the period of probation, an accusation and/or a petition to revoke probation or both has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation and/or a petition to revoke probation or both against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation and/or the petition to revoke probation has been acted upon by the Board. Upon successful completion of probation, Respondent's license will be fully restored.

RATIONALE: The provision ensures that the Board will be able to continue monitoring the practice of licensees who are either out of compliance with his or her probation conditions or have allegedly committed further acts that constitute a violation of the Dental Practice Act. This is necessary to protect the public from licensees who have already demonstrated a lack of compliance.

(13) SALE OR CLOSURE OF AN OFFICE AND/OR PRACTICE - If Respondent sells or closes his or her office after the imposition of administrative discipline, Respondent shall ensure the continuity of patient care and the transfer of patient records.

Respondent shall also ensure that patients are refunded money for dental work not completed, and shall not misrepresent to anyone the reason for the sale or closure of the office and/or practice. The provisions of this condition in no way authorize the practice of dentistry by the Respondent during any period of license suspension.

RATIONALE: This provision is intended to protect patients whose dentist of record has been disciplined and he or she needs to or chooses to sell or close his or her practice.

(14) NOTIFICATION TO EMPLOYER - Prior to engaging in the practice of dentistry, the Respondent shall provide a true copy of the Decision and Accusation to his or her employer, supervisor, or contractor, or prospective employer or contractor, and at any other facility where Respondent engages in the practice of dentistry before accepting or continuing employment. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in place of employment.

The Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the Board in writing of the facility or facilities at which the person engages in the practice of dentistry.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor, or contractor regarding the licensee's work status, performance, and monitoring.

RATIONALE: The condition provides the Board with a mechanism for ensuring that the employer providing dental services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.

ADDITIONAL CONDITIONS OF PROBATION MODEL LANGUAGE

These are additional probationary conditions that may be imposed depending on the nature of the violation(s). Some of the additional probationary conditions should be applied to substance abusing licensees.

(15) SUSPENSION - Commencing from the effective date of this decision, Respondent shall be suspended from the practice of dentistry for a minimum period of (minimum of 14 days). Respondent shall not mislead patients regarding the reasons for suspension from practicing dentistry.

During the suspension Respondent shall not practice dentistry directly or indirectly, including the supervision of dental auxiliaries, nor shall Respondent receive or have set aside for future receipt, any new monies derived from the practice of dentistry as defined by the provisions of Business and Professions Code Section 1625, which includes managing or conducting as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed.

If Respondent operates his or her own office as a solo practitioner or as a one person professional corporation, said office is to be closed except for administrative purposes (making future appointments when suspension is over, opening mail, referring patients, accepting payments on account, and general office administration); and Respondent shall not lease the dental office nor make any monetary gain from the practice earned during the period of time that the office is closed.

During the suspension period, all probation conditions are in full force and effect except those relating to the actual practice of [INSERT APPROPRIATE LICENSE CATEGORY.]

***RATIONALE**:* This provision is necessary for the protection of the public because in some cases the licensee needs to stop practicing and participate in either rehabilitation or remedial education before resuming practice. And, it is appropriate in cases where the serious nature of the misconduct warrants a period of suspension from practice.

(16) REMEDIAL EDUCATION – Within (90 days) of the effective date of this decision, Respondent shall submit to the Board for its prior approval, an appropriate program of remedial education related to (*the cause of disciplinary action)* in an educational facility or program which must also to be approved by the Board. *(If appropriate, Respondent shall be evaluated by a dental educational institution prior to submitting remedial education courses for approval.)* The exact number of hours and specific content of the

program shall be determined by the Board or its designee. Respondent shall successfully complete the remedial education program and may be required to pass an examination administered by the Board or its designee related to the program's content. *(If appropriate, Respondent shall be restricted from the practice of {areas where a deficiency has been identified} until the remedial education program has been successfully completed.)* Respondent shall pay all costs of the remedial education program.

RATIONALE: In those instances where a licensee has demonstrated negligence or incompetence, or has been found to have performed work or attempting treatment beyond the scope of training or experience, the Board will impose a program of remedial education. This program shall specify the areas and hours of education remediation required, and may also dictate the institution(s) where the education will be received. A remedial education program is usually required prior to allowing the licensee to return to the identified deficient area of practice, and requires prior approval by the Board. Continuing education courses used for renewal of licensure will not fulfill the remedial education requirement. This program is for dentists and auxiliaries who have demonstrated deficiencies in skill but do not constitute a present danger to patients in other areas of practice.

(17) EXAMINATION – Respondent shall not practice dentistry until he or she has passed the California clinical examination or the Western Regional Examination Board examination. Respondent shall pay all fees related to the examination. If Respondent fails the examination three times, a period of one year must pass prior to retaking the required examination. Under the condition of failure for three times, the Respondent must also show evidence of remediation in the deficient area(s) prior to retaking the examination. Respondent must be successful in each section of the examination in order to fulfill this requirement and may not practice until totally successful. The probation period is tolled until Respondent passes either examination.

RATIONALE: This condition concerns itself with those individuals who are significantly deficient in the practice of dentistry or who have had a prior revocation and are petitioning the Board for reinstatement of their license. This condition will also apply to licensees who have had prior restrictions on practicing in a particular area or specialty field. This condition is particularly recommended in cases where Respondent has been found to have committed gross negligence, incompetence or repeated negligence.

(18) SUPERVISED PRACTICE - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which

Respondent's practice would be supervised. The Board will advise Respondent within two weeks whether or not the proposed supervisor and plan of supervision are approved. Respondent shall not practice until receiving notification of Board approval of Respondent's choice of a supervisor and plan of supervision. Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding the Respondent and the supervisor's requirements and reporting responsibilities.

The plan of supervision shall be *(direct and require the physical presence of the supervising dentist in the dental office during the time dental procedures are performed.) (general and not require the physical presence of the supervising dentist during the time dental procedures are performed but does require an occasional random check of the work performed on the patient as well as quarterly monitoring visits at the office or place of practice).* Additionally, the supervisor shall have full and random access to all patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies.

Each proposed supervisor shall be a California licensed dentist who shall submit written reports to the Board on a quarterly basis verifying that supervision has taken place as required and include an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely manner. Each supervisor shall have been licensed in California for at least five (5) years and not have ever been subject to any disciplinary action by the Board. An administrative citation and fine does not constitute discipline and therefore, in and of itself is not a reason to deny an individual as a supervisor.

The supervisor shall be independent, with no prior business or professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner or associate of Respondent. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has been approved by the Board. All costs of the supervision shall be borne by the Respondent.

If Respondent is placed on probation due to substance or alcohol abuse, then the supervisor shall meet the following additional requirements:

The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to supervise the licensee as set forth by the Board.

The supervisor shall have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, but at least once per week. The supervisor shall interview other staff in the office regarding the licensee's behavior, if applicable. The supervisor shall review the licensee's work attendance and behavior.

The supervisor shall orally report any suspected substance abuse to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. The supervisor shall submit a written report to the Board within 48 hours of occurrence.

The supervisor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; supervisor's name and signature; supervisor's license number; worksite location(s); dates licensee had face-to-face contact with supervisor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

RATIONALE: This condition allows the Board to monitor the competency of Respondent by use of a fellow practitioner. It ~~is most appropriate~~ should be used in those cases involving incompetence, negligence, ~~and~~ sexual misconduct, and substance abuse. The type of supervision needs to be clearly defined relative to the necessity for the presence of the supervisor. Direct supervision would require the physical presence of the supervisor during the time dental procedures are performed. General supervision does not require the physical presence of the supervising dentist. The type of required supervision depends on the severity of the violation(s).

(19) RESTRICTED PRACTICE - Respondent shall not practice which includes consulting, examining and treating in *(area of noted deficiency) (shall not treat {male}{female}{minors} patients {without the presence of another party}).* Within 30 days from the effective date of this decision, Respondent shall submit to the Board, for prior approval, a plan to implement this restriction. Respondent shall submit proof satisfactory to the Board of compliance with this term of probation.

Respondent shall notify all current and prospective patients of the inability to perform the dental procedure of ____ by posting a written notification visible to all patients before they receive any dental treatment. Respondent shall submit documentation which provides satisfactory evidence of compliance with this term of probation.

RATIONALE: The condition prevents the Respondent from engaging in the practice of dentistry in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances.

(20) THIRD PARTY CHAPERONE MONITOR - During probation, Respondent shall have a third party Board-approved monitor present at all times while consulting, examining or treating (INSERT PATIENT CATEGORY, e.g., male, female, or minors) patients. Respondent shall, within (30) calendar days of the effective date of the Decision, submit to the Board for prior approval names of persons who will act as the third party monitor. Each third party monitor shall initial and date each patient dental record at the time the monitor's services are provided. Each third party monitor shall read the Decision(s) and the Accusation(s) and fully understand the role of the third party monitor.

Respondent shall maintain a log of all patients seen for whom a third party monitor is required. The log shall contain the; 1) monitor's name, patient name, age, gender, address, and telephone number; and date of service. Respondent shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours by the Board, and shall retain the log for the entire term of probation. Failure to maintain a log of all patients requiring a third party monitor, or to make the log available for immediate inspection and copying on the premises, is a violation of probation.

Respondent shall provide written notification prior to treatment to Respondent's affected patients that a third party monitor shall be present during all consultations, examination, or treatment with (e.g., male, female, or minor) patients. Respondent shall maintain in the patient's file a copy of the written notification, shall make the notification available for immediate inspection and copying on the premises at all times during business hours by the Board, and shall retain the notification for the entire term of probation.

Respondent shall submit documentation to the Board that provides satisfactory evidence of compliance with this term of probation.

RATIONALE: This condition should only be imposed in those rare instances where the Respondent has shown evidence of rehabilitation and is no longer considered a danger to patients. In those instances where Respondent is still considered a danger to patients, revocation should be imposed.

NOTE: In those cases where practice is restricted by either scope of practice or by the age or gender of patients, the Respondent must notify all current and prospective

patients of the restriction. Respondents found to have violation(s) or conviction(s) of sexual misconduct shall also be placed in a supervised environment.

(21) RESTITUTION - Within *(30 to 90)* days of the effective date of this decision, Respondent shall make arrangements for restitution to *(patient or entity)* in the amount of *(dollar amount)*. (Insert who payment is to be made and when it is due. If a payment plan is imposed, insert specifics regarding payment plan.)

RATIONALE: Where there has been patient harm resulting from negligent or incompetent treatment or a determination has been made concerning fraudulent billing, restitution may be warranted. Careful scrutiny should be made to ensure that proper restitution is made to either the patient or any other applicable entity. Restitution may be made within a specific time frame or on a payment schedule. Restitution should cover those amounts that are a direct result of the actions of Respondent.

(22) COMMUNITY SERVICE - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, a community service program for the *(first year of probation or a specified period of probation)* in which Respondent shall provide volunteer services on a regular basis to a non-profit community or charitable facility or agency for at least *(number of hours per month/year for the first year or specified period of probation).* Such community service shall be *(dental or non-dental)* related.

Community service required by this condition shall be performed in the State of California. Community service performed prior to the effective date of the Decision shall not be accepted in fulfillment of this condition.

Prior to engaging in any community service Respondent shall provide a true copy of the Decision to the chief of staff, director, office manager, program manager, officer, or the chief executive officer at every community or non-profit organization where Respondent provides community service and shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall also comply to any change(s) in community service.

All community services must be completed no later than one hundred and twenty (120) calendar days prior to the scheduled termination of probation.

RATIONALE: The Dental Practice Act authorizes the Board to impose as a condition of probation the fulfillment of community service. This is appropriate in those cases where

the Respondent has violated the public's trust. If the violation relates to quality of care, the community service shall not be dentally related.

(23) PSYCHOLOGICAL EVALUATION - Within 60 days of the effective date of this decision, and on a periodic basis thereafter as required by the Board or its designee, Respondent shall undergo a psychological evaluation by a licensed psychiatrist or psychologist approved by the Board. The psychiatrist or psychologist shall have been licensed for a minimum of five years and shall not have been subject to discipline by a regulatory agency. The evaluator shall furnish a detailed written report to the Board regarding Respondent's judgment and ability to practice dentistry independently and safely and other information as the Board may require. The cost of the evaluation shall be paid by Respondent. Respondent shall execute a Release of Information form authorizing the evaluator to release all information to the Board. Respondent shall comply with all of the recommendations of the evaluator unless excused by the Board in its sole discretion. This evaluation shall be confidential by the Board and is not subject to discovery. Psychological evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement.

OPTION: Respondent shall not engage in the practice of dentistry until notified by the Board in writing of its determination that Respondent is safe to practice dentistry independently and safely. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation.

Respondent's failure to undergo and complete the psychological evaluation, recommended therapy or comply with any other recommendations by the evaluator is a violation of probation.

RATIONALE: This condition shall be applied, but not limited to, any licensee who may be affected by a psychological problem, who has committed an act of sexual misconduct or who has suffered a substantially related conviction. This evaluation may be ordered and the results evaluated prior to allowing practice by the Respondent.

(24) PSYCHOTHERAPY - Within 45 days of the effective date of this decision, or within 45 days of a determination that psychotherapy is required, Respondent shall submit a proposed therapist and plan of therapy to be approved by the Board. The cost of therapy shall be borne by Respondent. The plan of therapy shall include the nature of the treatment and its proposed duration. The psychotherapist shall agree to submit quarterly reports to the Board regarding the progress and participation of Respondent. The treatment program shall not be terminated except upon Board approval after submission of the results of the program by the psychotherapist.

If there is a need for ongoing psychiatric psychological treatment, Respondent shall, within 30 days of the requirement notice, submit to the Board for it prior approval the name and qualifications of a psychotherapist psychiatrist licensed mental health professional of Respondent's choice. If the psychological evaluation recommends that Respondent seek treatment from a specific type of mental health professional (e.g. psychiatrist, psychologist, licensed clinical social worker or marriage and family therapist), Respondent shall only submit for consideration those who meet that recommendation. Respondent shall undergo and continue psychotherapy until further notice from the Board or its designee. Respondent shall have the treating psychotherapist mental health care professional submit quarterly status reports to the Board or its designee indicating whether the Respondent is capable of practicing dentistry safely.

RATIONALE: This condition should be imposed whenever there is evidence that the Respondent may have a psychological problem that may impact his or her being able to practice safely. If the Respondent is already in therapy this condition should be imposed to ensure that he or she continues to receive help.

(25) PHYSICAL EVALUATION - Within 45 days of the effective date of this decision, Respondent, at his or her expense, shall have a licensed physician and surgeon, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a dentist. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician providing written reports to the Board.

If Respondent is determined to be unable to practice dentistry safely with or without restrictions, the licensed physician and surgeon making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board in writing. During this period of cessation of practice, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of cessation of practice shall not apply to the reduction of this probationary time period.

If the Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent's license is immediately suspended and he or she shall immediately cease practice and shall not resume practice until notified by the

Board in writing. This period of suspension of practice shall not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

Physical evaluations conducted prior to the effective date of the Decision shall not be accepted towards the fulfillment of this requirement.

OPTION: Respondent shall not engage in the practice of dentistry until notified by the Board in writing of its determination that Respondent is safe to practice dentistry independently and safely. The period of time that Respondent is not practicing shall not be counted toward completion of the term of probation.

RATIONALE: This condition shall be applied, but not limited to, any licensee whose ability to practice safely may be affected by a physical condition. This evaluation may be ordered and the results evaluated prior to allowing practice by the Respondent.

(26) DIVERSION PROGRAM - Within 7 days of the effective date of this Decision, Respondent shall contact the Program Manager of the Board's Diversion Program or his or her designee to schedule an intake and assessment and drug testing for evaluation by the Diversion Evaluation Committee (DEC). If Respondent fails to participate in the time required by the Diversion Program in the initial intake and assessments before his or her meeting with the DEC, this shall constitute a violation of probation and shall be reported to the enforcement program. If the Board notifies Respondent in writing of such failure to participate in the time required for the initial intake and assessment, he or she shall immediately cease practicing. If the DEC determines that Respondent is not appropriate for the program for reasons other than Respondent's failure to cooperate or make a good faith effort to participate, this condition of probation will have been met. If accepted into the program, Respondent shall fully comply with the terms and conditions of treatment and any other requirements imposed by the DEC. Any costs incurred shall be paid by Respondent. Failure to successfully complete the DEC treatment Diversion Program shall constitute a violation of probation.

<u>If Respondent is not accepted into the Diversion Program for any reason, then the following probation condition shall apply.</u>

Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board. The cost of such evaluation shall be paid by the Respondent.

Respondent shall cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations.

RATIONALE: Where it has been determined that in order to protect the public, a licensee or applicant should be evaluated to determine if he or she should participate in the Board's Diversion Program due to drug or alcohol impairment, this condition of probation should be imposed.

(27) BIOLOGICAL TESTING - Respondent shall submit to and pay for any random and directed biological fluid or hair sample, breath alcohol or any other mode of testing required by the Board. The Respondent shall be subject to a minimum of ~~one hundred and four (104)~~ fifty-two (52) random tests per year within the first year of probation, and a minimum of ~~fifty (50)~~ thirty-six (36) random tests per year thereafter, ~~for the duration of the probationary term~~ up to five (5) years. Thereafter, if additional years of probation are ordered, Respondent shall be subject to random tests one (1) time per month if there have been no positive drug tests in the previous five (5) consecutive years of probation or diversion. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall have the test performed by a Board-approved laboratory certified and accredited by the U.S. Department of Health and Human Services ~~within twelve (12) hours upon request by the Board, or sooner if so requested by the Board~~ ~~and~~ on the same day that he or she is notified that a test is required. ~~t~~This shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a

positive drug screen and constitutes a violation of probation. If a test results in a determination that the urine admission was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If an "out of range result" is obtained, the Board may require Respondent to immediately undergo a physical examination and to complete laboratory or diagnostic test to determine if any underlying physical condition has contributed to the diluted result and to cease practice. Any such examination or laboratory and testing costs shall be paid by respondent. An "out of range result" is one in which, based on scientific principles, indicates the Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the board. If Respondent tests positive for a banned substance, Respondent shall be ordered by the Board to cease any practice, and may not practice unless and until notified by the Board. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Nothing precludes the Board from increasing the number of random tests for any reason. If the Board finds or has suspicion that a licensee has committed a violation of the testing program or who has committed a Major Violation, the Board may reestablish the testing cycle by placing that licensee at the beginning of level I, in addition to any other disciplinary action that may be pursued.

RESPONDENT'S TESTING FREQUENCY SCHEDULE IS SUBJECT TO THE FOLLOWING EXCEPTIONS:

I. PREVIOUS TESTING/SOBRIETY

In cases where the Board has evidence that a licensee has participated in a treatment or monitoring program requiring random testing, prior to being subject to testing by the Board, the Board may give consideration to that testing in altering the testing frequency schedule so that it is equivalent to this standard This means that credit may be given for testing that has already occurred in setting the frequency schedule of drug testing.

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

An individual whose license is placed on probation for a single conviction or incident or two convictions or incidents, spanning greater than seven years from each other, where those violations did not occur at work or while on the licensee's way to work, where alcohol or drugs were a contributing factor, may bypass level I and participate in level II of the testing frequency schedule.

III. NOT EMPLOYED IN HEALTH CARE FIELD

The Board may reduce testing frequency to a minimum of 12 times per year for any person who is not practicing OR working in any health care field. If a reduced testing frequency schedule is established for this reason, and if a licensee wants to return to practice or work in a health care field, the licensee shall notify and secure the approval of the Board. Prior to returning to any healthcare employment, the licensee shall be subject to level I testing frequency for at least 60 days. At such time the person returns to employment (in a health care field), if the licensee has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

IV. TOLLING

The Board may postpone all testing for any person whose probation or diversion is placed in a tolling status if the overall length of the probationary or diversion period is also tolled. A licensee shall notify the Board upon the licensee's return to California and shall be subject to testing as provided in this term. If the licensee returns to employment in a health care field, and has not previously met the level I frequency standard, the licensee shall be subject to completing a full year at level I of the testing frequency schedule, otherwise level II testing shall be in effect.

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

In cases where no current substance use disorder diagnosis is made, a lesser period of monitoring and toxicology screening may be adopted by the Board, but not to be less than 24 times per year.

RATIONALE: This probation condition will allow the Board to monitor the Respondent in order to ascertain if he/she is substance and/or chemical free. It is to be required when the Respondent has violated any alcohol and/or substance abuse prohibitions. This condition shall be used in conjunction with additional probationary condition (28) Abstain from Use of Alcohol, Controlled Substance and Dangerous Drugs.

(28) ABSTAIN FROM USE OF ALCOHOL, CONTROLLED SUBSTANCES AND DANGEROUS DRUGS - Respondent shall abstain completely from the possession, injection, or consumption of any route, including inhalation, of all psychotropic (mood altering) drugs, including alcohol, and including controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drug as defined by Business and Professions Code Section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed by a physician and surgeon, dentist, or nurse practitioner for a bona fide illness or condition. Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the Board in writing of the following: prescriber's name, address, and telephone

number; medication name and strength, issuing pharmacy name, address, and telephone number, and specific medical purpose for medication. Respondent shall also provide a current list of prescribed medication with the prescriber's name, address, and telephone number on each quarterly report submitted. Respondent shall provide the Board with a signed and dated medical release covering the entire probation period.

Respondent shall identify for the Board's approval a single coordinating physician and surgeon who shall be aware of Respondent's history of substance abuse and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, psychotropic or mood altering drugs. Once a Board-approved physician and surgeon has been identified Respondent shall provide a copy of the accusation and decision to the physician and surgeon. The coordinating physician and surgeon shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of such substances.

The Board may require that only a physician and surgeon who is a specialist in addictive medicine be approved as the coordinating physician and surgeon.

If Respondent has a positive drug screen for any substance not legally authorized, Respondent shall be ordered by the Board to cease any practice and may not practice unless and until notified by the Board. ~~and~~ If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, Respondent shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

Note: This condition is to be required when Respondent has violated any alcohol and/or substance abuse prohibitions. The provisions of Section 315.2 of the Business and Professions Code require the Board to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program.

RATIONALE: Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.

(29) SURRENDER/PARTIAL SURRENDER OF DRUG ENFORCEMENT AGENCY PERMIT -

Option 1:

Controlled Substances - Within 60 days of the effective date of this decision, Respondent shall submit to the Board proof of surrender of Respondent's Drug Enforcement Agency Permit. Respondent shall not apply for a new permit without prior written approval from the Board.

OR

Option 2:

Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined by the California Uniform Controlled Substances Act, *(except for those drugs listed in Schedule(s)_____)* of the Act and/or prescribed to Respondent for a bona fide illness or condition by another practitioner. Respondent shall ensure that the DEA Permit is modified to reflect this restriction and proof submitted to the Board of this modification within 60 days.

RATIONALE: In cases of substance abuse/or violation of statutes regulating the procurement, dispensing or administration of controlled substances and dangerous drugs, this condition must be imposed.

(30) ETHICS COURSE - Within 30 days of the effective date of this decision, Respondent shall submit for prior Board approval a course in ethics that will be completed within the first year of probation. Units obtained for an approved course in ethics shall not be used for continuing education units required for renewal of licensure. No correspondence or Internet courses shall be allowed. An ethics course taken after the acts that gave rise to the charges in the accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board, be accepted towards the fulfillment of this condition.

RATIONALE: In those cases involving fraud, false advertising, excessive billing, or negligence this condition of probation will be imposed and may also be imposed in other cases if applicable.

(31) BILLING MONITOR – Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to act as a billing monitor. The proposed billing monitor(s) shall have been licensed dentist for at least five (5) years be approved and not have ever been subject to any disciplinary action by the Board. Once the Board has approved a

billing monitor, Respondent shall submit a plan by which the billing monitor will provide monitoring of Respondent billing practices.

All proposed billing monitors shall be independent, with no professional or personal relationship with Respondent, including a familial relationship with or be an employee, partner, or associate of Respondent. If at any time during the period of probation, the billing monitor quits or is otherwise unavailable to perform his or her monitoring duties, within fifteen (15) calendar days of the same, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more persons to be the monitor.

The billing monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place as required. It shall be Respondent's responsibility to ensure that the required reports are filed in a timely manner.

Respondent shall give the monitor access to all of Respondent's dental practice business records including financial and patient records. Monitoring shall consist of at least four (4) hours, per quarter, of review of Respondent's records. This review shall take place in Respondent's office and or place of employment. If the monitor prepares a quarterly report to the Board which finds substantial errors or omissions in, and/ or questionable billing practices, monitoring may be increased at the discretion of the Board and Respondent shall immediately comply therewith. All costs of monitoring shall be borne by the Respondent.

Each supervising monitor shall have read this Decision and the related Accusation.

RATIONALE: Recommended in cases involving capping, steering, fees for patient referrals or any other type of billing irregularities or fraud.

(32) SOLO PRACTICE - Respondent is prohibited from engaging in the solo practice of dentistry.

RATIONALE: Like similar conditions, this condition prevents the respondent from engaging as a sole practitioner in the practice of dentistry in situations where there is no close supervision and/or where the respondent could have undue authority over others and/or access to controlled substances.

(33) CONTROLLED SUBSTANCE-MAINTENANCE OF RECORDS AND INVENTORIES - Respondent shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by Respondent, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3)

the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Respondent shall keep these records in a separate file or ledger, in chronological order. All records and any inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

Failure to maintain all records, to provide immediate access to the inventory, or to make all records available for immediate inspection and copying on the premises, is a violation of probation.

RATIONALE: In cases of substance abuse/or violation of statutes regulating the procurement, dispensing or administration of controlled substances and dangerous drugs, this condition must be imposed.

(34) CLINICAL TRAINING PROGRAM - Within 60 days of the effective date of this Decision, respondent shall enroll in a clinical training or educational program offered by an approved California Dental School. The program shall consist of a comprehensive assessment comprised of a two-day assessment of respondent's basic clinical and communication skills common to all clinicians; and dental knowledge, skill and judgment pertaining to respondent's specialty or sub-specialty (if he or she has one), and at a minimum, a 40 hour program of clinical education in the area of practice for which respondent was alleged to be deficient and that takes into account data obtained from the assessment, administrative decisions and accusations, and any other information that the Board deems relevant. Respondent shall pay all expenses associated with the clinical training program.

Based on respondent's performance and test results in the assessment and clinical education, the program will advise the Board of its recommendations for the scope and length of any additional education or clinical training or anything else affecting respondent's practice of dentistry.

At the completion of any additional education or training, respondent shall submit to and pass an examination. The program's determination whether or not respondent passed the examination or successfully completed the program shall be binding.

Respondent shall complete the program no later than six months after respondent's initial enrollment unless the Board agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program as outlined above is a violation of probation.

Option #1: Condition Precedent

Respondent shall not practice dentistry until he or she has successfully completed the program and has been so notified by the Board in writing, except that respondent may practice in a clinical training program approved by the Board. Respondent's practice of dentistry shall be restricted to that which is required by the program.

Option #2 Condition Subsequent

If respondent fails to complete the clinical training program within the designated time period, respondent shall cease the practice of dentistry within 72 hours after being notified by the Board that respondent failed to successfully complete the program.

(35) FACILITATED GROUP SUPPORT MEETINGS –

Within fifteen (15) days from the effective date of the decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more meeting facilitators. Respondent shall participate in facilitated group support meetings within fifteen (15) days after notification of the Board's approval of the meeting facilitator. When determining the type and frequency of required facilitated group support meeting attendance, the Board shall give consideration to the following:

- The licensee's history;
- The documented length of sobriety/time that has elapsed since substance abuse;
- The recommendation of the clinical evaluator;
- The scope and pattern of use;
- The licensee's treatment history; and ,
- The nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group support meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

1. The group meeting facilitator shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The group meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last ~~five (5)~~ years~~s~~.
3. The group facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The group meeting facilitator shall report any unexcused absence to the Board within twenty-four (24) hours.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations.

RATIONALE: Alcohol and/or drug abuse treatment should be required in addition to other terms of probation in cases where the use of alcohol or other drugs by the Respondent has impaired the Respondent's ability to safely practice.

(36) CLINICAL DIAGNOSTIC EVALUATION –Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 1 month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an extension, not to exceed 30 days, is granted to the evaluator by the Board. The cost of such evaluation shall be paid by the Respondent.

Respondent shall cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 1 month of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Note: This condition should be imposed when the Respondent's license is placed on probation for substance or alcohol abuse violations and Additional Probationary Term No, (26) (Diversion Program) is not a term and condition of the probationary order.

RATIONALE: This condition gives the Board the ability to order a Respondent, at any time during the probation period, to undergo an evaluation to determine if he or she is currently safe to practice.

RECOMMENDED PENALTIES

B&P Refers to Business and Professions Code

Section 123 B&P Subversion of Examinations

Maximum Penalty: Revocation of license or Statement of Issues denying admission into examination.

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard conditions (1-14)
2. Community Service, 40 hours per year (22)
3. Ethics Course (30)

****

Section 125.6 B&P Refusal to Treat Patient

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation.

1. Standard Conditions (1-14)
2. Ethics Course (30)

Additional Condition if Warranted Based Upon Nature and Extent of Violation(s):
1. Suspension, 30 days (15)

****

Section 125.9B&P Failure to Comply with Citation

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard conditions (1-14)
2. Suspension, 30 days (15), as an additional condition if warranted
3. Compliance with citation, if applicable

****

Section 498 B&P License Secured by Fraud or Misrepresentation

Maximum Penalty: Revocation, Revocation in all cases in which the licensee is not qualified for the license.

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard conditions (1-14)
2. Suspension, 30 days (15)
3. Community Service, 40 hours per year (22)
4. Ethics Course (30)

****

Section 650 B&P Accepting or Receiving Rebates
Section 1680(g) B&P

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard conditions (1-14)
2. Suspension, 30 days (15)
3. Community Service , 40 hours per year (22)
4. Ethics Course (30)

For more serious cases, the following additional condition should be imposed:
1. Suspension, 30 days (15)

****

Section 650.2(i) B&P Patient Referral Service-Failure to Disclose

Maximum Penalty: Revocation of registration of dental service.

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard conditions (1-14)
2. Community Service , 40 hours per year(22)
3. Ethics Course (30)

Also see Section 1680(g)

****

Section 651 B&P **False, Misleading or Deceptive Public Communications**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising

1. Standard Conditions (1-14)
2. Community Service , 40 hours per year (22)
3. Ethics Course (30)

See Section 1680(h)-(l)

****

Section 654.1 B&P **Prohibits Referral of Patients to Laboratories without Disclosure of Beneficial Interest**

Maximum Penalty: Revocation of registration of dental referral service.

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard Conditions (1-14)
2. Ethics Course (30)

****

Section 654.2 B&P **Prohibits charges, billings, solicitations or referrals without disclosure of beneficial interest.**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard Conditions (1-14)
2. Community Service, 40 hours per year (22)
3. Ethics Course (30)

****

Section 725 B&P **Excessive Prescribing or Treatment or Administration of Drugs**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

1. Standard Conditions (1-14)
2. Remedial Education, Prescribing Practice Course (16)
3. Community Service, 40 hours per year (22)
4. Surrender/Partial Surrender of DEA Permit (19)
5. Ethics Course (30)
6. Controlled Substance-Maintenance of Records and Inventories (33)

In more serious cases the following additional conditions should be imposed:

1. Suspension, 60 days (15)
2. Examination (17)
3. Supervised Practice (18)

See Section 1680(p)

****

Section 726 B&P **Commission of Act of Sexual Abuse or Misconduct With Patient**.

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five years probation for consensual sex with one patient

1. Standard Conditions (1-14)
2. Ethics Course (30)
3. Professional Boundaries program
4. Psychiatric Evaluation
5. Third Party Chaperone
6. Suspension, 60 days, additional condition if warranted
7. Psychotherapy, additional condition if warranted
8. Restricted Practice, additional condition if warranted

****

Section 732 B&P Failure to Refund Overpayments to Patients

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Restitution (21)
3. Ethics Course (30)

****

Section 810 B&P Insurance Fraud

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Remedial Education, in book keeping (16)
4. Restitution (21)
5. Community Service , 50 hours (22)
6. Ethics Course (30)
7. Billing Monitor (31)

See Section 1680(a)

****

Section 822 B&P Psychological or Physical Illness

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation, depending on severity.

Psychological Illness:

1. Standard conditions (1-14)
2. Psychological Evaluation (23)
3. Psychotherapy (24)

Additional conditions if the licensee is suffering from a serious psychological illness:

1. Suspension from practice until determined safe to practice after completing psychological evaluation (23).
2. Supervised practice (18)
3. Solo practice (32)

Physical Illness:

1. Standard conditions (1-14)
2. Physical evaluation (25)
3. Solo practice (32)

Additional conditions if the licensee is suffering from a serious physical illness:

1. Suspension from practice until determined safe to practice after completing physical evaluation (25)
2. Supervised practice (18)
3. Solo practice (32)

****

Section 1611.5 B&P Inspection of Books, Records, and Premises

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Ethics Course (30)

****

Section 1645 B&P Continuing Education Violations

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation, 30 days actual suspension, and compliance within one (1) year

1. Standard Conditions (1-14)
2. Community service, 40 hours per year (22)
3. Ethics Course (30)

For More Serious Cases, the Following Additional Condition Should be Imposed:

1. Suspension, 30 days (15)

Section 1680(n)

****

Section 1646.1 B&P **Administration of General Anesthesia (GA) Without a Permit/Failure to Renew a Permit**

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
3. Ethics Course (30)

****

Section 1647.2 B&P **Administration of Conscious Sedation Without a Permit/Failure to Renew a Permit**

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
3. Ethics Course (30)

****

Section 1647.11 B&P **Administration of Oral Conscious Sedation Without a permit - Minors**

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
3. Ethics Course (30)

****

Section 1647.19 B&P **Administration of Oral Conscious Sedation Without a permit -Adults**

Maximum Penalty: Revocation of Licensure and/or Denial of Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) if practicing without ever having been issued a permit.
3. Ethics Course (30)

****

Section 1670 B&P **Gross Negligence, Incompetence, Repeated Acts of Negligence**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation depending on nature and extent of the violation

1. Standard Conditions (1-14)
2. Remedial Education (16)
3. Supervised Practice (18)
4. Community Service, 40 hours per year (22), as an additional condition if warranted

Additional conditions if warranted based on nature and extent of violation(s):

1. Suspension (15)
2. Examination (17)
3. Restricted practice (19)
4. Solo practice (32)
5. Clinical training program (34)

****

Section 1670.1 B&P Conviction of a Crime

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) to five (5) years probation depending upon the nature of the criminal offense

1. Standard Conditions (1-14)
2. Suspension, 30 days (15) depending on the nature of the criminal offense
3. Community Service , 40 hours per year (22)
4. Ethics Course (30)

****

Section 1671 B&P Violation of Probation

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed and extension of probationary period probation depending upon the nature of the violation

The maximum penalty should be given for repeated similar offenses.

****

Section 1680(a) B&P or Section 810 B&P **Obtaining Any Fee by Fraud or Misrepresentation Insurance Fraud**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Remedial Education (16)
4. Restitution (21)
5. Community Service , 50 hours (22)
6. Ethics Course (30)
7. Billing Monitor (31)

****

Section 1680(b) B&P **Employment of Any Student or Suspended or Unlicensed Dentist**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15), as an additional condition, if warranted
3. Community Service , 40 hours (22)
4. Ethics Course (30)

****

Section 1680(c) B&P **Aiding or Abetting Unlicensed Practice**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15), as an additional condition, if warranted
3. Community Service , 50 hours per year (22)
4. Ethics Course (30)

****

Section 1680(d) B&P **Aiding or Abetting Licensed Person to Practice Dentistry Unlawfully**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15), as an additional condition, if warranted
3. Remedial Education (16)
4. Restitution (21)
5. Community Service , 40 hours per year (22)
6. Ethics Course (30)

****

Section 1680(e) B&P Sexual Abuse, Misconduct, or Relations with a Patient

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Remedial Education (16)
4. Supervised Practice (18)
5. Third Party Chaperone Monitor (20)
6. Community Service, 50 hours per year (22)
7. Psychological Evaluation (23)
8. Psychotherapy (24)
9. Ethics Course (30)
10. Solo Practice (32)

****

Section 1680(f) B&P Use of False or Fictitious Name

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 day (15) suspension where the use of the name involved substantial deception of the public related to the practice of dentistry.
3. Ethics Course (30)

****

Section 1680(h) B&P Use of Deceptive or Misleading Advertising Statements

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation and correct advertising

1. Standard Conditions (1-14)
2. Community Service , 40 hours per year(22)

3. Ethics Course (30)

****

Section 1680(i) B&P Advertising of Professional Superiority

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation and correct advertising

1. Standard Conditions (1-14)
2. Community Service , 40 hours per year (22)
3. Ethics Course (30)

****

Section 1680(j) B&P Employing or Making use of Solicitors

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Community Service , 40 hours per year (22)
3. Ethics Course (30)

****

Section 1680(k) B&P Any Advertising that Violates Section 651 of the Business and Professions Code

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising

Please see Section 651 B&P for proposed penalty.

****

Section 1680(l) B&P **Advertising to Guarantee Any Dental Service or to Perform Dental Operations Painlessly**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation and correct advertising as appropriate

1. Standard Conditions (1-14)
2. Community Service , 50 hours per year (22)
3. Ethics Course (30)

****

Section 1680(m) B&P **Violation of any Law Regulating the Dispensing or Administration of Dangerous Drugs or Controlled Substances**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Suspension , 60 days (15), as additional condition if warranted
3. Remedial Education (16)
4. Supervised environment (18)
5. Ethics Course (30)
6. Controlled Substances-Maintenance of Records and Inventories (33)

Additional conditions:

1. Community Service, 40 hours per year (22)
2. Diversion (26) or Clinical Diagnostic Evaluation (36)
3. Biological Testing (27)
4. Abstain from use of alcohol, controlled substances and dangerous drugs (28)
5. Surrender/partial surrender of DEA permit (29)
6. Facilitated Group Support Meetings (35)

****

Section 1680(o) B&P **Permitting any Person to Operate Radiographic equipment in Violation of the Law**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, Five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Community Service , 40 hours per year (22)
4. Ethics Course (30)

****

Section 1680(p) B&P **Clearly Excessive Prescribing or Treatment**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-12)
2. Remedial Education (14)
3. Community Service, 40 hours per year (22)
4. Surrender/Partial Surrender of DEA Permit (29)
5. Ethics Course (30)
6. Controlled substance-Maintenance of Records and Inventories (33)

For more serious cases, the following additional conditions should be imposed:

1. Suspension, 60 days (13)
2. Supervised practice (18)
3. Restitution (21)
4. Clinical Training Program (34)

****

Section 1680(q) B&P Use of Threats or Harassment to Dissuade Testimony

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Community Service, 40 hours per year (22)
4. Ethics Course (30)

****

Section 1680(r) B&P Suspension or Revocation by Another State

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Impose similar conditions as indicated by other state.
3. Ethics Course (30)

****

Section 1680(s) B&P Alteration of Patient Records

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation, correction of condition

1. Standard Conditions (1-14)
2. Remedial Education (16)
3. Supervised Environment (18)
4. Community Service, 40 hours per year (22)
5. Ethics Course (30)

For more serious violations, the following additional condition should be imposed:
Suspension, 60 days (15)

****

Section 1680(t) Unsanitary Conditions

Maximum Penalty: Revocation

Minimum Penalty: Revocation, stayed three (3) years probation

1. Standard Conditions (1-14)
2. Remedial Education (16)

If violation does not warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in infection control approved by the Board.

In more serious cases:
Suspension, 30 days (15)

****

Section 1680(u) B&P Abandonment of Patient

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Community Service, 40 hours per year (22)
3. Ethics Course (30)

For those more serious violations, the following condition should be imposed:
Suspension, 30 days (15)

****

Section 1680(v) B&P Misrepresenting the Facts Regarding Disciplinary Action

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation.

1. Standard Conditions (1-14)
2. Ethics Course (30)

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Section 1680(w) B&P Fraud in the Procurement of Any License

Maximum Penalty: Revocation. Revocation in all cases in which the licensee is not qualified for the license.

Minimum Penalty: Revocation, five (5) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15)
3. Community Service, 40 hours per year (22)
4. Ethics Course (30)

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Section 1680(x) B&P Actions that would Warrant Denial of a License

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14); and

Any other conditions as appropriate and consistent with these guidelines based on the particular action.

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Section 1680(y) B&P Aiding or Abetting Negligent or Incompetent Practice

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard conditions (1-14)
2. Suspension, 30 days (15)
3. Remedial Education (16)
4. Examination (17) if appropriate
5. Supervised Environment (18)
6. Restricted practice (19)
7. Ethics Course (30)

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Section 1680(z) B&P Failure to Report Patient Death

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, 5 years probation

1. Standard conditions (1-14)
2. Ethics Course (30)

For more serious cases, the following additional condition should be imposed:
1. Suspension, 30 days (15)

****

Section 1680(aa) B&P Participating In or Operating Any Group Advertising or Referral Services that is not Registered by the Board

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard Conditions (1-14)
2. Suspension, six (6) months suspension from advertising through referral services
3. Community Service, 40 hours per year (22)
4. Ethics Course (30)

(Section 650.2 B&P)

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Section 1680(ab)B&P Failure to use a Fail-Safe Machine

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Terms (1-14)
2. Proof of Correction Through Obtaining and Using Correct Machine
3. Remedial Education (16)

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Section 1680(ac) Engaging in Practice of Dentistry with an Expired License

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, two (2) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15), as an additional condition, if warranted
3. Ethics (30)

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Section 1680(ad) Unsafe and Sanitary Conditions

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Suspension, 30 days (15)
3. Remedial Education in infection control (16)
4. Proof of correction of the condition

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in infection control approved by the Board

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Section 1680(ae) The Use of Auxiliaries Beyond the Scope of the License

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15), as an additional condition if warranted
3. Remedial Education in scope of practice for dental auxiliaries (16)
4. Proof of correction of the condition

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period with a requirement to take a course in the scope of practice of a dental auxiliary approved by the Board.

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Section 1681(a) B&P **Substance Abuse, Posession or Control, Alchohol Abuse, or Conviction related to Controlled Substances**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years

1. Standard Conditions (1-14)
2. Supervised Practice (18)
3. Abstain from use of alcohol, Controlled substances and dangerous drugs (28)
4. Surrender/Partial surrender of DEA permit (29)
5. Ethics Course (30)
6. Controlled Substance-Maintenance of Records and Inventories (33)

Optional Conditions Where Appropriate:

1. Psychological Evaluation (23)
2. Psychotherapy (24)
3. Diversion (26) or Clinical Diagnostic Evaluation (36)
4. Biological Fluid Testing (27)
5. Facilitated Group Support Meetings (35)

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Section 1681 (b) B&P **Use of drugs/alcohol causing danger to patient**

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, seven (7) years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Supervised Practice (18)
4. Psychological Evaluation (23)
5. Psychotherapy(24)
6. Diversion(26) or Clinical Diagnostic Evaluation (36)
7. Biological Fluid Testing (27)

8. Abstain from use of Alcohol, Controlled Substances and Dangerous Drugs (28)
9. Surrender/Partial Surrender of DEA permit (29)
10. Ethics Course (30)
11. Controlled Substance-Maintenance of Records and Inventories (33)
12. Facilitated Group Support Meetings (35)

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Section 1681 (c) B&P Conviction of violating state drug statutes

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, 5 years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Supervised Practice (18)
4. Psychological Evaluation (23)
5. Psychotherapy (24)
6. Diversion (26) or Clinical Diagnostic Evaluation (36)
7. Biological Testing (27)
8. Abstain from use of Alcohol, Controlled Substances and Dangerous Drugs (28)
9. Surrender/Partial Surrender of DEA permit (29)
10. Ethics Course (30)
11. Controlled Substance-Maintenance of Records and Inventories (33)
12. Facilitated Group Support Meetings (35)

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Section 1682 B&P Violation of Requirements re Patients Undergoing Conscious Sedation or General Anesthesia

Maximum Penalty: Revocation of licensure and/or Permit

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Remedial Education (16)
3. Examination (17)
4. Supervised Practice (18)
5. Restricted Practice (19)
6. Ethics Course (30)

Section 1647 B&P

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Section 1683 B&P Treatment Entries in Patient Records

Maximum Penalty: Revocation of licensure and/or Permit

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Remedial Education(16)

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period or public reprimand with a requirement to take a course approved by the Board in how to maintain patient records.

****

Section 1684 B&P Service Beyond the Scope of License

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, three (3) years probation

1. Standard Conditions (1-14)
2. Community Service, 40 hours per year (22)
3. Ethics Course (30)

Options and additions where appropriate

1. Suspension (15)
2. Remedial Education (16)
3. Examination (17)
4. Supervised Practice (18)
5. Restricted Practice (19)
6. Restitution (31)
7. Clinical Training Program (34)

****

Section 1685 B&P Permitting Dental Care that Discourages Necessary or Encourages Excessive or Improper Treatment

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years probation

1. Standard Conditions (1-14)
2. Ethics Course (30)

Options and additions where appropriate

1. Suspension, 30 days (15)
2. Remedial Education (16)
3. Examination (17)
4. Restitution (21)
5. Clinical Training Program (34)

****

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P 916-263-2300 F 916-263-2140 www.dbc.ca.gov

MEMORANDUM

DATE	February 14, 2012
TO	Dental Board Members
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 2(B):** Discussion and Possible Action Regarding Adoption of Proposed Amendments to Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

Background:
Following the Board's consideration of comments received during the required 45-day public comment period, the Board may hold discussion and take action to adopt proposed amendments to California Code of Regulations, Title 16, Sections 1018 and 1020.5 for the Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines.

Action Requested:
Depending on the Board's response to the comments received, staff requests the Board take one of the following actions:

A. If the Board votes to not modify the text, then the Board would:

   Adopt the final text as noticed and direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law and authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to California Code of Regulations, Title 16, Sections 1018 and 1020.5.

   If the rulemaking file expires prior to staff submitting the final rulemaking file with the Office of Administrative Law, direct staff to take all steps necessary to initiate the formal rulemaking process again, including noticing the proposed language, as approved by the Board at the February 23, 2012 meeting, for 45-day public comment, setting the proposed language for a public hearing, and authorize the Executive Officer to make any non-substantive changes to the rulemaking package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, authorize the Executive

Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed additions to California Code of Regulations, Title 16, Sections 1018 and 1020.5 as noticed in the proposed text.

B. If the Board votes to make modifications to the proposed text, then the Board would:

Modify the text in response to the comments and recommendations received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to California Code of Regulations, Title 16, Sections 1018 and 1020.5 as noticed in the modified text.

If the rulemaking file expires prior to staff submitting the final rulemaking file with the Office of Administrative Law, direct staff to take all steps necessary to initiate the formal rulemaking process again, including noticing the proposed language, as approved by the Board at the February 23, 2013 meeting, for 45-day public comment, setting the proposed language for a public hearing, and authorize the Executive Officer to make any non-substantive changes to the rulemaking package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed additions to California Code of Regulations, Title 16, Sections 1018 and 1020.5 as noticed in the proposed text.

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STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P 916-263-2300 F 916-263-2140 www.dbc.ca.gov

MEMORANDUM

DATE	February 10, 2012
TO	Dental Board Members Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 3:** Discussion and Possible Action Regarding Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to Add Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

Background:
At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to Sponsored Free Health Care Events. The Board directed staff to initiate a rulemaking with the Office of Administrative Law.

Staff filed the rulemaking with the Office of Administrative Law on September 27, 2011 and the proposed regulatory language relative to Sponsored Free Health Care Events was noticed on the Board's Web site and mailed to interested parties on October 7, 2011. The 45-day public comment period began on October 7, 2011 and ended on November 21, 2011. A regulatory hearing was held on November 22, 2011 in Sacramento, CA.

The Board received comments from the California Association of Oral and Maxillofacial Surgeons (CALAOMS), the California Dental Association (CDA), and the California Academy of General Dentists (CAGD).

Summary of Comments Received from the California Dental Association and the California Association of Oral and Maxillofacial Surgeons and Staff Recommendations:

1. Comments Regarding Fingerprinting Requirement:
Both CDA and CALAOMS commented that the requirement for out-of-state practitioners to provide fingerprints to the Board seemed excessive and unnecessary. Both organizations commented that the oversight of the sponsoring entities and remaining documentation the practitioner would be required to submit proving licensure and good

standing in another state would be sufficient to ensure the professional quality of the practitioner.

Staff Recommendation: Staff recommends rejections of this comment. The requirements for out-of-state practitioners to submit fingerprints as part of the application process is reasonably necessary in order for the board to verify that an applicant is "in good standing" as required by Section 901, including the requirement of Section 901(b)(1)(B)(i) that the applicant has "not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under [Code] Section 480." Section 480 authorizes a board to deny licensure based on an applicant's conviction of a substantially-related crime or the commission of an act substantially-related to the qualifications, functions or duties of a licensed dentist. A criminal background check cannot be effectuated if the board does not have the appropriate personal identifying information. Further, the board is authorized to require applicants to furnish fingerprints for criminal background checks under Business and Professions Code Section 144 and to require disclosure of Social Security Numbers for all other applicants under Section 30 of the Business and Professions Code. Further, Section 901(b)(1)(B)(iii) requires a health-care practitioner to agree to comply with all applicable practice requirements set forth in Section 901 and the board's applicable regulations. This form, with its accompanying attestation provisions, would provide the mechanism to effectuate such an agreement.

Currently, the Dental Board of California requires applicants and licensees, for whom an electronic record of fingerprints do not exist, to provide fingerprints for a background check before issuance of a license. The protection of the public is the Board's highest priority when exercising its licensing, regulatory, and disciplinary functions. This proposal is consistent with the Board's priority of protecting the public.

2. Comments Regarding Continuing Education Requirement:
Both CDA and CALAOMS commented that the requirement for an out-of-state practitioner to provide documentation of 50 hours of continuing education within the previous two years of the date of the application seemed excessive, burdensome, and arbitrary. Most, if not all, states require continuing education as a condition of licensure, which is considered proof that the practitioner's license is valid and in good standing. The applicant's valid and current license, in good standing in another state, should be taken as sufficient evidence that the applicant maintains the continuing education necessary to provide competent dental care.

Staff Recommendation: Staff recommends acceptance of this comment and recommends deleting the requirement for an out-of-state practitioner to provide proof of completion of 50 hours of continuing education within two years of the date of his or her application. Staff recognizes that this requirement may be unnecessary and may cause an undue burden upon the out-of-state practitioner.

3. Comments Regarding Application Fee for Out-of-State Practitioners:
Both CDA and CALAOMS commented that the proposed $100 application fee was high and could serve as an impediment to participation. Both organizations recommend that the Board adopt an application fee of $25, like that of the Medical Board of California.

Staff Recommendation: Staff recommends acceptance of the comment that the fee should be lowered so as not to impede participation from out-of-state practitioners at sponsored events. When the regulations were initially drafted it was unknown how many sponsors of free healthcare events and how many volunteer out-of-state licensees may apply to the Board as a result of these regulations. Initially, the Board estimated that it would receive at least 250 applications per year from out-of-state dentists seeking authorization to provide services at sponsored health care events. In order for the Board to absorb the workload associated with processing the requests for authorization from the out-of-state dentists, the Board would have needed to charge a $100 non-refundable processing fee to offset the costs associated with staff's processing of the application.

After further evaluation, staff believes that the estimated number of applications the Board would receive each year from out-of-state practitioners would be significantly lower. Staff now estimates that the Board would receive approximately 75 applications per year from out-of-state dentists seeking authorization to provide services at sponsored free health care events. To absorb the workload associated with processing 75 applications per year, the Board would need to charge a $30 non-refundable processing fee per application. Staff recommends modifying the text accordingly.

4. Comments Regarding Requirement to Provide Written Notice to Each Patient: At the regulatory hearing held on November 22, 2011, Mr. Fred Noteware, representing both CDA and CALAOMS, commented that the organizations were concerned with the provisions contained in section 1023.19 regarding written notice to each patient. The organizations felt that the requirement for a separate notice immediately before treatment is burdensome and will be an impediment to efficient care. Mr. Noteware commented that the notice should be part of the general waiver and consent. Currently the waiver and consent will inform the patient that they may be seen by student dentists or student hygienists working under the direct supervision of their instructors; patients are required to sign this waiver and acknowledgement. The names and states of each out of state dentist that may provide care could be added to the waiver and consent. An example of the difficulty associated with the DBC proposal would be if a local dentist has difficulty with an extraction and asks an out of state oral surgeon for help. The oral surgeon would have to stop treatment while the patient reads the 'out-of-state' waiver. The waiver would be unenforceable because the patient could later claim it was signed under the duress of the situation. Mr. Noteware commented that it would be much better to get the waiver signed by all potential patients in advance and not patient by patient at the time of service.

Staff Recommendation: Staff recommends rejection of this comment. The notice is not considered a waiver. Providing written notification to each patient that the practitioner is licensed outside of the State of California does not relinquish or surrender the patient's privilege to health care services provided by the out-of-state practitioner. The out-of-state practitioner is only required to provide written notification to each patient, in at least 12-point font and include information regarding licensure, as specified, and a disclosure that the Dental Board of California has only authorized the practitioner to provide services at that particular health care event for a period not to exceed 10 days. The notice may be provided to the patient on a form of the practitioner's choosing.

Statutory law makes no provision for notifying the affected public that out-of-state practitioners are not California licensed dentists in good standing. A member of the public would assume, unless this notice is provided, that dentists providing dental services in California would be duly licensed and regulated by the Dental Board. The protection of the public is the Board's highest priority when exercising its licensing, regulatory, and disciplinary functions. This proposal is consistent with the Board's priority of protecting the public. The requirement of written notification provides transparency to the public that individuals performing dentistry at the sponsored event are licensed in good standing by another state, district or territory, the license numbers, effective dates of each license and issuing agency, and the dates that the out-of-state practitioner is authorized to practice by the board. This proposed regulation further specifies a statement of disclosure that the Dental Board has only authorized the practitioner to provide services at the sponsored event and for a period not to exceed 10 days. This proposed section provides disclosure to the public that practitioners are licensed by another governmental agency, provides specific information regarding those licenses, and informs the public that practitioners may only practice pursuant to the specific provisions of Section 901.

5. Summary of Comments Received from the California Academy of General Dentists and Staff Recommendations:

At the regulatory hearing, Dr. Guy Acheson, Vice President of the California Academy of General Dentistry, verbally presented a letter from the President of the California Academy of General Dentistry in support of the regulations. Dr. Acheson read the letter aloud and entered the letter into the rulemaking. Dr. Acheson stated that he has participated in events in other states in the past. He specifically pointed out that he had been able to participate in an event at the Louisiana State University School of Dentistry where dental care was provided to underserved residents of New Orleans, LA. The event gathered more than 140 volunteers from around the country to provide care for over 180 patients from New Orleans. Additionally, Dr. Acheson stated that he participated an event at the San Diego Convention Center with approximately 30 other California licensed dentists to provide over $80,000 in free dentistry work to about 125 veterans in San Diego, CA. He stated that these proposed regulations are important to authorize more volunteers from other states to assist with providing important dental care services at these health care events. The California Academy of General Dentistry wanted to clearly emphasize that the proposed regulations be limited to licensed dentists to volunteer their services in California. The organizations believe that for public health and safety reasons , non-traditional therapists should not be included in the regulations.

Staff Recommendation: No Board response is necessary, as this is not considered an adverse comment. The Board's regulations are only applicable to licensed dentists.

Additional Staff Recommendations:

Staff has made some additional technical and clarifying changes to the proposed modified text.

October 27, 2011

The California Academy of General Dentistry strongly supports legislation that reduces the barriers of extending manpower to serve the many needs of Californian's that have not had easier access to dental care. Such individuals usually have complex dental needs requiring the expertise of a general dentist or specialist. Allowing licensed dentists from other states, who do not have a CA dental license, the ability and opportunity to voluntarily treat individuals on a limited basis in California is a safe and sound step in addressing the access to care issue.

Due to some changes in workforce in some states it is important for the CAGD to clearly emphasize that the proposed legislation be limited to ***licensed dentists*** with a DDS or DMD (or equivalent degree) to volunteer their services in CA. Furthermore, for public health and safety reasons, non-traditional therapists (mid-level providers) should not be included in this legislation. The lack of training and skill-set development could increase risks for the patients being treated.

In July 2010, the Academy of General Dentistry put on an Outreach Program in New Orleans and the state of Louisiana was able to grant temporary licenses to out-of-state volunteer dentists. In July 2011, a similar outreach was held by the AGD at the San Diego Convention Center. We had to restrict and turn away several out-of-state dentists who wanted to volunteer. Fortunately, over 120 patients from Veteran's Village of San Diego were treated by the volunteer CA dentists and auxiliaries. Such legislation would allow such outreach programs to be more robust, however. CAGD dentists welcome serving alongside our colleagues around our nation and many of us have already volunteered in other states. Such reciprocation of volunteer dentists is a wise action and greatly underscores the caring attitude of dentists while addressing the public health and safety of patients.

Respectfully,

Stephen E. Lockwood, DMD, MAGD
2011 President

Guy Acheson, DDS, MAGD
2011 Vice President

Advancing the Value and Excellence of General Dentistry
2063 Main Street, PMB 470 Oakley, California 94561-5302
(877) 468-6738 toll free (925) 625-8857 fax www.agd.org

CALAOMS
CALIFORNIA ASSOCIATION OF ORAL AND MAXILLOFACIAL SURGEONS

950 RESERVE DRIVE
SUITE 120
ROSEVILLE, CA 95678
P: 800-500-1332
F: 916-772-9220

November 20, 2011

Bruce Whitcher, DDS
Board President
Dental Board of California
2005 Evergreen Street, Suite 1550
Sacramento, CA 95815

RE: Sponsored Free Health Care Events—Proposed Regulations

Dear Dr. Whitcher:

We appreciate the opportunity to provide comments regarding the proposed regulatory language for Sponsored Free Health Care Events. It is our goal that the final, adopted rules implementing AB 2699 (Bass) will protect and safeguard patients, provide much needed access to preventive care, basic services, and specialty procedures to uninsured and underinsured Californians, as well as create a fair, reasonable system to attract participation by out-of-state dentists.

To this end, we recommend the following changes to the proposed regulations:

1. The need to supply fingerprints or submit a Live Scan inquiry is unnecessary. The out-of-state dentist must already submit their personal identifying information including contact information, social security number, be in good standing with the Dental Board of the applicant's home state, submit his/her license to the Dental Board of California, provide photo identification, and clear a background check. On top of the other safeguards, requesting the applicant to also submit fingerprints is an unnecessary bureaucratic hurdle as there are a multitude of other mechanisms in place to assure the professional quality of the dentist is high.
2. Requiring an out-of-state applicant to submit to the Dental Board of California proof that he/she has completed a minimum of 50 units of continuing education within two years of the date of application is a burdensome request that provides questionable value to California patients. It is possible that a number of the continuing education requirements in other states are not offered in California, as the courses are not approved by the Dental Board of California. Therefore, this proposed regulation could deny the participation of a dentist into the Free Health Care Event program because he/she did not supply proof of completed CE courses not recognized by the state of California.

Additionally, many courses making up the 50 units would be of little, if any benefit to the California patients at the Free Health Care Events. Such CE courses as "Cadaver Dissection," "Dental Practice Transitions," and "The Values of Purchasing an Existing Dental Practice" offered in Massachusetts or CE courses in New York state such as "Risk Management," and "Jurisprudence of the Dental Practitioner" would assist in the applicant achieving the proposed requirement of 50 units, however, meeting this arbitrary rule does not follow through that the courses will serve as meaningful to the patient at the Free Health Care Event. It is our recommendation that the burden created by this requirement is not equitable to the benefit to the California patient and should therefore be removed.

3. As proposed, the required fee of $100.00 is high and could serve as an impediment to participation. To this point, the final Senate Floor Analysis for AB 2699 (Bass) stated the volunteer "pays a nominal fee." Not only is $100.00 not nominal, the fee for volunteer dentists could be higher as the proposed regulations require the volunteer to not only pay the fee but an additional $51.00 if submitting a Live Scan inquiring, as well as all costs for furnishing fingerprints and conducting a criminal history record check.

   We acknowledge the Dental Board of California's administrative burden and cost to establish the internal framework necessary to implement this program, however, with more volunteer dentists willing to participate the program, the lower the average cost to those dentists via the fee. Therefore, it is advantageous of the Board to create regulations that do not discourage participation.

   The proposed regulations of the Medical Board of California, dated May 6, 2011 for the Sponsored Free Health Care Events recommends a fee of $25.00 to volunteer physicians. We recommend the Dental Board also establish a fee of $25.00. Additionally, as a method to encourage as many physicians as possible to volunteer their time and services, they have proposed a mechanism to further remove impediments by allowing the sponsor of the event pay the physician's fee. We recommend the Dental Board adopt similar language.

Thank you for the opportunity to provide comments on the proposed regulations. If you have any questions about our recommendations, please do not hesitate to call. It would be a pleasure to speak with you.

Sincerely,

John L. Lytle, DDS, MD
President CALAOMS

November 21, 2011

Bruce Whitcher, DDS
President
Dental Board of California
2005 Evergreen Street, Suite 1550
Sacramento, CA 95815

RE: Proposed Regulations – Sponsored Free Health Care Events

Dear Dr. Whitcher:

The California Dental Association (CDA) appreciates the opportunity to provide comment on the Dental Board's proposed regulations designed to implement AB 2699 (Bass), which was enacted in 2010.

AB 2699 was designed to provide an opportunity for medical providers licensed in other states to offer their services at volunteer health care events such as Remote Area Medical (RAM), Care Now and Mission of Mercy (MOM). Having assisted with many of these events in the past, and with plans well under way to co-sponsor a CDA Cares/MOM event in Modesto next year, we appreciate the importance of implementing the new law. We also appreciate the importance of protecting patient safety without creating unnecessary paperwork and cost barriers for dental professionals wishing to provide free dental services to those in need. For the most part, we believe the proposed regulations achieve these goals. We would, however, like to join with the California Association of Oral and Maxillofacial Surgeons (CALAOMS) in offering the following three points:

1) The requirement in Section 1023.17 (a) for providers to submit a full set of fingerprints or Live Scan inquiry to the board seems excessive. Given the level of oversight expected of the sponsoring entities themselves, the remaining documentation proving that the provider is duly licensed and in good standing in another state should be sufficient for this purpose, and thus a criminal background check shouldn't be necessary.
2) Similarly, the requirement in Section 1023.17(c)(1)(C) for applicants to document completion of 50 hours of CE within two years of the date of application seems excessive. Since most, if not all, states require CE as a condition of licensure, proof that the provider's license is in good standing in another state should be sufficient.
3) Finally, the proposed $100 application fee for out-of-state practitioners also seems excessive and could impose a barrier on providers' willingness to participate in volunteer events. We recognize and appreciate the challenge for the board in determining an appropriate fee level when the number of applicants (and thus the board's administrative costs) is unknown. Nevertheless, we concur with CALAOMS that the

California Dental Association
1201 K Street, 14th Floor, Sacramento, CA 95814 | t. 800.232.7645 | p. 916.443.0505 | f. 916.443.2943 | cda.org

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$25 fee being proposed by the Medical Board in their equivalent regulations may be a more appropriate and consistent starting point, one which could be readdressed later depending upon the volume of applications that ultimately are received once these regulations are in place.

With the modifications listed above, CDA believes that these regulations will retain for the Dental Board the ability to enforce against violations, without erecting needless barriers for willing providers to come to California temporarily to help improve access to oral health care in this state.

Thank you for your consideration.

Sincerely,

William C. Lewis

William C. Lewis
Legislative/Regulatory Advocate

California Dental Association
1201 K Street, 14th Floor, Sacramento, CA 95814 | t. 800.232.7645 | p. 916.443.0505 | f. 916.443.2943 | cda.org

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2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2187 F (916) 263-2140 www.dbc.ca.gov

REGULATORY HEARING MINUTES

Dental Board of California
2005 Evergreen Street, Hearing Room
Sacramento, CA 95815
November 22, 2011

Minutes of Public Hearing for Cal. Code of Regs., Title 16,
Sections 1023.15, 1023.16, 1023.17, and 1023.18
Relevant to Licensure Exemption for Out of State Licensed Practitioners
to Provide Healthcare Services at Sponsored Free Health Care Events

Staff Present:
Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Sarah Wallace, Legislative & Regulatory Analyst
Karen Fischer, Special Assistant to the Executive Officer

Proposed Rulemaking to Add Cal. Code of Regs., Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

Sarah Wallace, Legislative and Regulatory Analyst, read the opening statement explaining the hearing process and opened the hearing for testimony at approximately 10:00 a.m.

Dr. Guy Acheson, Vice President of the California Academy of General Dentistry, verbally presented a letter from the President of the California Academy of General Dentistry in support of the regulations. Dr. Acheson read the letter aloud and entered the letter into the rulemaking. Dr. Acheson stated that he has participated in events in other states in the past. e specifically pointed out that he had been able to participate in an event at the Louisianna State University School of Dentistry where dental care was provided to underserved residents of New Orleans, LA. The event gathered more than 140 volunteers from around the country to provide care for over 180 patients from New Orleans. Additionally, Dr. Acheson stated that he participated an event at the San Diego Convention Center with approximately 30 other California licensed dentists to provide over $80,000 in free dentistry work to about 125 veterans in San Diego, CA. He stated that these proposed regulations are important to authorize more volunteers from other states to assist with providing important dental care services at these health care events.

Fred Noteware, representing the California Dental Association (CDA) and California Association of Oral and Maxillofacial Surgeons (CALAOMS), stated that both organizations have submitted letters to the Board in response to the regulations. Both organizations look

forward to working with the Board to implement the new regulations and are excited about opportunities to provide free dental care in the specified settings. Mr. Noteware read the letter from CALAOMS, that was received by the Board during the 45-day public comment period, reiterating the organizations concerns regarding the proposed fingerprinting requirement, continuing education requirement, and the proposed application fee.

Additionally, Mr. Noteware stated that both organizations were concerned with the provisions contained in section 1023.19 regarding written notice to each patient. The organizations felt that the requirement for a separate notice immediately before treatment is burdensome and will be an impediment to efficient care. Mr. Noteware commented that the notice should be part of the general waiver and consent. Currently the waiver and consent will inform the patient that they may be seen by student dentists or student hygienists working under the direct supervision of their instructors; patients are required to sign this waiver and acknowledgement. The names and states of each out of state dentist that may provide care could be added to the waiver and consent. An example of the difficulty associated with the DBC proposal would be if a local dentist has difficulty with an extraction and asks an out of state oral surgeon for help. The oral surgeon would have to stop treatment while the patient reads the ‘out-of-state’ waiver. The waiver would be unenforceable because the patient could later claim it was signed under the duress of the situation. Mr. Noteware commented that it would be much better to get the waiver signed by all potential patients in advance and not patient by patient at the time of service.

There were no additional comments, and the hearing was adjourned at 10:15 a.m.

TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

PROPOSED MODIFIED TEXT

Changes to the originally proposed language are shown by double underline for new text and double strikeout for deleted text. Changes are highlighted in gray for easy location.

Adopt Article 8 and Sections 1023.15, 1023.16, 1023.17, 1023. 18 and 1023.19 in Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read:

DIVISION 10. Dental Board of California
CHAPTER 1. General Provisions Applicable to All Licensees

Article 8. Sponsored Free Health Care Events – Requirements for Exemption

§1023.15. Definitions
For the purposes of Section 901 of the Code:

(a) "Community-based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

(b) "Out-of-state practitioner" means a person who is not licensed in California to engage in the practice of dentistry but who holds a current, active and valid license or certificate in good standing in another state, district, or territory of the United States to practice dentistry.

(c) "In good standing" means that a person:

(1) Is not currently the subject of any investigation by any governmental entity or has not been charged with an offense for any act substantially related to the practice of dentistry by any public agency;
(2) Has not entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon the person's professional conduct or practice, including any voluntary surrender of license; or,
(3) Has not been the subject of an adverse judgment resulting from the practice of dentistry that the board determines constitutes evidence of a pattern of incompetence or negligence.

NOTE: Authority cited: Sections 901 and 1614~~ and 901~~, Business and Professions Code. Reference: Section 901, Business and Professions Code.

§1023.16. Sponsoring Entity Registration and Recordkeeping Requirements

(a) Registration. A sponsoring entity that wishes to provide, or arrange for the provision of, health care services at a sponsored event under section 901 of the Code shall register with the board not later than 90 calendar days prior to the date on which the sponsored event is scheduled to begin. A sponsoring entity shall register with the board by submitting to the board a completed Form DBC-901-A (~~02/2011~~New 02/2012), which is hereby incorporated by reference.

(b) Determination of Completeness of Form. The board may, by resolution, delegate to the Department of Consumer Affairs the authority to receive and process Form DBC-901-A (New 02/2012) on behalf of the board. The board or its delegatee shall inform the sponsoring entity within 15 calendar days of receipt of Form DBC-901-A (New 02/2012) in writing that the form is either complete and the sponsoring entity is registered or that the form is deficient and what specific information or documentation is required to compete the form and be registered. The board or its delegatee shall reject the registration if all of the identified deficiencies have not been corrected at least 30 days prior to the commencement of the sponsored event.

(c) Recordkeeping Requirements. Regardless of where it is located, a sponsoring entity shall maintain at a physical location in California a copy of all records required by section 901 as well as a copy of the authorization for participation issued by the board to an out-of-state practitioner. The sponsoring entity shall maintain these records for a period of at least five years after the date on which a sponsored event ended. The records may be maintained in either paper or electronic form. The sponsoring entity shall notify the board at the time of registration as to the form in which it will maintain the records. In addition, the sponsoring entity shall keep a copy of all records required by section 901(g) of the Code at the physical location of the sponsored event until that event has ended. These records shall be available for inspection and copying during the operating hours of the sponsored event upon request of any representative of the board. In addition, the sponsoring entity shall provide copies of any record required to be maintained by section 901 of the Code to any representative of the board within fifteen (15) calendar days of the request.

(d) Requirement for Prior Board Approval of Out-of-State Practitioner. A sponsoring entity shall not permit an out-of-state practitioner to participate in a sponsored event unless and until the sponsoring entity has received written approval from the board.

(e) Report. Within fifteen (15) calendar days after a sponsored event has concluded, the sponsoring entity shall file a report with the board summarizing the details of the sponsored event. This report may be in a form of the sponsoring entity's choosing, but shall include, at a minimum, the following information:

(1) The date(s) of the sponsored event;

(2) The location(s) of the sponsored event;

3) The type(s) and general description of all health care services provided at the sponsored event; and

(4) A list of each out-of-state practitioner granted authorization pursuant to this article who participated in the sponsored event, along with the license number of that practitioner.

NOTE: Authority cited: Sections 1614 and 901, Business and Professions Code. Reference: Section 901, Business and Professions Code.

§1023.17. Out-of-State Practitioner Authorization to Participate in Sponsored Event

(a) Request for Authorization to Participate. An out-of-state practitioner ("applicant") may request authorization from the board to participate in a sponsored event and provide such health care services at the sponsored event as would be permitted if the applicant were licensed by the board to provide those services. Authorization shall be obtained for each sponsored event in which the applicant seeks to participate. An applicant shall request authorization by submitting to the board the following:

(1) A~~a~~ completed Form DBC-901-B (~~02/2011~~New 02/2012), which is hereby incorporated by reference, accompanied by a non-refundable processing fee of ~~$100~~$30.

(2) The applicant shall also furnish either a full set of fingerprints or submit a Live Scan inquiry to establish the identity of the applicant and to permit the board to conduct a criminal history record check. The applicant shall pay any costs for furnishing the fingerprints and conducting the criminal history record check. This requirement shall apply only to the first application for authorization that is submitted to the board by the applicant.

(b) Response to Request for Authorization to Participate. Within 20 calendar days of receiving a completed request for authorization, the board shall notify the sponsoring entity and the applicant whether that request is approved or denied.

(c) Denial of Request for Authorization to Participate.

(1) The board shall deny a request for authorization to participate if:

(A) The submitted Form DBC-901-B (New 02/2012) is incomplete and the applicant has not responded within 7 calendar days to the board's request for additional information;

(B) The applicant does not possess a current, active and valid license in good standing~~.~~;

~~(C) The applicant has not completed 50 units of continuing education within two years of the date of his or her application.~~

~~(D)~~(C) The applicant has had his or her permission from the federal Drug Enforcement Administration (DEA) to prescribe controlled substances suspended, revoked or denied~~.~~;

~~(E)~~(D) The applicant has failed to comply with a requirement of this article or has committed any act that would constitute grounds for denial under Section 480 of the Code of an application for licensure by the board~~.~~;

~~(F)~~(E) The applicant has a current physical or mental impairment related to drugs or alcohol~~.~~;

~~(G)~~(F) The applicant has been adjudicated by a court to be mentally incompetent or is under a conservatorship, so that the person is unable to undertake the practice of dentistry in a manner consistent with the safety of a patient or the public~~.~~; or

(G) The board has been unable to obtain a timely report of the results of the criminal history check.

(2) The board may deny a request for authorization to participate if:

(A) The request is received less than 20 calendar days before the date on which the sponsored event will begin~~.~~;

(B) The applicant has been previously denied a request for authorization by the board to participate in a sponsored event~~.~~;

(C) The applicant has previously had an authorization to participate in a sponsored event terminated by the board~~.~~; or

(D) The applicant has participated in three (3) sponsored events during the 12 month period immediately preceding the current application.

(d) Appeal of Denial. An applicant requesting authorization to participate in a sponsored event may appeal the denial of such request by following the procedures set forth in Section 1023.18.

NOTE: Authority cited: Sections 144, 901, and 1614~~, and 901~~, Business and Professions Code. Reference: Section 144, 480 and 901, Business and Professions Code.

§1023.18. Termination of Authorization and Appeal.

(a) Grounds for Termination. The board may terminate an out-of-state practitioner's authorization to participate in a sponsored event for any of the following reasons:

(1) The out-of-state practitioner has failed to comply with any applicable provision of this article, or any applicable practice requirement or regulation of the board.

(2) The out-of-state practitioner has committed an act that would constitute grounds for discipline if done by a licensee of the board.

(3) The board has received a credible complaint indicating that the out-of-state practitioner is unfit to practice at the sponsored event or has otherwise endangered consumers of the practitioner's services.

(b) Notice of Termination. The board shall provide both the sponsoring entity and the out-of-state practitioner with a written notice of the termination, including the basis for the termination. If the written notice is provided during a sponsored event, the board may provide the notice to any representative of the sponsored event on the premises of the event.

(c) Consequences of Termination. An out-of-state practitioner shall immediately cease his or her participation in a sponsored event upon receipt of the written notice of termination.

Termination of authority to participate in a sponsored event shall be deemed a disciplinary measure reportable to the national practitioner data banks. In addition, the board shall provide a copy of the written notice of termination to the licensing authority of each jurisdiction in which the out-of-state practitioner is licensed.

(d) Appeal of Termination. An out-of-state practitioner may appeal the board's decision to terminate an authorization in the manner provided by section 901(j)(2) of the Code. The request for an appeal shall be considered a request for an informal hearing under the Administrative Procedure Act (commencing with Section 11445.10 of the Government Code).

(e) Informal Conference Option. In addition to requesting a hearing, the out-of-state practitioner may request an informal conference with the executive officer regarding the reasons for the termination of authorization to participate. The executive officer shall, within 30 days from receipt of the request, hold an informal conference with the out-of-state practitioner. At the conclusion of the informal conference, the executive officer may affirm or dismiss the termination of authorization to participate. The executive officer shall state in writing the reasons for his or her action and mail a copy of his or her findings and decision to the out-of-state practitioner within ten days from the date of the informal conference. The out-of-state practitioner does not waive his or her request for a hearing to contest a termination of authorization by requesting an informal conference.

If the termination is dismissed after the informal conference, the request for a hearing shall be deemed to be withdrawn.

NOTE: Authority cited: Sections 901 and 1614 ~~and 901~~, Business and Professions Code. Reference: Section 901, Business and Professions Code.

§1023.19. Additional Practice Requirements for Out-of-State Practitioners Authorized to Participate in Sponsored Free Health Care Events.

(a) Each out-of-state practitioner authorized to participate in a sponsored event and provide dental services at the sponsored event pursuant to Section 1023.17 shall provide a written notice to each patient or prospective patient prior to performing any services. This notice may be in a form of the out-of-state practitioner's choosing, but shall be in at least 12 point font and include, at a minimum, the following information:

(1) The state, district, or territory where the out-of-state practitioner is licensed in good standing;
(2) The name of each governmental agency that has issued the out-of-state practitioner a license to practice dentistry and the effective dates of each license;
(3) The out-of-state practitioner's license number(s);
(4) The dates the out-of-state practitioner is authorized to practice by the board; and,
(5) A disclosure that states: "The Dental Board of California has only authorized me to provide services under my license from another state and only at this free health care event for a period not to exceed ten (10) days."

(b) This notice required by this Section shall be provided separate and apart from all other notices or authorizations that a patient may be given or required to sign and shall be retained by the patient.

NOTE: Authority cited: Sections 901 and 1614 ~~and 901~~, Business and Professions Code. Reference: Section 901, Business and Professions Code.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2300 F (916) 263-2140 | www.dbc.ca.gov

REGISTRATION OF SPONSORING ENTITY UNDER BUSINESS & PROFESSIONS CODE SECTION 901

In accordance with California Business and Professions Code Section 901(d), a non-government organization administering an event to provide health care services to uninsured and underinsured individuals at no cost may include participation by certain health care practitioners licensed outside of California if the organization registers with the California licensing authorities having jurisdiction over those professions. This form shall be completed and submitted by the sponsoring organization **at least 90 calendar days prior to the sponsored event**. *Note that the information required by Business and Professions Code Section 901(d) must also be provided to the county health department having jurisdiction in each county in which the sponsored event will take place.* Only one form (per event) should be completed and submitted.

PART 1 – ORGANIZATIONAL INFORMATION

1. Organization Name: _____

2. Organization Contact Information (*use principal office address*):

Address Line 1	Phone Number of Principal Office
Address Line 2	Alternate Phone
City, State, Zip	Website
County	

Organization Contact Information in California (*if different*):

Address Line 1	Phone Number
Address Line 2	Alternate Phone
City, State, Zip	
County	

3. Type of Organization:

Is the organization operating pursuant to Section 501(c)(3) of the Internal Revenue Code?
____ Yes ____ No

If not, is the organization a community-based organization*?
____ Yes ____ No

Organization's Tax Identification Number _____

If a community-based organization, please describe the mission, goals and activities of the organization (*attach separate sheet(s) if necessary*): _____

_____

_____

_____

_____

_____

_____

* A "community based organization" means a public or private nonprofit organization that is representative of a community or a significant segment of a community, and is engaged in meeting human, educational, environmental, or public safety community needs.

PART 2 – RESPONSIBLE ORGANIZATION OFFICIALS

Please list the following information for each of the principal individual(s) who are the officers or officials of the organization responsible for operation of the sponsoring entity.

Individual 1:

Name	Title
Address Line 1	Phone
Address Line 2	Alternate Phone
City, State, Zip	E-mail address
County	

Individual 2:

Name	Title
Address Line 1	Phone
Address Line 2	Alternate Phone
City, State, Zip	E-mail address
County	

Individual 3:

Name	Title
Address Line 1	Phone
Address Line 2	Alternate Phone

City, State, Zip E-mail address

_____

County

(Attach additional sheets if needed to list additional principal organizational individuals)

PART 3 – EVENT DETAILS

1. Name of event, if any: _____

2. Date(s) of event (not to exceed ten calendar days): _____

3. Location(s) of the event (be as specific as possible, including address):

_____
_____
_____
_____

4. Describe the intended event, including a list of all types of healthcare services intended to be provided (*attach additional sheet(s) if necessary*): _____
_____
_____
_____
_____
_____
_____

5. Attach a list of all out-of-state health care practitioners who you currently believe intend to apply for authorization to participate in the event. The list should include the name, profession, and state of licensure of each identified individual.

___ *Check here to indicate that list is attached.*

6. Please check each licensing authority that will have jurisdiction over an out-of-state licensed health practitioner who intends to participate in the event:

___ Acupuncture Board
___ Board of Behavioral Sciences
___ Board of Chiropractic Examiners
___ Dental Board
___ Dental Hygiene Committee
___ Medical Board
___ Naturopathic Medicine Committee
___ Board of Occupational Therapy
___ Board of Optometry
___ Osteopathic Medical Board
___ Board of Pharmacy
___ Physician Assistant Committee
___ Physical Therapy Board
___ Board of Podiatric Medicine
___ Board of Psychology
___ Board of Registered Nursing
___ Respiratory Care Board
___ Speech-Language Pathology, Audiology & Hearing Aid Dispensers Board
___ Veterinary Medical Board
___ Board of Vocational Nursing & Psychiatric Technicians

Note:

- Each individual out-of-state practitioner must request authorization to participate in the event by submitting an application (Form DBC- 901-B(02/2011)) to the Board.
- The organization and the applicant will be notified in writing by the Board whether authorization for an individual out-of-state practitioner has been granted.
- I understand the recordkeeping requirements imposed by California Business and Professions Code Section 901 and Title 16, California Code of Regulations Section 1023.16 to maintain records both at the sponsored event and for five (5) years in California.
- I understand that our organization must file a report with each applicable board/committee within fifteen (15) calendar days of the completion of the event.

This form, and any attachments, shall be submitted to the following addresses:

Department of Consumer Affairs
Attn: ~~[Executive Office]~~
Sponsored Free Health Care Events
1625 North Market Blvd.
Sacramento, CA 95834

Dental Board of California
Attn: Licensing & Examinations Unit
2005 Evergreen Street, Suite 1550
Sacramento, CA 95815

Questions regarding the completion of this form should be directed to: the Licensing and Examinations Unit of the Dental Board of California at the address listed above, or by phone or email as follows:

Phone: (916) 263-2300 or 877-729-7789
E-mail: dentalboard@dca.ca.gov

I certify under penalty of perjury that the information provided on this form and any attachments is true and current and that I am authorized to sign this form on behalf of the organization:

Name Printed	Title
Signature	Date

NOTICE OF COLLECTION OF PERSONAL INFORMATION

Disclosure of your personal information is mandatory. The information on this form is required pursuant to Title 16, California Code of Regulations Sections 1023.16 and Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected or denied as incomplete. The information provided will be used to determine compliance with Article 8 of Division 10 of Title 16 of the California Code of Regulations (beginning at Section 1023.15). The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the Board, unless the records are exempted from disclosure by Section 1798.40 of the Civil Code. Individuals may obtain information regarding the location of his or her records by contacting the Executive Officer at the Board at the address and telephone number listed above.

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REQUEST FOR AUTHORIZATION TO PRACTICE WITHOUT A LICENSE AT A REGISTERED FREE HEALTH CARE EVENT

In accordance with California Business and Professions Code Section 901 any dentist licensed/certified and in good standing in another state, district, or territory in the United States may request authorization from the Dental Board of California (Board) to participate in a free health care event offered by a sponsoring entity, registered with the Board pursuant to Section 901, for a period not to exceed ten (10) days. The Board may deny requests for authorization received less than twenty (20) calendar days before the date on which the sponsored event will begin.

Note: If you are submitting fingerprint cards to the Board ("Ink on Cards") along with your application, the Board recommends that you submit your completed application package to the Board at least 60 days prior to the scheduled event to assist in the timely processing of your fingerprint submissions through the California Department of Justice and Federal Bureau of Investigation.

PART 1 - APPLICATION INSTRUCTIONS

An application must be complete and must be accompanied by all of the following:

- A processing fee of $~~100~~30, made payable to the Dental Board of California. If submitting fingerprint cards instead of using Live Scan, please submit an additional $51 fee, payable to the Dental Board of California, to process your fingerprint cards for a total fee of **$~~151~~81**. See additional details below.
- A copy of each current, active and valid ~~and current~~ license and/or certificate authorizing the applicant to engage in the practice of dentistry issued by any state, district, or territory of the United States.
- A copy of a valid photo identification of the applicant issued by one of the jurisdictions in which the applicant holds a license or certificate to practice.
- ~~Copies of Certificates of Completion showing at least 50 units of continuing education within two years of the date of this application.~~
- Any documents or statements requested on this application.
- Fingerprints. Fingerprints can be done with electronic Live Scan or ink on cards.

Live Scan is available only in California, for either residents or visitors, and is far speedier. The California Department of Justice (DOJ) has the form you need to complete and take to the Live Scan service location in California, and a list of the locations where it is obtainable (see ag.ca.gov/fingerprints). The procedure is that you take the completed form to the service location, pay a fee and your fingerprints are taken on a glass without ink. The fingerprints are then transmitted electronically to the DOJ, and the DOJ sends the report to the Dental Board. Usually the report is received within two days. There is a low rate of rejections with this method.

Ink on Cards. If you are not able to come to California, you may contact the Board to obtain a copy of California "Ink on Cards" to have fingerprints made – 2 cards. Other States' resident Ink Cards will not be accepted. ***Be sure to type or print legibly in black ink all the areas on both cards asking for personal information, that the cards are dated and signed by the official taking the fingerprints, and have your signature on them.*** Include the 2 cards in your application with a $51 non-refundable processing fee. Reports on some cards are received within a month after submission. Others may take many months due to needing to be repeated because of unreadable prints or other factors beyond the control of the Dental Board.

The Board will not grant authorization until this form has been completed in its entirety, all required enclosures have been received by the Board, and any additional information requested by the Board has been provided by the applicant and reviewed by the Board, and a determination has been made to grant authorization.

The Board shall process this request and notify the sponsoring entity listed in this form if the request is approved or denied within 20 calendar days of receipt. If the Board requires additional or clarifying information, the board will contact you directly. Written approval or denial of requests will be provided directly to the sponsoring entity and to the applicant.

PART 2 – NAME AND CONTACT INFORMATION

1. Applicant Name: _____
First Middle Last

2. Social Security Number: ____ - ___ - _____ Date of Birth: _____

3. Applicant's Contact Information*:

Address Line 1	Phone
Address Line 2	Alternate Phone
City, State, Zip	E-mail address

(*If an authorization is issued, this address information will be considered your "address of record" with the Board and will be made available to the public upon request.)

4. Applicant's Employer : _____

Employer's Contact Information:

Address Line 1	Phone
Address Line 2	Facsimile
City, State, Zip	E-mail address (if available)

PART 3 – LICENSURE INFORMATION

1. Do you hold a current license, certification, or registration issued by a state, district, or territory of the United States authorizing the unrestricted practice of dentistry in your jurisdiction(s)?

No ☐ If no, you are not eligible to participate as an out-of-state practitioner in the sponsored event.

Yes ☐ If yes, list every license, certificate, and registration authorizing you to engage in the practice of dentistry in the following table. If there are not enough boxes to include all the relevant information please attach an addendum to this form. Please also attach a copy of each of your current licenses, certificates, and registrations.

State/ Jurisdiction	Issuing Agency/Authority	License Number	Expiration Date

~~2. CONTINUING EDUCATION. Provide copies of certificates of completion. Do not send originals.~~

~~3~~2. Are you currently the subject of any investigation by any governmental entity? Yes ☐ No ☐
If yes, provide a detailed explanation of the circumstances surrounding the investigation.

~~4~~3. Have you ever had charges filed against a dental license that you currently hold or held in the past, including charges that are still pending? Yes ☐ No ☐

If yes, provide a detailed explanation and a copy of the documents relating to the filing of charges.

~~5~~4. Have you ever had any disciplinary action taken against a dental license or other healing arts license? Yes ☐ No ☐

Disciplinary action includes, but is not limited to, suspension, revocation, probation, confidential discipline, consent order, letter of reprimand or warning, or any other restriction or action taken against a dental license. If yes, provide a detailed explanation and a copy of all documents relating to the disciplinary action.

~~6~~5. Have you ever surrendered a dental license, either voluntary or otherwise? Yes ☐ No ☐

If yes, provide a detailed explanation and a copy of all documents relating to the surrender.

~~7~~6. Have you ever been the subject of a malpractice settlement or judgment? Yes ☐ No ☐

If yes, provide a detailed explanation of the circumstances and outcome relating to the malpractice settlement of judgment. You may be required to provide additional information after review of your explanation.

IMPORTANT REQUIREMENT: If a disciplinary action is filed against any license you currently hold pending the Board's decision on this application for authorization, you must notify the Board in writing within 48 hours.

~~8~~7. With the exception of conviction of an infraction resulting in a fine of less than $1,000, have you ever been convicted of any crime, including an infraction, misdemeanor or felony? Yes ☐ No ☐

"Conviction" includes a plea of no contest and any conviction that has been set aside pursuant to Section 1203.4 of the Penal Code. Therefore, you must disclose any convictions in which you entered a plea of no contest and any convictions that were subsequently set aside pursuant to Section 1203.4 of the Penal Code.

~~9~~8. Do you have a permit to prescribe controlled substances from the Federal Drug Enforcement Agency (DEA)? If Yes, enter DEA number: _____ Yes ☐ No ☐

~~10~~9. Has permission from the DEA to prescribe controlled substances ever been suspended, revoked or denied? Yes ☐ No ☐

If yes, provide a detailed explanation of the circumstances and a copy of the document(s).

~~11~~12. Do you have a current physical or mental impairment related to drugs or alcohol? Yes ☐ No ☐

~~12~~11. Have you been adjudicated by a court to be mentally incompetent or are you currently under a conservatorship? Yes ☐ No ☐

If yes, provide a detailed explanation of the circumstances, date and time of the court order or the duration of the conservatorship.

PART 4 – SPONSORED EVENT

1. Name of non-profit or community-based organization hosting the free healthcare event (the "sponsoring entity"): _____

2. Name of event: _____

3. Date(s) & location(s) of the event: _____

_____

4. Date(s) & location(s) applicant will be performing healthcare services (if different):

_____

_____

5. Please specify the healthcare services you intend to provide: _____

_____

_____

_____

6. Name and phone number of contact person with sponsoring entity: _____

PART 5 – ACKNOWLEDGMENT/CERTIFICATION

I, the undersigned, declare under penalty of perjury under the laws of the State of California and acknowledge that:

- I will comply with all applicable practice requirements required of licensed dentists and all regulations of the Board.
- In accordance with Business and Professions Code Section 901(i), I will only practice within the scope of my licensure and/or certification and within the scope of practice for California-licensed dentists.
- I will provide the services authorized by this request and Business and Professions Code Section 901 to uninsured and underinsured persons only and shall receive no compensation for such services.
- I will provide the services authorized by this request and Business and Professions Code Section 901 only in association with the sponsoring entity listed herein and only on the dates and at the locations listed herein for a period not to exceed 10 calendar days.
- I will provide a written notice to each patient or prospective patient prior to performing any services pursuant to Cal, Code of Regs., Title 16, Section 1023.19
- I am responsible for knowing and complying with California law and practice standards while participating in a sponsored event located in California.
- Practice of a regulated profession in California without proper licensure and/or authorization may subject me to potential administrative, civil and/or criminal penalties.
- The Board may notify the licensing authority of my home jurisdiction and/or other appropriate law enforcement authorities of any potential grounds for discipline associated with my participation in the sponsored event.
- I have read the questions in the foregoing application and that all information provided by me in this application is true and complete to the best of my knowledge. By submitting this application and signing below, I am granting permission to the Board to verify the

information provided and to perform any investigation pertaining to the information I have provided as the Board deems necessary.

My signature on this application, or copy thereof, authorizes the National Practitioner Data Bank and the Federal Drug Enforcement Agency to release any and all information required by the Dental Board of California.

_____ _____

Signature Date

Name Printed: _____

NOTE: Authorization will not be issued until clearance has been received from the California Department of Justice and the Federal Bureau of Investigation.

NOTICE OF COLLECTION OF PERSONAL INFORMATION

Disclosure of your personal information is mandatory. The information on this application is required pursuant to Title 16, California Code of Regulations Section 1023.17 and Business and Professions Code section 901. Failure to provide any of the required information will result in the form being rejected as incomplete or denied. The information provided will be used to determine compliance with Article 8 of Division 10 of Title 16 of the California Code of Regulations (beginning at Section 1023.15). The information collected may be transferred to other governmental and enforcement agencies. Individuals have a right of access to records containing personal information pertaining to that individual that are maintained by the Board, unless the records are exempted from disclosure by Section 1798.40 of the Civil Code. Individuals may obtain information regarding the location of his or her records by contacting the Executive Officer at the Board at the address and telephone number listed above.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P 916-263-2300 F 916-263-2140 www.dbc.ca.gov

MEMORANDUM

DATE	February 10, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 3(B):** Discussion and Possible Action Regarding Adoption of Proposed Additions to Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

Background:
Following the Board's consideration of comments received during the required 45-day public comment period, the Board may hold discussion and take action to adopt proposed amendments to California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18 relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events.

Action Requested:
Depending on the Board's response to the comments received, staff requests the Board take one of the following actions:

A. If the Board rejects the comments received, then the Board would:
Adopt the final text as noticed and direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law and authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18 relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events.

B. If the Board accepts any comments received or modifies the text to include the staff's recommended changes, then the Board would:
Modify the text in response to the comments and recommendations received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the board at this meeting. If after the 15-day public

comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18 as noticed in the modified text relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events.

If the Board votes to accept comments received or modifies the text to include the recommended changes, staff will notice the modified text for 15-day public comment by March 2nd. Staff recommends the Board hold a special teleconference meeting, if needed, to respond to any adverse comments that may be received during the modified text public comment period to expedite the adoption of these regulations.

If no adverse comments are received after the 15-day public comment period, there will be no need for the Board to hold a special teleconference meeting, since the Board would have adopted the modified text as the final text at the February Board meeting.

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NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of Examination Committee of the Dental Board of California will be held as follows:

NOTICE OF EXAMINATION COMMITTEE MEETING

Thursday, February 23, 2012
Upon Conclusion of Closed Session
Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101
619-232-3861 or 916-263-2300

EXAMINATION COMMITTEE
Chair – Stephen Casagrande, DDS
Vice Chair – Steven Morrow, DDS
John Bettinger, DDS
Rebecca Downing, Public Member
Judy Forsythe, RDA
Suzanne McCormick, DDS

CALL TO ORDER

ROLL CALL AND ESTABLISHMENT OF QUORUM

EX 1 – Approval of the November 7, 2011 Examination Committee Meeting Minutes

EX 2 – Dental Assisting Program Examination Statistics

EX 3 – Update on Registered Dental Assistant (RDA) Written Examination

EX 4 – Western Regional Examination Board (WREB) Statistics and Update

PUBLIC COMMENT

ADJOURNMENT

Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the Committee Chair. For verification of the meeting, call (916) 263-2300 or access the Board's web site at **www.dbc.ca.gov**. The meeting facilities are accessible to individuals with physical disabilities. Please make any request for accommodations to Richard DeCuir at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, no later than one week prior to the day of the meeting.

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Examination Committee
Meeting Minutes
Monday, November 7, 2011

Sportsmen's Lodge, 12825 Ventura Blvd.
Studio City, CA 91604
DRAFT

Members Present:
Stephen Casagrande, DDS, Chair
Huong Le, DDS, Vice Chair
Luis Dominicis, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA
Steven Morrow, DDS
Thomas Olinger, DDS

Members Absent:

Staff Present:
Richard DeCuir, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Dental Assisting Program Manager
Teri Lane, Supervising Investigator I
Jocelyn Campos, Enforcement Coordinator
Adrienne Mueller, Enforcement Analyst
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Roll Call and Establishment of Quorum:
Dr. Stephen Casagrande, Chair called the meeting to order at 12:05 p.m. and established a quorum.

EX 1 – Approval of the August 11, 2011 Examination Committee Meeting Minutes
M/S/C (Morrow/Forsythe) to approve the August 11, 2011 Examination Committee meeting minutes. The motion passed unanimously. There was 1 abstention.

EX 2 – Dental Assisting Program Examination Statistics
Dr. Olinger commented that the first time pass rate of 77% for the Registered Dental Assistant Examination is a great improvement. Dr. Morrow stated that the repeat candidate statistic of only 55% is dismal and he suggested setting a limit as to how many times a candidate can take and fail an exam without remediation. Dr. Casagrande stated that the cost of the exam and travel to take the exam is probably deterrent enough. Dr. Dominicis stated that many of the English as a Second Language (ESL) candidates must repeat because of the language barrier. He does not want to put up obstacles. Mr. DeCuir stated that within the next year or two an occupational analysis will be done to compare what is on the examination to what is actually being done in an office setting. He suggests waiting until the analysis is complete before making any changes.

Earl Johnson DDS, California Orthodontic Association stated that the California Orthodontic Assistant (OA) examination is new but he is concerned about the low pass rate and that the exam might not be fully tuned. Mr. DeCuir stated that he went out to bid on a contract to review the OA exam. The bid was awarded last week. Dr. Johnson asked if it was awarded to a different vendor and Mr. DeCuir replied yes.

EX 3 – Update on RDA Practical Examination Dates and Sites

Dawn Dill, Dental Assisting Program Manager reported that at the August 2011 Examination Committee meeting Ms. Forsythe asked staff to look at alternate testing sites in Southern San Diego County and north of Sacramento. Ms. Dill ran a geographical survey of the August 2011 examination candidates to determine appropriate test locations. The data showed that the existing examination sites in San Francisco, Santa Maria and Pomona accurately reflect the geographical testing needs of examination candidates.

Dr. Casagrande stated that we should think out of the box to secure a Sacramento site. He suggested using smaller sites with multiple test dates or possibly a facility such as Carrington College. Ms. Dill stated that our pool of examiners is not large enough to add more dates and sites. Every examiner is working every Examination on the 2012 calendar. Mr. DeCuir stated that we will look into Sacramento and San Diego sites.

Dr. Lori Gagliardi, California Association of Dental Assisting Teachers (CADAT) commended staff for securing the Pomona site but feels that there is still a need for additional dates and sites in Sacramento and San Diego to accommodate all the candidates.

EX 4 – Update on Registered Dental Assistant (RDA) Written Examination

Mr. DeCuir reported that at the last meeting Tracy Montez of Applied Measurement provided some statistics. She was asked to provide further clarification on those statistics which was provided in the meeting packet. Mr. DeCuir stated that in order to provide a comprehensive, current examination an occupational analysis needs to be done to insure that what is being tested reflects the duties being performed in dental practices.

EX 5 – Update on Orthodontic Assistant Written Examination

Mr. DeCuir reported that the bid for this contract was awarded the week of November 1, 2011. Work on this is expected to begin in January 2012.

EX 6 – Cost Analysis of RDA Practical and RDAEF Examinations

Mr. DeCuir reported that on the previous report we were only reporting direct costs but the information provided in the report for this meeting includes prorated and overhead expenses which gives a more realistic cost estimate. There was discussion surrounding the costs for various sites and the number of candidates tested at these sites. Staff will review the possibility and cost effectiveness of contracting with different facilities.

EX 7 – Western Regional Examination Board (WREB) Statistics and Update

Dr. Dominicis reported that WREB will examine approximately 2,450 candidates by the end of December which will conclude the 2011 exam cycle. Currently 37 states accept WREB results for their licensure. The 2011 pass rate remains the same as last year at 82.5%. There were a total of 7 examination appeals of which 5 were denied. Candidates receive their examination scores within a week now that the exam is scored electronically. The next WREB Board meeting is in January 2012. Dr. Morrow stated that at the last Loma Linda Examination he was asked to encourage California Dental Board members to become WREB examiners.

Public Comment:

There was no public comment.

Adjournment:

The meeting adjourned at 1:04 p.m.

DRAFT

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MEMORANDUM

DATE	February 3, 2012
TO	Examination Committee Dental Board of California
FROM	Dawn Dill, Manager, Dental Assisting Program
SUBJECT	**Agenda Item EX 2:** Dental Assisting Program Examination Statistics

Written Examination Statistics for 2011 ALL CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
RDA	2,597	70%	30%
RDA Law & Ethics	2,910	69%	31%
RDAEF	69	59%	41%
Orthodontic Assistant	27	59%	41%
Dental Sedation Assistant	21	71%	29%

Written Examination Statistics for 2011 FIRST TIME CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
RDA	1,847	77%	23%
RDA Law & Ethics	2,206	72%	28%
RDAEF	44	66%	34%
Orthodontic Assistant	21	67%	33%
Dental Sedation Assistant	17	76%	24%

Written Examination Statistics for 2011 REPEAT CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
RDA	750	54%	46%
RDA Law & Ethics	704	57%	43%
RDAEF	18	48%	52%
Orthodontic Assistant	5	33%	67%
Dental Sedation Assistant	4	50%	50%

Written Examination Statistics for 2012 ALL CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
*RDA	224	*	*
RDA Law & Ethics	232	67%	33%
RDAEF	1	0%	100%
Orthodontic Assistant	0	0%	0%
Dental Sedation Assistant	0	0%	0%

Written Examination Statistics for 2012 FIRST TIME CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
*RDA	173	*	*
RDA Law & Ethics	184	73%	27%
RDAEF	0	0%	0%
Orthodontic Assistant	0	0%	0%
Dental Sedation Assistant	0	0%	0%

Written Examination Statistics for 2012 REPEAT CANDIDATES

Written Exam	Total Candidates Tested	% Passed	% Failed
*RDA	51	*	*
RDA Law & Ethics	48	44%	56%
RDAEF	1	0%	100%
Orthodontic Assistant	0	0%	0%
Dental Sedation Assistant	0	0%	0%

*No results will be released until the updated RDA Written examination is validated.

RDA Practical Examination Statistics for 2011 ALL CANDIDATES

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDA – February	263	86%	14%
RDA – April North	244	84%	16%
RDA – April South	291	77%	23%
RDA – August North	441	90%	10%
RDA – August Central	227	85%	15%
RDA – August South	438	84%	16%
RDA – Nov - North	367	87%	13%
RDA – Nov - South	483	79%	21%
Total for Year	2,754	84%	16%

RDA Practical Examination Statistics for 2011 FIRST TIME CANDIDATES

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDA – February	192	93%	7%
RDA – April North	192	93%	7%
RDA – April South	221	84%	16%
RDA – August North	404	92%	8%
RDA – August Central	221	84%	16%
RDA – August South	364	85%	15%
RDA – Nov - North	316	87%	13%
RDA – Nov - South	399	78%	22%
Total for Year	2,309	86%	14%

RDA Practical Examination Statistics for 2011 REPEAT CANDIDATE

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDA – February	71	66%	34%
RDA – April North	52	52%	48%
RDA – April South	70	54%	46%
RDA – August North	37	78%	22%
RDA – August Central	6	100%	0%
RDA – August South	74	77%	23%
RDA – Nov - North	51	84%	16%
RDA – Nov - South	84	81%	19%
Total for Year	445	71%	29%

RDAEF Clinical/Practical Examination Statistics for 2011

Practical/Clinical Exam Type	Candidates Tested	% Passed	% Failed
RDAEF – March	13	92%	8%
RDAEF – May	30	73%	27%
RDAEF – Oct North	23	87%	13%
RDAEF – Oct South	16	50%	50%
Total for Year	82	76%	24%

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MEMORANDUM

DATE	February 7, 2012
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**EX 3:** Update on Registered Dental Assistant (RDA) Written Exam

At the November 2011 Board Meeting, Dr. Tracy Montez, Applied Measurement Services, LLC, provided updated statistics correlating the pass rates and qualifications methods for the Registered Dental Assisting (RDA) written examination.

The Beta testing results for the Registered Dental Assistant (RDA) examination are not yet completed. A report will be provided at the next meeting.

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MEMORANDUM

DATE	February 1, 2012
TO	Examination Committee Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**EX 4:** Western Regional Examination Board (WREB) Statistics and Update

Dr. Suzanne McCormick will give a verbal report.

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NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of Licensing, Certification and Permits Committee of the Dental Board of California will be held as follows:

NOTICE OF LICENSING, CERTIFICATION AND PERMITS COMMITTEE MEETING

Thursday, February 23, 2012

Upon Conclusion of Examination Committee Meeting
Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101
619-232-3861 or 916-263-2300

LICENSING, CERTIFICATION, AND PERMITS COMMITTEE
Chair – Thomas Olinger, DDS
Vice Chair – Suzanne McCormick, DDS
Steve Afriat, Public Member
John Bettinger, DDS
Luis Dominicis, DDS
Judith Forsythe, RDA

CALL TO ORDER

ROLL CALL AND ESTABLISHMENT OF QUORUM

LCP 1 – Approval of the November 7, 2011 Licensing, Certification and Permits Committee Meeting Minutes

LCP 2 – Dental and Dental Assisting Program Licensure and Permit Statistics

LCP 3 – General Anesthesia/Conscious Sedation Permit Evaluation Statistics

LCP 4 – Update Regarding the General Anesthesia/Conscious Sedation (GA/CS) Calibration Courses

PUBLIC COMMENT

ADJOURNMENT

Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the Committee Chair. For verification of the meeting, call (916) 263-2300 or access the Board's web site at **www.dbc.ca.gov**. The meeting facilities are accessible to individuals with physical disabilities. Please make any request for accommodations to Richard DeCuir at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, no later than one week prior to the day of the meeting.

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Licensing, Certification and Permits Committee
Meeting Minutes
Monday, November 7, 2011

Upon Conclusion of Examination Committee Meeting
Sportsmen's Lodge, 12825 Ventura Blvd.
Studio City, CA 91604
DRAFT

Members Present:
Bruce Whitcher, DDS, Chair
Luis Dominicis, DDS, Vice Chair
Steven Afriat, Public Member
Stephen Casagrande, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA

Members Absent:
Suzanne McCormick, DDS

Staff Present:
Richard DeCuir, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Dental Assisting Program Manager
Teri Lane, Supervising Investigator I
Jocelyn Campos, Enforcement Coordinator
Adrienne Mueller, Enforcement Analyst
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Roll Call and Establishment of Quorum:
Dr. Whitcher, Chair of the Licensing, Certification and Permits Committee called the meeting to order at 2:08 p.m. and established a quorum.

LCP 1 – Approval of the August 11, 2011 Licensing, Certification and Permits Committee Meeting Minutes:
M/S/C (Afriat/Forsythe) to approve the August 11, 2011 Licensing, Certification and Permits Committee meeting minutes. The motion passed unanimously with one abstention.

LCP 2 – Dental and Dental Assisting Program Licensure and Permit Statistics:
Dr. Whitcher reviewed the statistics provided. He reported that there is less than one Registered Dental Assistant (RDA) licensee per Dental licensee and even fewer Registered Dental Hygienist (RDH) licensees.

DRAFT

LCP 3 – General Anesthesia/Conscious Sedation Permit Evaluation Statistics:
Dr. Whitcher reviewed the statistics provided. He noted that there is a great need for Conscious Sedation (C/S) evaluators in California. Approximately 40% of the Conscious Sedation Permit evaluations are postponed due to no evaluator. Dr. Whitcher suggested sending out a letter to all the Conscious Sedation Permit holders requesting they consider becoming evaluators. Steve Afriat, Public Member suggested reaching out to the Medical Board for evaluators.

LCP 4 – Update Regarding Fingerprinting Renewal Requirements for Licensees:
Dr. Whitcher reviewed the statistics provided. He reported that information regarding Fingerprinting Requirements and Frequently Asked Questions is available on the Dental Boards' website at: www.dbc.ca.gov .

Dr. Whitcher reported on the items discussed during Closed Session.

Public Comment:
There was no public comment.

ADJOURNMENT:
The meeting was adjourned at 2:21 p.m.

DRAFT

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MEMORANDUM

DATE	February 3, 2012
TO	Licensing, Certification and Permits Committee Dental Board of California
FROM	Dawn Dill, Manager, Dental Assisting Program Donna Kantner, Manager, Licensing and Examination Unit
SUBJECT	**Agenda Item LCP 2 – Dental and Dental Assisting Program Licensure & Permit Statistics**

Following are statistics of current license/permits by type as of January 1, 2012

License Type	Active	Inactive	Delinquent	Renewal In Process	Total Current Population	Total Cancelled Since Implemented
Dental License	37,494	3,718	2,895	180	44,287	11,610
RDA Licenses	34,078	10,477	9,263	456	54,274	32,677
RDAEF Licenses	1,264	120	172	16	1,572	130
Total Licenses	72,836	14,315	12,330	652	100,133	44,417

New RDAEF licenses issued since January 1, 2010 = 63.
Existing AEF licenses enhanced since January 1, 2010 = 116.

Dental Licenses Issued via Pathway	Total Issued in 2012	Total Issued in 2011	Total Issued to Date	Date Pathway Implemented
California Exam	0	0	53,977	Prior to 1929
WREB Exam	43	632	4,096	January 1, 2006
Licensure by Residency	7	181	716	January 1, 2007
Licensure by Credential	12	164	2,261	July 1, 2002
LBC Clinic Contract	0	5	24	July 1, 2002
LBC Faculty Contract	0	0	3	July 1, 2002

Status Definition

License/Permit /Certification/Registration Type	Current Active Permits	Delinquent	Total Cancelled Since Implemented
Additional Office Permit	2,016	451	4,966
Conscious Sedation Permit	469	23	277
Continuing Education Registered Provider Permit	1,305	573	1,163
Elective Facial Cosmetic Surgery Permit	19	0	0
Extramural Facility Registration	*140	n/a	n/a
Fictitious Name Permit	5,044	895	3,427
General Anesthesia Permit	810	17	730
Mobile Dental Clinic Permit	21	12	21
Medical General Anesthesia Permit	68	16	131
Oral Conscious Sedation Certification (Adult Only 1,087; Adult & Minors 1,128)	2,215	358	110
Oral & Maxillofacial Surgery Permit	85	3	10
Referral Service Registration	*285	n/a	n/a
Special Permits	30	10	151
Dental Sedation Assistant Permit	4	0	0
Orthodontic Assistant Permit	16	0	0

*Current population numbers for Extramural Facilities and Referral Services are approximated because they are not automated programs.

General Anesthesia Permits - Since the Board's last meeting, the numbers above reflect an increase of two Active permits, two additional Delinquent, and no change Cancelled.

Conscious Sedation Permits – Since the Board's last meeting, the numbers above show an increase of six permits, five additional Delinquent, and no change Cancelled.

Oral Conscious Sedation Permits – Since the Board's last meeting, the numbers above show an increase of two Adult Only Permits and an increase of thirteen Adult and Minors Permits. 21 permits have become Delinquent since the last report and four permits have been Cancelled.

Cancelled Status – In November 2009, the definition of Cancelled status on the Board's website was updated as follows:

- A licensee may choose to cancel a permit. Cancellation of a permit by the licensee means that the permit is no longer required or needed. A Board issued permit may be cancelled or delinquent while the dental license is current and valid for practice.
- A permit is cancelled if it is delinquent for five (5) years or the Board has cause. This Permit is cancelled and no longer valid.
- You may contact the Board to see why the permit was cancelled

Business and Professions Code Section 1718 allows renewal of a license within 5 years of expiration. Section 1718.3 prohibits a license from being "renewed, restored reinstated or reissued" upon cancellation.

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MEMORANDUM

DATE	February 2, 2012
TO	Dental Board Members
FROM	Jessica Olney, Associate Governmental Program Analyst Dental Board of California
SUBJECT	**Agenda Item: LCP 3:** General Anesthesia/Conscious Sedation/Medical General Anesthesia Evaluation Statistics

2011-2012 Statistical Overview of the On-Site Inspections and Evaluations Administered by the Board

General Anesthesia Evaluations

	Pass Eval	Fail Eval	Permit Cancelled / Non Compliance	Postpone no evaluators	Postpone by request	Permit Canc by Request
January	13	0	1	3		0
February	13	0	0	2		0
March	18	0	1	3		0
April	18	1	0	0		0
May	11	0	0	4		0
June	12	0	4	2		2
July	10	0	1	4		5
August	5	0	0	3	2	2
September	13	0	0	4	8	0
October	16	0	0	2	3	0
November	15	0	0	0	7	0
December	7	0	0	1	2	5
January*	12	0	0	1	2	1
February*	16	0	0	0	1	0
Total	**179**	**1**	**7**	**29**	**25**	**15**

***Approximate schedule for January/February

Conscious Sedation Evaluations

	Pass Eval	Fail Eval	Permit Cancelled / Non Compliance	Postpone no evaluators	Postpone by request	Permit Canc by Request
January	1	0	0	3		0
February	7	0	0	0		0
March	2	0	0	2		0
April	4	0	0	1		0
May	4	0	0	4		0
June	5	0	0	3		2
July	6	0	0	1		0
August	4	0	0	1	3	0
September	2	1	0	1	2	1
October	4	1	0	0	0	0
November	9	1	0	0	1	0
December	1	0	1	1	1	0
January	2	0	0	1	1	0
February	8	0	0	0	0	0
Total	**59**	**3**	**1**	**18**	**8**	**3**

*Approximate schedule for January/February

There is a great need for conscious sedation evaluators throughout California. Several evaluations have been postponed recently due to a lack of available evaluators. The Board is actively recruiting for the evaluation program.

Medical General Anesthesia Evaluations

	Pass Eval	Fail Eval	Permit Cancelled / Non Compliance	Postpone no evaluators	Postpone by request	Permit Canc by Request
January	1	0	0	0		0
February	1	0	0	0		0
March	1	0	1	1		0
April	1	0	1	0		0
May	0	0	1	2		0
June	1	0	0	0		0
July*	2	0	0	0		0
August	0	0	0	0		0
September	0	0	0	0	3	0
October	1	0	0	1	1	0
November	1	0	0	0	0	0
December	0	0	0	1	0	0
January*	1	0	0	1	0	0
February*	1	0	0	0	0	0
Total	**11**	**0**	**3**	**6**	**4**	**0**

*Approximate schedule for January/February

Evaluators Approved after November 2011

Region	GA	CS	MGA
Northern California	0	0	0
Southern California	1	3	0

Pending Evaluator Applications*

Region	GA	CS	MGA
Northern California	1	0	0
Southern California	1	3	0

*Deficient, or do not meet 3 year requirement.

Current Evaluators per Region

Region	GA	CS	MGA
Northern California	155	69	15
Southern California	199	88	14

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Dental Board of California
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MEMORANDUM

DATE	February 2, 2012
TO	Dental Board Members
FROM	Jessica Olney, Associate Governmental Program Analyst Dental Board of California
SUBJECT	**Agenda Item: LCP 4:** Evaluator Calibration Courses

The following dates have been scheduled for the 2012 General Anesthesia/Conscious Sedation/Medical General Anesthesia Evaluator Calibration Training Courses:

Wednesday March 14, 2012
Crowne Plaza Hotel, Union City
32083 Alvarado Niles Road
Union City CA 94587
GA/CS Course: 1:30-3:30p.m.
CS Course: 4:00-5:30p.m.

Wednesday May 2, 2012
Anaheim Hilton Hotel, Anaheim
777 Convention Way
Anaheim CA 92802
GA/CS Course: 1:30-3:30p.m.
CS Course: 4:00-5:30p.m.

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NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of the Dental Assisting Committee of the Dental Board of California will be held as follows:

NOTICE OF DENTAL ASSISTING COMMITTEE MEETING

Thursday, February 23, 2012
Upon Conclusion of Licensing, Certification and Permits Committee Meeting
Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101
619-232-3861 or 916-263-2300

DENTAL ASSISTING COMMITTEE
Chair – Judith Forsythe, RDA, Chair
Vice Chair – Bruce Whitcher, DDS
Fran Burton, Public Member
Luis Dominicis, DDS
Huong Le, DDS
Tom Olinger, DDS

CALL TO ORDER

ROLL CALL AND ESTABLISHMENT OF QUORUM

DA 1 – Approval of the November 7, 2011 Dental Assisting Committee Meeting Minutes

DA 2 – Update Regarding Status of Dental Assisting Programs and Courses

DA 3 – Update from Subcommittee Regarding the Survey of Registered Dental Assistants in Extended Functions (RDAEF) Licensees for the Purpose of Analysis of Workforce and Barrier to Care Issues

DA 4 – Discussion and Possible Action Regarding the Possibility of Splitting the RDAEF Examination into Two Separate Parts

PUBLIC COMMENT

ADJOURNMENT

Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the Committee Chair. For verification of the meeting, call (916) 263-2300 or access the Board's web site at **www.dbc.ca.gov**. The meeting facilities are accessible to individuals with physical disabilities. Please make any request for accommodations to Richard DeCuir at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, no later than one week prior to the day of the meeting.

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Dental Assisting Committee
Meeting Minutes
Monday, November 7, 2011

Sportsmen's Lodge, 12825 Ventura Blvd.
Studio City, CA 91604
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Members Present:
Judith Forsythe, RDA, Chair
Bruce Whitcher, DDS, Vice Chair
Fran Burton, Public Member
Luis Dominicis, DDS
Huong Le, DDS
Thomas Olinger, DDS

Members Absent:

Staff Present:
Richard DeCuir, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Dental Assisting Program Manager
Teri Lane, Supervising Investigator I
Jocelyn Campos, Enforcement Coordinator
Adrienne Mueller, Enforcement Analyst
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Roll Call and Establishment of Quorum:
Judith Forsythe, Chair called the meeting to order at 2:25 p.m. and established a quorum.

DA 1 – Approval of the August 11, 2011 Dental Assisting Committee Meeting Minutes
M/S/C (Le/Olinger) to accept the August 11, 2011 Dental Assisting Committee Meeting minutes. The motion was approved unanimously.

DA 2 – Update Regarding Status of Dental Assisting Programs and Courses
Dawn Dill, Dental Assisting Program Manager, reported that the new regulations for the Registered Dental Assisting Educational Programs will be effective Friday, November 11, 2011. There are 9 new applications being reviewed that will require site visits. There are 5 applications that will be sent an approval letter on November 11, 2011. All providers of dental assisting programs and courses affected by the new regulations, who currently possess Board approval, will be informed and sent a notice of compliance, which must be returned within 90 days of the effective date. All pending applicants affected by the new regulations will be notified of the adoption of the new requirements and informed to update their applications to comply with the new requirements.

Fran Burton asked that the city name be added to each of the Pending List Providers and that the primary location for multiple site providers be indicated.

DA 3 – Update from Subcommittee Regarding the Survey of Registered Dental Assistants in Extended Functions (RDAEF) Licensees for the Purpose of Analysis of Workforce and Barrier to Care Issues

Judith Forsythe reported for the subcommittee of herself and Dr. Whitcher that they are using Survey Monkey, a web-based survey developer, to aid in the administration of the revised survey. The Board does not collect email addresses from licensees; therefore, mailing labels will be created to send to all RDAEF licensees requesting participation in completing the survey via Survey Monkey.

Kristy Shellans, Legal Counsel, suggested a disclaimer be included in the letter stating that the survey is voluntary and would be to assist OSHPD in the collection of workforce data.

There was discussion as to how to assimilate the information gathered. Ms. Forsythe stated that they would let the full Board decide.

DA 4 – Discussion and Possible Action Regarding Consideration of the Dental Assisting National Board (DANB) CPR List of Recognized Providers for Use by California Registered Dental Assistant Programs

Ms. Forsythe stated that the California Association of Dental Assisting Teachers (CADAT) requested that this item be placed on the agenda.

Lori Gagliardi, CADAT, stated that the issue of CPR providers came up because there are providers other than the American Red Cross (ARC) and American Heart Association (AHA) that are acceptable for renewal but not for initial application. CADAT believes that providers recognized by the Dental Assisting National Board (DANB) meet the same standard and would like to have the courses considered equivalent.

The new regulations that became effective November 11, 2011 require a RDA program to provide a course in Basic Life Support (BLS) by an instructor approved by ARC or AHA, or any other course approved by the Board as equivalent (Ca. Code of Regs., Title 16, Section 1070.2(d)(9)(D)).

Richard DeCuir, Executive Officer, stated that he was informed by CADAT that the DANB approved BLS providers issue ARC or AHA certification cards.

Ms. Shellans stated that the regulation states ….or any other course approved by the Board as equivalent. The Board needs to develop a standardization of what's equivalent and what is acceptable evidence for proof of certification through regulations.

Dr. Whitcher suggested putting that on the list for the next time a rulemaking is done for Dental Assisting.

Ms. Shellans stated that her interpretation is that if an instructor is certified by ARC or AHA then it's acceptable.

Dr. Whitcher suggested that in the interim, if instructors provide proof such as verification that they are ARC or AHA certified on ARC or AHA letterhead, they would be approved.

Dawn Dill stated that a letter to the course providers asking for proof of certification could be sent out and posted on our website along with an email blast. She further stated that if students provided this certification with their application for examination it would not require any additional staff time.

Dr. Whitcher offered to help craft a letter to the course providers.

M/S/C (Whitcher/Burton) to direct staff to conduct outreach to course providers to insure that students have evidence that instructors of Basic Life Support courses provide suitable documentation of American Red Cross or American Heart Association certification. The motion passed unanimously.

DA 5 – Discussion and Possible Action Regarding the Possibility of Splitting the RDAEF Examination into Two Separate Parts

Dawn Dill reported that at the last meeting the Board directed staff to study the issue of exam validity and psychometric aspects and get an opinion from the Department of Consumer Affairs, (DCA) Office of Professional Examination Services (OPES). OPES believes it is appropriate for the Board to make a determination on changing the format of the exam provided the psychometric concerns are taken into consideration. The concerns of OPES were; that the candidate maintain minimum competency between the initial (passed in part, failed in part) and final (complete passed) pair of examinations, and that a candidate may be tempted to ask a patient not to visit a dentist so that the candidate can re-administer the procedure on the patient for the next examination. There was discussion about how the exam should be split and possibly putting a timeframe on retaking the exam.

Ms. Shellans stated that there is nothing in the statute that provides for limitations on re-takes. The Board could try adopting a regulation to implement a time limitation.

Dr. Whitcher suggested that until competency becomes an issue we should just leave it open.

M/S (Whitcher/Dominicis) to split the RDAEF Examination into two parts for re-takes so that candidates only have to re-take the failed portion.

There was further discussion regarding competency and the need for a time limitation for re-taking the exam.

The vote was taken, there were 2 in favor and 3 opposed. The motion failed.

M/S/C (Burton/Olinger) to recommend to the Board that they adopt the split RDAEF examination but continue with the current requirement until a regulation for a time limit on re-taking the failed portion of the exam is in place. The motion passed 4 approved, 1 opposed.

DA 6 – Discussion and Possible Action Regarding Consideration of the Dental Assisting National Board (DANB) Certified Orthodontic Assistant Examination as an Acceptable Alternative for the Orthodontic Assistant Permit

Lori Gagliardi, CADAT, reported that the resources available to prepare for the Orthodontic Assistant Examination were either unavailable or outdated. DANB has an Orthodontic Assistant Exam that is accepted in 4 other states. She reviewed the side by side comparison provided. CADAT would like the Board to consider the DANB exam as an alternative to the current exam.

Kristy Shellans, Legal Counsel, referred the Board to Section 1750.2 of the Business and Professions Code which states that the requirement for Orthodontic Assistant Permit eligibility is passage of a written examination administered by the Board. At this time, the Board is required by Legislation to develop and administer the exam for Orthodontic Assistants. The Board does not have the authority to allow an outside vendor to administer the exam. That would take a statutory change. Bids are being reviewed for the Board's Orthodontic Assistant written examination. The Board expects to have a fully executed contract and begin work in January 2012.

Earl Johnson, California Association of Orthodontists (CAO), stated that when he was asked for reference materials he found very little printed material on the specifics of Orthodontic Assisting. He

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stated that the best document available is the one CAO made for its members for this particular permit. He stated that DANB is a good idea and should be looked into in the future.

DA 7 – Discussion and Possible Action Regarding the Dental Assisting Council Appointment Process

Judith Forsythe reported that the subcommittee of herself and Dr. Whitcher has been working on the application process for the potential Dental Assisting Council members. Initial appointments need to be done by May 1, 2012. Dr. Whitcher reported that they have a draft of an application that is being reviewed by legal. The committee was given a copy of the draft and agreed that in the interest of expediency, it did not need to come back to committee once it has been reviewed by legal.

Lori Gagliardi, CADAT, stated that they would like to see the time commitment and travel requirements outlined for potential applicants of the Dental Assisting Council.

Fran Burton stated that an understanding of complying with conflict of interest requirements is a concern of hers. Ms. Shellans stated that the Department has an Incompatible Work Activity Policy that could be included in whole or part. The committee agreed to move forward with the application process.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

The committee adjourned at 3:30 p.m.

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MEMORANDUM

DATE	February 10, 2012
TO	Dental Assisting Committee Dental Board Members
FROM	Sharon Langness, Associate Governmental Program Analyst Dawn Dill, Manager, Dental Assisting Program
SUBJECT	**Agenda Item DA 2:** Update Regarding Status of Dental Assisting Programs and Courses

The educational regulations for approval of Registered Dental Assistant Educational Programs, Infection Control Courses, Orthodontic Assistant Permit Courses, Dental Sedation Assistant Permit Courses, and Registered Dental Assistant in Extended Functions Programs became effective on November 11, 2011.

The table below identifies the pending applications. There are a total of 34 applications. Two Registered Dental Assistant programs have site visits scheduled for February 15 and 17, 2012. The remaining applications have been reviewed by staff, and are pending a response from the course provider or have arrived at the Board recently.

PROGRAM/COURSE	# of Applications
Registered Dental Assistant Program	10
Radiation Safety Course	6
Coronal Polish Course	4
Pit and Fissure Sealants Course	1
Ultrasonic Scaler Course	1
Infection Control Course	8
Orthodontic Assistant Course	3
Dental Sedation Assistant Course	1

Attached is a list of the pending applications for dental assisting program and course providers.

PENDING PROGRAMS AND COURSES (as of 2/13/12)

Provider	App Rec'd	RDA Program	Radiation Safety	Coronal Polishin	Pit and Fissure	Ultrasonic Scaling	Infection Control	Dental Sedation Assistant	Orthodontic Assistant
UEI College - Anaheim	1/31/11 5/13/11	X							
UEI College - San Marcos	2/7/11 5/13/11	X							
UEI College - San Bernardino	2/8/11 5/13/11	X							
Make a Smile - Folsom	4/4/11						X		
Four-D College - Victorville	4/8/11						X		
Health Quest Academy LLC - Pasadena	4/26/11						X		
Southland Dental/Lin Dental Corp - Anaheim	5/18/11						X		
San Bernardino County ROP/Morongo	6/3/11 7/25/11	X							
UEI College - Gardena	6/6/11	X							
North-West College - Glendale	6/14/11		X						
North-West College - Glendale	6/14/11			X					
All Stars Orthodontics - Murrieta	6/21/11								X
UEI College - Riverside	7/13/11	X							
Four-D College - Victorville	7/29/11	X							
Four-D College - Colton	7/29/11	X							
Adrian Vogt -	9/13/11								X

Provider	App Rec'd	RDA Program	Radiation Safety	Coronal Polishin	Pit and Fissure	Ultrasonic Scaling	Infection Control	Dental Sedation Assistant	Orthodontic Assistant
Redwood City Dental Institute - Redwood City	10/7/11						X		
Heald College - Roseville	10/19/11	X							
Charter College - Oxnard	10/27/11						X		
San Mateo County Office of Education	10/28/11		X						
Charter College - Oxnard	11/7/11			X					
Dr. Betsy Lindbergh - Imperial	11/14/11		X						
Institute of Technology - Citrus Heights	11/15/11	X							
California Dental Certifications - San Diego	11/15/11						X		
Brite Dental Group - Sacramento	11/17/11								X
Pacific Dental Services - Rancho Cucamonga	11/22/11		X						
Charter College - Oxnard	1/19/12				X				
Ricardo J. Berrios, DDS - Huntington Beach	12/13/11							X	
Kathleen J. Nuckles - Los Angeles	11/15/11								X
Robert G. Allen, DDS - Petaluma	12/12/11							X	
Ohanian Dental Corporation - Reseda	11/22/11			X					
Robert Sheffield, DDS - Antioch	1/12/12								X
Pima Medical Institute - Chula Vista	2/7/12						X		

Provider	App Rec'd	RDA Program	Radiation Safety	Coronal Polishin	Pit and Fissure	Ultrasonic Scaling	Infection Control	Dental Sedation Assistant	Orthodontic Assistant
International Career College - Pasadena	2/7/12						X		
Napa Valley Oral & Maxillafacial Surgery - Napa	1/27/12							X	
Ohanian Dental Corporation - Reseda	2/8/12						X		

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MEMORANDUM

DATE	February 14, 2012
TO	Dental Assisting Committee Dental Board of California
FROM	Denise Johnson, Assistant Executive Officer Dental Board of California
SUBJECT	**Agenda Item DA 3:** Update from Subcommittee Regarding the Survey of Registered Dental Assistants in Extended Functions (RDAEF) Licensees for the Purpose of Analysis of Workforce and Barrier to Care Issues

Background
Since the last meeting, the subcommittee and staff worked together to finalize the survey to send to all currently licensed RDAEFs. The Board has utilized SurveyMonkey, a web-based survey developer, to administer and collect survey information. Since the Board does not collect email addresses from licensees, the Board mailed letters to all 1245 registered RDAEF's requesting their participation in the survey.

The survey was successfully launched on February 9, 2012. Participants were given a deadline of May 1, 2012 to complete the survey. Survey responses have begun to filter in; however, there has not been a sufficient sampling to analyze the data at this time.

The subcommittee will be available to answer questions regarding this agenda item.

Action Requested:
No action necessary.

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MEMORANDUM

DATE	February 14, 2012
TO	Dental Assisting Committee Dental Board of California
FROM	Denise Johnson, Assistant Executive Officer Dental Board of California
SUBJECT	**Agenda Item DA 4:** Discussion and Possible Action Regarding the Possibility of Splitting the RDAEF Examination into Two Separate Parts

Background

At its November 2011 meeting, the Board discussed the Dental Assisting Forum's recommendation to split the existing RDAEF examination into two separate components. The discussion included the concerns raised by the Department of Consumer Affairs' Office of Professional Examination Services (OPES) and whether Cal. Code of Regs., Title 16, Section 1004 adequately addressed the time frame within which "the licensing examination" application would be abandoned if the exam was not taken and passed within 2 years.

Board Legal Counsel advised that Cal. Code of Regs., Title 16, Section 1004 didn't adequately address the issue of splitting the actual examination, and recommended the Board develop a regulation so that applicants know that they cannot take the examination components more than a specified number of years apart.

Action Requested:

Discuss the splitting the RDAEF examination into two components, and determine if a recommendation should be forwarded to the Board to direct staff to begin the rulemaking process.

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NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of the Legislative and Regulatory Committee of the Dental Board of California will be held as follows:

NOTICE OF LEGISLATIVE AND REGULATORY COMMITTEE MEETING

Thursday, February 23, 2012
Upon Conclusion of Dental Assisting Committee Meeting
Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101
619-232-3861 or 916-263-2300

LEGISLATIVE & REGULATORY COMMITTEE
Chair – Fran Burton, Public Member
Vice Chair – Steve Afriat, Public Member
Stephen Casagrande, DDS
Huong Le, DDS
Steve Morrow, DDS
Thomas Olinger, DDS

CALL TO ORDER

ROLL CALL AND ESTABLISHMENT OF QUORUM

LEG 1 - Approval of the November 7, 2011 Legislative and Regulatory Committee Meeting Minutes

LEG 2 - 2012 Tentative Legislative Calendar – Information Only

LEG 3 - Discussion and Possible Action on the Following Legislation:

- AB 127 (Logue) Regulations: effective date
- AB 991 (Olsen) State government: licenses: California Licensing and Permit Center
- SB 103 (Liu) State government: meetings
- SB 544 (Price) Professions and vocations: regulatory boards
- SB 694 (Padilla) Dental care
- Any additional legislation impacting the Board that staff becomes aware of between the time the meeting notice is posted and the Board meeting

LEG 4 - Discussion of Prospective Legislative Proposals:
Stakeholders Are Encouraged to Submit Proposals in Writing to the Board Before or During the Meeting for Possible Consideration by the Board at a Future Meeting

PUBLIC COMMENT

ADJOURNMENT

Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the Committee Chair. For verification of the meeting, call (916) 263-2300 or access the Board's web site at **www.dbc.ca.gov**. The meeting facilities are accessible to individuals with physical disabilities. Please make any request for accommodations to Richard DeCuir at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, no later than one week prior to the day of the meeting.

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Legislative and Regulatory Committee
Meeting Minutes
Monday, November 7, 2011

Upon Conclusion of Dental Assisting Committee Meeting
Sportsmen's Lodge, 12825 Ventura Blvd.
Studio City, CA 91604
DRAFT

Members Present:
Fran Burton, Public Member, Chair
Stephen Casagrande, DDS, Vice Chair
Steven Afriat, Public Member
Luis Dominicis, DDS
Huong Le, DDS
Steven Morrow, DDS

Members Absent:
Suzanne McCormick, DDS

Staff Present:
Richard DeCuir, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Dental Assisting Program Manager
Teri Lane, Supervising Investigator I
Jocelyn Campos, Enforcement Coordinator
Adrienne Mueller, Enforcement Analyst
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Roll Call and Establishment of Quorum:
Chair Fran Burton called the meeting to order at 3:33 p.m. and established a quorum.

LEG 1 - Approval of the August 11, 2011 Legislative and Regulatory Committee Meeting Minutes:
M/S/C (Afriat/Le) to approve the August 11, 2011 Legislative and Regulatory Committee meeting minutes. The motion passed unanimously.

LEG 2 - 2011 Tentative Legislative Calendar – Information Only:
Fran Burton, Public Board Member, reported that this year's Legislative Session had concluded, and the 2012 Tentative Legislative Calendar had not yet been available for this Board meeting. Ms. Burton noted that the Legislature reconvenes on January 4, 2012.

LEG 3 - 2011 End-of-Year Legislative Summary:

Sarah Wallace, Legislative and Regulatory Analyst, reported that Board Members and staff had actively participated in the 2011 Legislative Session by attending hearings, communicating with Legislators and their staff and taking positions on bills. Ms. Wallace reported that the Committee and the Board had followed ten bills throughout 2011, five of which had been signed by Governor Brown. Those five bills are as follows:

AB 1088 (Eng) - State Agencies: Collection of Demographic Data

AB 1088(Chapter 689, Statutes of 2011) requires state agencies to update survey forms to use separate collection categories for other identified Asian, Native Hawaiian, and Pacific Islander groups. This bill will affect the Dental Board of California, the Medical Board of California and the Dental Hygiene Committee of California, as these agencies are currently collecting demographic data via surveys. This bill will not affect the revenues of these agencies and the expected fiscal impact is minor and absorbable. This statute will become effective on January 1, 2012.

AB 1424 (Perea) - Franchise Tax Board: Delinquent Tax Debt

AB 1424 (Chapter 455, Statutes of 2011) requires the State Board of Equalization, quarterly, and the Franchise Tax Board, at least twice each calendar year, to make available a list of the 500 largest tax delinquencies in excess of $100,000. This bill requires the Franchise Tax Board to include additional information on the list with respect to each delinquency, including the type, status, and license number of any occupational or professional license held by the person or persons liable for payment of the tax and the names and titles of the principal officers of the person liable for payment of the tax if that person is a limited liability company or corporation. This bill requires a person whose delinquency appeared on either list and whose name has been removed, as provided, to comply with the terms of the arranged resolution, and would authorize the State Board of Equalization and the Franchise Tax Board, if the person fails to comply with the terms of the arranged resolution, to add the person's name to the list without providing prior written notice, as provided.

This bill requires a state governmental licensing entity, other than the Department of Motor Vehicles, State Bar of California, and Alcoholic Beverage Control Board, as provided, that issues professional or occupational licenses, certificates, registrations, or permits, to suspend, revoke, and refuse to issue a license if the licensee's name is included on either list of the 500 largest tax delinquencies described above. This bill would not include the Contractors' State License Board in the definition of "state governmental licensing entity." This bill also requires those licensing entities to collect the social security number or federal taxpayer identification number of each individual applicant of that entity for the purpose of matching those applicants to the names on the lists of the 500 largest tax delinquencies, and would require each application for a new license or renewal of a license to indicate on the application that the law allows the State Board of Equalization and the Franchise Tax Board to share taxpayer information with a board and requires the licensee to pay his or her state tax obligation and that his or her license may be suspended if the state tax obligation is not paid. This bill authorizes the State Board of Equalization and the Franchise Tax Board to disclose to state governmental licensing entities identifying information, as defined, of persons on the list of the 500 largest tax delinquencies, as specified. This bill authorizes a motor carrier permit of a licensee whose name is on the certified list of tax delinquencies to be suspended, as provided. The bill requires the State Board of Equalization and the Franchise Tax Board to meet certain requirements and would make related changes. This statute will become effective on January 1, 2012.

SB 540 (Price) - Dentistry

SB 540 (Chapter 385, Statutes of 2011) extends the operation the Dental Board of California until January 1, 2016, and specifies that the board would be subject to review by the appropriate policy

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committees of the Legislature. The bill changes the membership of the board to include one additional public member, to be appointed by the Governor. The bill creates a Dental Assisting Council of the board, to be appointed by the board, to consider matters relating to dental assistants and make recommendations to the board and standing committees of the board, as specified. This bill contains other related provisions and other existing laws. This statute will become effective on January 1, 2012.

SB 541 (Price) – Regulatory Boards: Expert Consultants

SB 541 (Chapter 339, Statutes of 2011), sponsored by the Medical Board of California and the Contractors State License Board, is an urgency measure that authorizes any board, within the Department of Consumer Affairs, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to enter into an agreement with an expert consultant to do any of the following:

- Provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing.
- Assist the board as a subject matter expert in examination development, examination validation, or occupational analyses.
- 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.

An executed contract between a board and an expert consultant shall be exempt from the State Contract Act. Each board is required to establish policies and procedures for the selection and use of expert consultants. Nothing in this bill should be construed to expand the scope of practice of an expert consultant providing services pursuant to this section.

This statute became effective immediately.

SB 943 (Senate BP&ED Committee) - Healing Arts

SB 943 (Chapter 350, Statutes of 2011) makes several non-controversial, minor, non-substantive or technical changes to various miscellaneous provisions pertaining to healing arts boards of the Department of Consumer Affairs and professions regulated under the Business and Professions Code, including the Dental Hygiene Committee of California. This statute will become effective on January 1, 2012.

LEG 4 - Dental Board of California Legislative Proposals for 2012:

Richard DeCuir, Executive Officer reported that in September 2011, the Department of Consumer Affairs Division of Legislative and Policy Review contacted boards and bureaus requesting 2012 legislative proposals. The Governor's Office requested that the legislative proposals to be submitted either have no cost or be absorbable, save money, meet Federal compliance, or contain unopposed technical clean-up language.

Mr. DeCuir directed Board staff to submit two legislative proposals to DCA that the Board had pursued in the 2011 legislative session. Those legislative proposals related to SB 540 and the addition of 3 new enforcement tools and the modification that would apply to foreign dental schools.

The new enforcement tools would allow the Board to address minor to moderate violations of the Dental Practice Act. The additional methods include specific time limitations on public disclosure for citations issued for less egregious violations, a Notice of Correction and a Letter of Admonishment.

The Foreign Dental School Proposal would allow the Board to accept the findings of any commission or accrediting agency, approved by the Board, and adopt the findings as its own for approval of foreign dental schools.

DRAFT

Mr. DeCuir was notified by DCA that it is the Board's responsibility to pursue authors for both proposals for the 2012 Legislative Session.

Fran Burton asked if anyone on the Committee would like to bring up a Legislative proposal.

Dr. Morrow asked for clarification on *Business & Professions Code 1626* regarding the California licensure exemption for foreign trained dentists and out of state dentists who are teaching in dental schools. He asked how the Dental Board is notified of these exemptions and if anyone is requiring proof that these licenses are being maintained.

Kristy Shellans, Legal Counsel, stated that Boards don't require proof of exemption.

Mr. DeCuir pointed out that it is the school's responsibility to maintain Board standards or risk not having their license re-approved.

There was discussion surrounding mailing a notice to the schools reminding them of their responsibility to insure that each of their instructors maintains a current license.

M/S/C (Casagrande/Morrow) to table this discussion regarding sending a letter to the schools about instructor licensing and bring it back at the next Board meeting in the LCP Committee. The motion passed unanimously.

Public Comment:
There was no further public comment.

ADJOURNMENT:
The committee adjourned at 4:01 p.m.

DRAFT

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P 916-263-2300 F 916-263-2140 www.dbc.ca.gov

MEMORANDUM

DATE	February 2, 2012
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item LEG 2:** 2012 Tentative Legislative Calendar – Information Only

Background
The 2012 Tentative Legislative Calendar is enclosed.

Action Requested:
No action necessary.

2012 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY OFFICE OF THE SECRETARY OF THE SENATE & THE OFFICE OF THE ASSEMBLY CHIEF CLERK

Revised 10-5-11

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

FEBRUARY							
	S	M	T	W	TH	F	S
Wk. 1				1	2	3	4
Wk. 2	5	6	7	8	9	10	11
Wk. 3	12	13	14	15	16	17	18
Wk. 4	19	20	21	22	23	24	25
Wk. 1	26	27	28	29			

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

APRIL							
	S	M	T	W	TH	F	S
Spring Recess	1	2	3	4	5	6	7
Wk. 2	8	9	10	11	12	13	14
Wk. 3	15	16	17	18	19	20	21
Wk. 4	22	23	24	25	26	27	28
Wk. 1	29	30					

MAY							
	S	M	T	W	TH	F	S
Wk. 1			1	2	3	4	5
Wk. 2	6	7	8	9	10	11	12
Wk. 3	13	14	15	16	17	18	19
Wk. 4	20	21	22	23	24	25	26
No Hrgs.	27	28	29	30	31		

*Holiday schedule subject to final approval by Rules Committee.

DEADLINES

Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

Jan. 4 Legislature reconvenes (J.R. 51(a)(4)).

Jan. 10 Budget must be submitted by Governor (Art. IV, Sec. 12 (a)).

Jan. 13 Last day for **policy committees** to hear and report bills introduced in 2011 for referral to **fiscal committees** (J.R. 61(b)(1)).

Jan. 16 Martin Luther King, Jr. Day.

Jan. 20 Last day for any committee to hear and report to the **Floor** bills introduced in their house in 2011 (J.R. 61(b)(2)).

Jan. 27 Last day to submit **bill requests** to the Office of Legislative Counsel.

Jan. 31 Last day for each house to pass **bills** introduced in 2011 (Art. IV, Sec. 10(c)) (J.R. 61(b)(3)).

Feb. 20 Presidents' Day.

Feb. 24 Last day for bills to be **introduced** (J.R. 61(b)(4), J.R. 54(a)).

Mar. 29 **Spring Recess** begins upon adjournment (J.R. 51(b)(1)).

Mar. 30 Cesar Chavez Day observed.

Apr. 9 Legislature reconvenes from Spring Recess (J.R. 51 (b)(1)).

Apr. 27 Last day for **policy committees** to hear and report to fiscal committees **fiscal bills** introduced in their house (J.R. 61(b)(5)).

May 11 Last day for **policy committees** to hear and report to the floor **nonfiscal** bills introduced in their house (J.R. 61(b)(6)).

May 18 Last day for **policy committees** to meet prior to June 4 (J.R. 61(b)(7)).

May 25 Last day for **fiscal committees** to hear and report to the floor bills introduced in their house (J.R. 61 (b)(8)). Last day for **fiscal committees** to meet prior to June 4 (J.R. 61 (b)(9)).

May 28 Memorial Day.

May 29 – June 1 Floor session only. No committee may meet for any purpose (J.R. 61(b)(10)).

2012 TENTATIVE LEGISLATIVE CALENDAR

COMPILED BY OFFICE OF THE SECRETARY OF THE SENATE & THE OFFICE OF THE ASSEMBLY CHIEF CLERK

Revised 10-5-11

JUNE							
	S	M	T	W	TH	F	S
No Hrgs.						1	2
Wk. 1	3	4	5	6	7	8	9
Wk. 2	10	11	12	13	14	15	16
Wk. 3	17	18	19	20	21	22	23
Wk. 4	24	25	26	27	28	29	30

June 1 **Last day to pass bills** out of house of origin (J.R. 61(b)(11)).

June 4 Committee meetings may resume (J.R. 61(b)(12)).

June 15 Budget Bill must be passed by midnight (Art. IV, Sec. 12(c)(3)).

June 28 Last day for a legislative measure to qualify for the Nov. 6 General Election ballot (Elec. Code Sec. 9040).

JULY							
	S	M	T	W	TH	F	S
Wk. 1	1	2	3	4	5	6	7
Summer Recess	8	9	10	11	12	13	14
Summer Recess	15	16	17	18	19	20	21
Summer Recess	22	23	24	25	26	27	28
Summer Recess	29	30	31				

July 4 Independence Day.

July 6 Last day for **policy committees** to hear and report bills (J.R. 61(b)(13)). **Summer Recess** begins on adjournment, provided Budget Bill has been passed (J.R. 51(b)(2)).

AUGUST							
	S	M	T	W	TH	F	S
Summer Recess				1	2	3	4
Wk. 2	5	6	7	8	9	10	11
Wk. 3	12	13	14	15	16	17	18
No Hrgs.	19	20	21	22	23	24	25
No Hrgs.	26	27	28	29	30	31	

Aug. 6 Legislature reconvenes from Summer Recess (J.R. 51(b)(2)).

Aug. 17 Last day for **fiscal committees** to meet and report bills to the Floor (J.R. 61(b)(14)).

Aug. 20 - 31 **Floor session only**. No committee may meet for any purpose (J.R. 61(b)(15)).

Aug. 24 Last day to **amend** on the Floor (J.R. 61(b)(16)).

Aug. 31 Last day for **each house to pass bills** (Art. IV, Sec. 10(c), J.R. 61(b)(17)). **Final Recess** begins on adjournment (J.R. 51(b)(3)).

IMPORTANT DATES OCCURRING DURING FINAL RECESS

2012

Sept. 30 Last day for Governor to sign or veto bills passed by the Legislature before Sept. 1 and in the Governor's possession on or after Sept. 1 (Art. IV, Sec. 10(b)(2)).

Oct. 2 Non-urgency bills enacted on or before this date take effect January 1, 2013. (Art. IV, Sec. 8(c)).

Nov. 6 General Election.

Nov. 30 Adjournment *sine die* at midnight (Art. IV, Sec. 3(a)).

Dec. 3 2013-14 Regular Session convenes for Organizational Session at 12 noon. (Art. IV, Sec. 3(a)).

2013

Jan. 1 Statutes take effect (Art. IV, Sec. 8(c)).

*Holiday schedule subject to final approval by Rules Committee.

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STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P 916-263-2300 F 916-263-2140 www.dbc.ca.gov

MEMORANDUM

DATE	February 9, 2012
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item LEG 3:** Discussion and Possible Action on Legislation

Background
Staff has enclosed a matrix summarizing the status, location, and current Board position for the following proposed legislation:

- AB 127 (Logue) Regulations: effective date
- AB 991 (Olsen) State government: licenses: California Licensing and Permit Center
- SB 103 (Liu) State government: meetings
- SB 544 (Price) Professions and vocations: regulatory boards
- SB 694 (Padilla) Dental care

Senate Bill 694 is the only designated two-year bill that will continue through the legislative process in 2012. The remaining bills have failed to pass necessary deadlines. Staff will continue to monitor these bills in the event that they are taken up again in the future.

Copies of each of the bills and staff analysis are enclosed for the Committee's review. Other legislation impacting the Board that staff becomes aware of before the meeting will be hand-carried to the Board meeting.

Action Requested:
The Committee may take action to recommend a position of support, oppose, watch, or neutral to the full Board on each bill.

Dental Board of California
Bill Analysis

Bill No.: Assembly Bill 127 (Introduced 1/11/2011)
Topic: Regulations: effective date
Author: Logue
Status: 1/18/2012 - From committee without further action pursuant to Joint Rule 62(a).
Location: 1/18/2012 - Assembly Business, Professions & Consumer Protection Committee

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Summary:
The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, except as provided.

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

Analysis:
The current rulemaking process takes an estimated 12 to 18 months to complete. The Dental Board of California's (Board) highest priority is the protection of the public when exercising its licensing, regulatory, and disciplinary functions. The primary methods by which the Board achieves this goal are: issuing licenses to eligible applicants; investigating complaints against licensees and disciplining licensees for violating of the Dental Practice Act (DPA); monitoring licensees whose license has been placed on probation; and managing the Diversion Program for licensees, whose practice may be impaired due to abuse of dangerous drugs or alcohol. The Board is authorized to adopt reasonably necessary rules to implement, interpret, or make specific the statutes that govern the Dental Practice Act. Extending the time before a regulation may become effective could unnecessarily endanger the public.

REGISTERED SUPPORT/OPPOSITION
Support (As of May 3, 2011):
American Council of Engineering Companies of California
Associated Builders and Contractors of California
California Building Industry Association
California Business Properties Association
California Forestry Association
California Grocers Association
California League of Food Processors
California Manufacturers & Technology Association

California Retailers Association
Chemical Industry Council of California
Consumer Specialty Products Association
Engineering and Utility Contractors Association
Golden State Builders Exchanges
Industrial Environmental Association
National Federation of Independent Business
USANA Health Sciences, Inc.
Western Growers

Opposition:
None on file as of 5/3/2011.

Board Position
The Committee and the Board took a “watch” position at the May 2011 meeting.

ASSEMBLY BILL No. 127

Introduced by Assembly Member Logue

January 11, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Under existing law, a regulation or an order of repeal of a regulation becomes effective on the 30th day after it is filed with the Secretary of State, except as provided.

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

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

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

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

11343.4. A regulation or an order of repeal required to be filed with the Secretary of State shall become effective on ~~the 30th day~~

January 1 next following a 90-day period after the date of filing unless:

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

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

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

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Dental Board of California
Bill Analysis

Bill No.: Assembly Bill 991 (Amended 4/13/2011)
Topic: State government: licenses: California Licensing and Permit Center
Author: Olsen
Status: 2/1/2012 - Died pursuant to Art. IV, Sec. 10(c) of the Constitution. From committee: Filed with the Chief Clerk pursuant to Joint Rule 56.
Location: 2/1/2012 - Assembly Appropriations

Summary:
This bill would require the Governor, or his or her designee, in cooperation with the California Technology Agency, to establish the California Licensing and Permit Center (CLPC) and corresponding user friendly Web site to assist the public with licensing, permitting, and registration requirements of state agencies. The CLPC's Web site shall be accessible from the Governor's Web site and shall be provided to the public free of charge. This bill requires the Web site to contain information on the licensing, permitting, and registration requirements of state agencies, including the following information:

a) Assisting potential applicants with identifying the type of applications, forms, or other similar documents an applicant may need;
b) Providing a digital copy of all state applications, forms, or other similar documents; and,
c) Instructing potential applicants where to transmit applications, forms, or other similar documents.

Each state agency determined by the Governor to have licensing authority to participate fully with this program by providing accurate updated information about its licensing requirements.

This bill requires the Governor, or his or her designee, to operate, via electronic mail and telephone methods, a help center that will assist applicants with licensing, permitting, and registration requirements.

This bill establishes the California License and Permit Fund (Fund) in the State Treasury, and provides that all moneys in the Fund shall, upon appropriation by the Legislature, be used by the Governor only for the purposes of this bill. Each state agency required to participate in the CLPC to reallocate funds annually from its operating budget to the Fund in the amount necessary to pay for the agency's proportionate share of establishing and operating the CLPC.

Analysis:
As introduced, this bill requires the Board to provide CLPC accurate updated information regarding our licensing requirements, digital copies of the various type of applications, forms, or any other documents an applicant may need, and instructions on

where to transmit applications. This information is currently available via the Board's Web site and readily available to forward to another agency, if needed.

This bill also requires the Board to reallocate the necessary funds annually from its operating budget to fund this program. It is anticipated that the Board would experience a significant fiscal impact as a result of this bill. In addition, this bill appears to be create a licensing center with duplicate functions, as this information is already available via the Board's Web site.

Registered Support/Opposition

Support: The National Federation of Independent Business as of 5/10/2011.

Opposition: California Board of Accountancy as of 5/10/2011.

Board Position

The Committee and the Board took a "watch" position at the May 2011 meeting.

AMENDED IN ASSEMBLY APRIL 13, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 991

Introduced by Assembly Member Olsen
(Principal coauthors: Assembly Members Gatto, ~~and Perea~~ *Gordon, Hagman, Harkey, Knight, Mansoor, Perea, Portantino, Silva, and Wagner*)

~~(Coauthor: Senator Berryhill)~~
(Coauthors: Senators Berryhill, Fuller, Harman, and Runner)

February 18, 2011

An act to add Section 12019.5 to the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 991, as amended, Olsen. State government: licenses: California Licensing and Permit Center.

Existing law requires members of the public to obtain license, permits, or to register with state agencies prior to undertaking certain types of tasks.

This bill would require the Governor to establish a Internet Web site, known as the California Licensing and Permit Center (CLPC), to assist the public with licensing, permitting, and registration requirements of state agencies. This bill would require the Governor to operate, via both e-mail and telephone methods, a help center to assist applicants with licensing, permitting, and registration requirements. This bill would require state agencies that the Governor determines has licensing authority to cooperate with this program by providing accurate updated information about their licensing requirements.

This bill would create the California License and Permit Fund in the State Treasury, and require state agencies that are required to participate in the CLPC to reallocate a portion of their operating budget, as specified, to pay for the operating cost of the CLPC. This bill would state that upon appropriation by the Legislature, revenues from the fund will be used only for purposes of the bill.

This bill would require the CLPC to be provided to *the* public free of charge.

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 12019.5 is added to the Government Code, to read:

12019.5. (a) The Governor, or his or her designee, shall, in cooperation with the California Technology Agency, establish an Internet Web site to assist the public with licensing, permitting, and registration requirements. This Internet Web site shall be known as the California Licensing and Permit Center (CLPC) and shall be accessible from the Governor's Web site. This Internet Web site shall contain information on *the* licensing, permitting, and registration requirements of state agencies, and shall include, but not be limited to, information that does all of the following:

(1) Assists potential applicants with identifying the type of applications, forms, or other similar documents an applicant may need.

(2) Provides a digital copy of all state applications, forms, or other similar documents.

(3) Instructs potential applicants where to transmit applications, forms, or other similar documents.

(b) The Governor, or his or her designee, shall operate, via both e-mail and telephone methods, a help center that will assist applicants with licensing, permitting, and registration requirements.

(c) The Governor, in cooperation with the California Technology Agency, shall ensure that the Internet Web site is user friendly and provides accurate, updated resources.

(d) Each state agency that the Governor determines has licensing authority shall participate fully with this program by providing accurate updated information about its licensing requirements.

(e) (1) The California License and Permit Fund is hereby created in the State Treasury. Each state agency that is required to participate in the CLPC shall reallocate funds annually from its operating budget to the fund in the amount necessary to pay for the agency's proportionate share of establishing and operating the CLPC.

(2) All moneys in the fund shall, upon appropriation by the Legislature, be used by the Governor only for the purposes of this section.

(f) The CLPC shall be provided to the public free of any charges.

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Dental Board of California
Bill Analysis

Bill No.: Senate Bill 103 (Amended 7/12/2011)
Topic: State government: meetings
Author: Liu
Status: 8/25/2011 - Set, second hearing. Held in committee and under submission
Location: 8/25/2011 - A . APPR.

Summary:
Existing law, The Bagley-Keene Open Meeting Act, set forth in Government Code Sections 11120-11132, applies to all state boards and commissions and generally requires these bodies to publicly notice their meetings, prepare agendas, accept public testimony and conduct their meetings in public unless specifically authorized by the Act to meet in closed session.

The Act provides for audio or audio and visual teleconference meetings for the benefit of the public body (Government Code Section 11123). When a teleconference meeting is held, each site from which a member of the body participates must be accessible to the public. All proceedings must be audible and votes must be taken by roll call. All other provisions of the Act also apply to teleconference meetings. Government Code Section 11123 does not prevent the body from providing additional locations from which the public may observe the proceedings or address the state body by electronic means.

This bill makes the following changes to the provisions of the Bagley-Keene Open Meeting Act relating to teleconference meetings:

1. Deletes language from the Act that expressly does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and instead authorizes a state body, to the extent practicable, to conduct teleconference meetings for the benefit of the public and the body.

2. Provides that, upon the request of a member of a state body, the body must hold an open or closed meeting by teleconference, unless the Chair of the body determines that it would be more costly to hold the meeting by teleconference than it would be to hold it in person.

3. Prohibits a member of a state body from requesting a meeting by teleconference solely because it would be more convenient than holding a meeting.

4. Specifies compliance requirements for teleconference meetings.

5. Requires a state body that operates an Internet Web Site to provide a supplemental live audio or video web-broadcast of each of its meetings that are open to the public and provide information on how to access the live audio or video broadcast in a convenient location on its Internet Web site. .

6. Stipulates that if a technical failure prevents the body from providing a live web-broadcast, that failure shall not constitute a violation of the Act if the body exercised reasonable diligence in providing the live broadcast.

7. Also, stipulates that failure to provide a live broadcast due to a technical failure shall not prohibit the body from meeting and taking actions as otherwise provided by law.

Analysis:
This bill would allow state organizations to use teleconferencing when it is more cost effective than travel. According to the author, state organizations should conduct meetings electronically in an effort to save resources and reduce costs. The use of video and teleconferencing allows for a reduction in administrative costs and transportation.

The Dental Board of California (Board) holds at least four meetings per year. The Board is required by statute, Business and Professions Code Section 1607, to hold one meeting in San Francisco and one meeting in Los Angeles each year. The Board currently holds teleconference meetings when legally and financially possible. The Board web casts meetings and notices the web casts on its Internet Web site.

Note: At its March 25, 2011 meeting, the California Board of Accountancy (CBA) voted to oppose Senate Bill 103. The CBA currently pursues a policy that if a member has a reason that they cannot attend a meeting in person, the option of a teleconference is available. However, the CBA is concerned that, should this bill pass, it would be possible for a member of a state body to abuse the privilege and never attend a meeting in person. The CBA expressed its belief that meeting attendance is important so that members are exposed to the views and scrutiny of the public. Even with recent amendments, the CBA voted to maintain their position of opposition at its July 21, 2011 meeting.

Registered Support/Opposition
Support:
American Federation of State, County and Municipal Employees
Sierra Club California

Opposition:
None on file.

Board Position
The Board took a “watch” position on this bill at the February 2011 meeting.

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 29, 2011

AMENDED IN ASSEMBLY JUNE 14, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE MARCH 1, 2011

SENATE BILL No. 103

Introduced by Senator Liu

January 12, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 103, as amended, Liu. State government: meetings.

Existing law authorizes a state body to conduct teleconference meetings.

This bill would authorize a state body, to the extent practicable, to conduct teleconference meetings.

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

This bill would require a state body that operates an Internet Web site to provide a supplemental live audio or video broadcast on the Internet Web site of its board meetings that are open to the public, and

would specify that a technical failure to provide a live broadcast would not prohibit the body from meeting and taking actions.

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 the following:

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

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

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

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

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

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

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

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

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

(3) A member of a state body shall not request a meeting by teleconference solely because it would be more convenient than holding a meeting in person.

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

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

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

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

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

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

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

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

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

public. *The state body shall provide information on how to access the live audio or video broadcast in a convenient location on its Internet Web site.*

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

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

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Dental Board of California
Bill Analysis

Bill No.: Senate Bill 544 (As Amended January 4, 2012)
Topic: Professions and vocations: regulatory boards
Author: Price
Status: 1/31/2012 - Returned to Secretary of Senate pursuant to Joint Rule 56.
Location: 1/31/2012 - Senate Business, Professions, and Economic Development Committee

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ANALYSIS OF PROVISIONS CONTAINED IN SB 544 (PRICE) RELATING TO ALL HEALING ARTS BOARDS

Code Section Affected: Creation of the Consumer Health Protection Enforcement Act
Page Number: 6

Provision Summary:
This bill establishes the Consumer Health Protection Enforcement Act and states Legislative findings and declarations on the need to investigate and prosecute licensed health care professionals who have violated the law in a timely manner, and the importance of providing healing arts boards with the regulatory tools and authorities necessary to reduce the timeframe for investigating and prosecuting violations of law by healing arts practitioners between 12 and 18 months.

Provision Analysis:
The establishment of the Consumer Health Protection Enforcement Act will provide the Dental Board of California (Board) with the additional tools and authorities necessary to reduce the timeframe for investigating and prosecuting violations of the Dental Practice Act (Act). The reduction in the timeframe for investigating and prosecuting violations of the law to between 12 and 18 months will assist the Board with meeting is statutory priority of protecting the public. However, it should be clarified if the 12 to 18 month timeframe is from the time a complaint is filed, or from the time a complaint is found to warrant an investigation. The success of reducing the timeframes relating to the investigation and prosecution of violations is directly related to the ability of the Board to hire the allocated CPEI positions; due to the Governor's Executive Order B-3-11 the Board is currently unable to fill those p3ositions. It should also be noted that while the Board may intend to reduce the timeframe of the investigation and prosecution of a case, the Board will be unable to control the ability of the Department of Justice to meet the necessary timeframes.

Code Section Affected: Adds Business and Professions Code Section 44
Page Number: 8

Provision Summary:
This bill prohibits a licensee from including the following in settlement agreements for civil disputes filed by a consumer arising from the licensee's practice:

a. prohibiting another party to the dispute from contacting or cooperating with the board;
b. prohibiting another party to the dispute from filing a complaint with the board;
c. and requiring another party to the dispute to withdraw a complaint they have filed with the board.

The bill specifies that any settlement agreement that contains any of these provisions is void against public policy, and constitutes unprofessional conduct. These provisions do not apply to the Medical Practice Act as they are already provided in Section 2220.7 of the Code.

Provision Analysis:
The prohibition of a licensee to include a gag order in a settlement will not significantly impact the workload of the Board's enforcement program. Currently, the Board receives notification of approximately 2 settlements annually via the reporting requirement of Business and Professions Code Section 805.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Currently, physicians and surgeons are prohibited from including gag clauses in civil dispute settlements. AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. There is no reason why other healing arts professionals should not be subject to the same prohibition which would prevent them from including a "gag clause" in a malpractice settlement and thus prevent a board from receiving information about a practitioner who may have violated the law. The use of gag clauses still persists. Gag clauses are sometimes used to intimidate injured victims so they refuse to testify against a licensee in investigations. Gag clauses can cause delays and thwart a board's effort to investigate possible cases of misconduct, thereby preventing the board from performing its most basic function - protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as healing arts professional.

Code Section Affected: Amend Business and Professions Code Section 116
Page Number: 9

Provision Summary:
This bill expands the current authority of the Director of DCA to audit all healing arts boards. This bill clarifies that the Director may make recommendations for disciplinary system changes to the board, the Legislature, or both, for their consideration. This bill specifies that the Director is required to report to the Chairpersons of the Senate Committee on Business, Professions, and Economic Development and the Assembly Committee on Health annually, regarding the findings from the audit.

Provision Analysis:
The Director currently has the authority to audit and review the enforcement programs of the Medical Board of California and the California Board of Podiatric Medicine. This bill expands the Director's authority to audit all healing arts boards and authorizes the Director to select a designee to perform the audit and review. In the case of an audit and review, the Board may experience minimal impact on workload to assist with answering questions.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
There does not appear to be any reason why the Director should only be limited to auditing and taking specific actions on behalf of consumers for the MBC and the Podiatric Board. The Director should be authorized to audit and review any healing arts boards as necessary, and allow the Director to make recommendations for changes to the board's disciplinary or enforcement system.

Code Section Affected: Amend Business and Professions Code Section 155
Page Number: 9

Provision Summary:
This bill provides that investigators used by the healing arts boards are not required to be employees of the Division of Investigation and the healing arts boards may contract for investigative services with the Department of Justice.

Provision Analysis:
This bill provides that investigators used by the healing arts boards are not required to be employees of the Division of Investigation and authorizes healing arts boards to contract for investigative services with the Department of Justice. These provisions will not impact the Board's enforcement program and ability to hire investigators.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Healing arts boards should be provided with the greatest flexibility in obtaining investigative services and in completing cases in a timely manner. By allowing healing arts boards to contract with the Department of Justice, or to utilize the investigative services of the DOI, they will be provided with the broadest opportunity to move cases forward in a more expeditious manner. The AG's Office made this recommendation

since it also believes that more difficult criminal-type cases could be investigated and prosecuted by their Office.

Code Section Affected: Amend Business and Professions Code Section 159.5
Page Number: 10

Provision Summary:
This bill establishes within the Division of Investigation the Health Quality Enforcement Unit to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards.

Provision Analysis:
The establishment of the Health Quality Enforcement Unit within the Division of Investigation will not impact the Board's enforcement program and ability to hire investigators. The Dental Board of California and the Medical Board of California maintain their own investigative staff as authorized in Business and Professions Code Section 160. These proposed amendments will provide other healing arts boards with the ability to hire the investigators necessary to conduct expeditious and effective investigations of their licensees. This provision is applicable to all healing arts boards.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Creating a Health Quality Enforcement Unit to focus on health care quality cases will create expertise in the investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

Code Section Affected: Add Business and Professions Code Section 505
Page Number: 10

Provision Summary:
This bill requires healing arts boards to annually report to DCA and the Legislature, not later than October 1, the following information:

d. Total number of complaints closed or resolved without discipline, prior to accusation;
e. Total number of complaints and reports referred for formal investigation
f. Total number of accusations filed and the final disposition of accusations through the board and court review, respectively;
g. Total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable;
h. Total number of final licensee disciplinary actions taken, by category;
i. Total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board;

j. Average time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively;
k. Total number of licensees in diversion or on probation for alcohol or drug abuse, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively;
l. Total number of probation violation reports and probation revocation filings, and their dispositions; and
m. Total number of petitions for reinstatement, and their dispositions.

Provision Analysis:
The provisions of this bill will require the Board to provide an annual report to DCA and the Legislature. This reporting requirement will have a minimal impact on workload associated with compiling the specified information. Staff estimates that this proposed report will require approximately four (4) hours of additional staff time per month to generate reports and compile the necessary information. This provision is applicable to all healing arts boards.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Currently, the MBC reports annually to the DCA and the Legislature certain enforcement actions taken against physicians and surgeons. There is no reason why other healing arts boards should not be subject to the same requirements in submitting an annual enforcement report both to the DCA and the Legislature.

Code Section Affected: Amend Business and Professions Code Section 726
Page Number: 11

Provision Summary:
This bill states that commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed, and under any initiative act, as specified. This bill specifies that the commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration, as specified, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board.

Provision Analysis:
This bill identifies the commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action. This bill specifies that the commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of healing arts board. This bill also specifies that these provisions shall not apply to sexual contact between a licensee and their spouse or person in an equivalent domestic relationship

when the licensee provides medical treatment, other than psychotherapeutic treatment, to their spouse or equivalent domestic partner. These proposed amendments do not define "equivalent domestic relationship". Business and Professions Code Section 1687 currently authorizes the Board to deny the application of an individual or revoke the license of an individual who is required to register as a sex offender. Section 1687 specifies that the Board is not authorized to issue a stay of license denial and place the license on probation in cases of sexual misconduct. Existing law, Business and Professions Code Section 1680, specifies that the committing of any act or acts of sexual abuse, misconduct, or relations with a patient that are substantially related to the practice of dentistry is considered unprofessional conduct. Existing law, Business and Professions Code Section 1670, authorizes the Board to take disciplinary action for unprofessional conduct. The addition of this provision will make this applicable to all healing arts boards and will assist in disciplinary proceedings for all healing arts licensees.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Existing law provides that for physicians and surgeons, dentists and other health professionals, a conviction of sexual misconduct is considered a crime substantially related to the qualifications, functions, or duties of a board licensee. There is no reason why other health professionals who have been convicted of sexual misconduct should not be subject to the same standard and finding that such a crime is substantially related to the qualifications, functions, or duties of a board licensee.

Code Section Affected: Add Business and Professions Code Sections 734 and 735
Page Number: 12

Provision Summary:
This bill specifies that the following constitutes unprofessional conduct:

a. The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances. States that the record of the conviction is conclusive evidence of the unprofessional conduct; and that a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction. Allows discipline to be ordered against a licensee, as specified.
b. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances.

Provision Analysis:
The Board has similar statutory authority deeming these acts unprofessional conduct. Existing Law, Business and Professions Code Section 1681, specifies that the use of any controlled substance or dangerous drugs, or alcoholic beverage or other intoxicating substances, to an extent or in a manner dangerous or injurious to themselves, to any person, or the public to the extent that such use impairs their ability to practice safely constitutes unprofessional conduct. Section 1681 further specifies that the self administration of any controlled substance or dangerous drug in violation of the law constitutes unprofessional conduct. Section 1681 also specifies that the

conviction of a charge violating any federal or state statute or regulation regulating dangerous drugs or controlled substances constitutes unprofessional conduct. However, the Board does not have a current provision specifying that a violation of any federal or state statute or regulation regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The addition of this provision will provide the Board with the ability to take disciplinary action against a licensee who violates a federal or state statute or regulation without an actual conviction. This will be beneficial in instances where the Drug Enforcement Administration revokes a permit of a licensee for drug related violations and gives the Board the authority to take disciplinary action without an actual conviction. Existing law, Business and Professions Code Section 1670, authorizes the Board to take disciplinary action for unprofessional conduct.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
The Medical Practice Act provides that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct. There is no reason why other health professionals should not be subject to the same requirements regarding certain drug related offenses which would be considered as unprofessional conduct on the part of the practitioner.

Code Section Affected: Add Business and Professions Code Section 737
Page Number: 13

Provision Summary:
This bill specifies that the following constitutes unprofessional conduct for any licensee to fail with complying with the following:

a. Furnish information in a timely manner, as specified.
b. Cooperate and participate in any investigation or other regulatory or disciplinary proceeding pending against the licensee. States that this provision shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges.

Provision Analysis:
The Board promulgated proposed regulations for the Consumer Protection Enforcement Initiative that defines the failure to provide records requested by the Board within 15 days constitutes unprofessional conduct. Existing law, Business and Professions Code Section 1670, authorizes the Board to take disciplinary action for unprofessional conduct.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
This requirement was recommended by the AG's Office. According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the board. This

refusal to cooperate routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required their licensees to cooperate with investigations being conducted by disciplinary authorities. The AG argues that the enactment of a statutory requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

Code Section Affected: Amends Business and Professions Code Section 803
Page Number: 14

Provision Summary:
This bill requires the clerk of the court to do the following:

a. Report to a healing arts board any judgment for a crime committed or for any death or personal injury in excess of $30,000, for which the licensee is responsible due to negligence, error or omission in practice, or rendering unauthorized professional services.
b. Transmit any felony preliminary hearing transcript concerning a defendant licensee of a healing arts board.

Provision Analysis:
Requiring the clerk of the court to report any judgment for a crime committed or for any death or personal injury in excess of $30,000, for which the licensee is responsible due to negligence, error or omission in practice, or rendering unauthorized professional services and to transmit any felony preliminary hearing transcript concerning a defendant licensee to the Board will provide earlier notification to the Board of a licensee's violation of the Act and will assist the Board with its priority of protection of the public.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
There is no reason the clerk of the court should not report a judgment for a crime or for personal injury to any of the other healing arts boards. Most healing arts boards are currently covered under this provision.

Code Section Affected: Amends Business and Professions Code Section 803.5
Page Number: 15

Provision Summary:
This bill requires the district attorney, city attorney, or other prosecuting agency, to notify the appropriate healing arts boards and the clerk of the court if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the board.

Provision Analysis:
Requiring the district attorney, city attorney, or other prosecuting agency, to notify the Board and the clerk of the court if the licensee has been charged with a felony

immediately upon obtaining information that the defendant is a licensee of the board will provide earlier notification to the Board of a licensee's violation of the Act and will assist the Board with its priority of protection of the public.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
There is no reason why all the other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

Code Section Affected: Adds Business and Professions Code Section 803.7
Page Number: 16

Provision Summary:
This bill requires the Department of Justice to ensure that subsequent reports and subsequent disposition information authorized to be issued to any board are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

Provision Analysis:
Requiring the Department of Justice to ensure that subsequent reports and subsequent disposition information authorized to be issued to any board are submitted to the Board within 30 days from notification of subsequent arrests, convictions, or other updates will provide earlier notification to the Board of a licensee's violation of the Act and will assist the Board with its priority of protection of the public.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
While all new fingerprints are performed electronically, not all records at the DOJ are kept electronically for licensees who were fingerprinted in the past. Retrieving non-electronic records adds unnecessary time to investigations. The DCA is not in a position to recommend how exactly the DOJ can reduce the amount of time it takes to complete subsequent arrest and conviction notices, but believes that a benchmark should be set. This would speed up the time it takes to receive some arrest and conviction notices and will allow boards to take action against licensees sooner.

Code Section Affected: Adds Business and Professions Code Section 803.8
Page Number: 16

Provision Summary:
This bill requires the Attorney General's Office to do the following:

a. Serve, or submit to a healing arts board for service, an accusation within 60 calendar days after receipt from the healing arts board.
b. Serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.
c. Set a hearing date within three days of receiving notice of defense, unless the healing arts board gives the AG's Office instruction otherwise.

Provision Analysis:

Requiring the Attorney General's Office to serve or submit an accusation within 60 calendar days, serve or submit a default decision within five days following the time period allowed for the filing of a notice of defense, and set a hearing date within three days of receiving notice of defense, unless the healing arts board gives the AG's Office instruction otherwise will assist the Board with expediting the disciplinary proceedings of a licensee found to be in violation of the Act, thus providing better public protection.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
There are delays in the prosecution of cases at the AG's Office that are contributing to the lengthy enforcement and disciplinary process that can take on average up to 2 to 3 years. According to statistics provided by the AG's Office, the average time for the AG to file an accusation for a board is taking from 5 to 8 months, and to complete prosecution can take on average about 400 days. Concerns have also been raised about the time it takes the AG to prepare a proposed default decision. The filing of a default decision is made once a licensee has failed to file a "notice of defense" when an accusation has been served on him or her. If the licensee fails to file a notice of defense within a specified timeframe, he or she is subject to a default judgment because of a failure to appear or make a defense of the disciplinary case. In 2004-2005 it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. However, the filing of a proposed default decision is "not rocket science" and should only take a matter of days.

Code Section Affected: Adds Business and Professions Code Section 857
Page Number: 17

Provision Summary:
This bill requires each healing arts board to conduct a search on the National Practitioner Data Bank (NPDB) prior to granting a license, certificate, or permit to an applicant residing in another state or who is currently or has ever been licensed as a health care practitioner in California or another state, or granting a petition for reinstatement of a revoked or surrendered license. This bill allows a healing arts board to charge a fee to cover the actual cost to conduct the search.

Provision Analysis:
Proposed Business and Professions Code Section 857 requires the Board to query the National Practitioner Data Bank (NPDB) prior to granting a license to an out-of-state applicant or any applicant who has been licensed as a health care practitioner. The NPDB may only be queried through the use of a credit card. Each year the use of the Cal-Card is suspended from June 1 until passage of a budget. During previous years when the budget is not passed until September or October, applicant's licensure has been delayed for several months due to the inability of the Board to obtain NPDB information. This causes delays in licensure for those individuals and creates a stressful situation for staff that are unable to process the applications timely, creating a burden on both applicants and staff. Each query of the NPDB costs $4.75.

Senate BP&ED Committee Analysis (Dated 1-5-2012)

There is no reason for boards not to check the NPDB or other national professional or council databases to find out whether applicants or licensees have been sanctioned or disciplined by other states prior to granting or renewing of a license.

Code Section Affected: Add Government Code Section 12529.8
Page Number: 232

Provision Summary:
This bill authorizes any healing arts board to utilize the vertical enforcement and prosecution models of some or all of its enforcement actions. This bill authorizes the healing arts boards to utilize the services of the DOJ Health Quality Enforcement Section or the licensing section. If a healing arts board elects to utilize these services, DOJ shall assign attorneys to work on location at the licensing until of the Division of Investigation of the Department of Consumer Affairs.

Provision Analysis:
This bill authorizes any healing arts board to utilize the vertical enforcement and prosecution models of some or all of its enforcement actions. This provision is permissive and does not require the Board to utilize the vertical enforcement and prosecution models.

ANALYSIS OF PROVISIONS CONTAINED IN SB 544 (PRICE) RELATING TO THE DENTAL BOARD OF CALIFORNIA

Code Section Affected: Addition of Business and Professions Code Section 1688
Page Number: 18

Provision Summary:
This bill authorizes the Board to delegate to its executive officer the authority to adopt a proposed default decision where there is an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued. This bill requires the executive officer to report to the Board the number of proposed default decision adopted pursuant to this section.

This bill authorizes the Board to delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts board and the licensee has agreed to the revocation or surrender his or her license.

This bill requires the executive officer to report to the Dental Board the number of proposed settlement agreements adopted pursuant to this section.

Provision Analysis:
This language is permissive and does not require the Board to delegate authority to the Executive Officer. When reviewing the proposed Consumer Protection Enforcement Initiative regulatory language in 2010, the Board voted to not include the delegation of authority in the proposed regulatory language.

Between January 1, 2009 and December 31, 2011, the Board adopted 75 default decisions and 25 stipulated surrenders. Currently, the average time between receipt of a signed settlement and Board adoption is approximately a month and a half.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
According to the AG's Office, a majority of filed cases settle and the receipt of a Notice of Defense can trigger either settlement discussions or the issuance of a Default Decision. Stipulated settlements are a more expeditious and less costly method of case resolution. The EO of the board can provide summary reports of all settlements to the board and the board can provide constant review and feedback to the executive officer so that policies can be established and adjusted as necessary. Also, there have been instances of undue delays between when a fully-signed settlement has been forwarded to the board's headquarters and when it has been placed on the board's agenda for a vote. Delegating this authority to the executive officer will result in a final disposition of these matters much more quickly. The fact that the BRN, for example, as reduced the number of its annual meetings has only increased the need for this.

According to the Center for Public Interest Law (CPIL), it is taking the AG too long to prepare a proposed default decision. In 2004-2005, it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. As argued by CPIL, filing a proposed default is "not rocket science" and should only take a matter of hours.

Code Section Affected: Addition of Business and Professions Code Section 1688.1
Page Number: 18

Provision Summary:
This bill allows the Board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant. The bill requires the settlement to include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated and specifies that a person who enters a ***into*** settlement is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement. The bill states that any settlement executed against a licensee shall be considered discipline, and a public record to be posted on the applicable board's Internet Website. The executive officer is required to report to the Dental Board the number of proposed settlement agreements adopted pursuant to this section.

Provision Analysis:
This proposed language may violate due process laws and the Administrative Procedure Act. The factual basis and findings for a violation are contained within the Accusation or Statement of Issues before reaching settlement agreements.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Arguments in Opposition: The California Psychological Association (CPA) has taken an opposed position on this bill. The CPA is concerned about rearranging the balance of power and diluting the due process rights afforded to practitioners, and the proposed provisions represent a diminution in the duties and responsibilities of the appointed board.

Code Section Affected: Addition of Business and Professions Code Section 1688.2
Page Number: 19

Provision Summary:
This bill requires the automatic suspension of any licensee who is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The Board is required to notify the licensee in writing of the suspension and of his or her right to elect to have the issue of penalty heard, as specified.

Provision Analysis:
This provision will aid the Board with expediting the disciplinary process for licensees who have been incarcerated. Currently the Board has the ability to issue PC 23, Interim Suspension Orders, and Temporary Restraining Orders. However, all are time consuming processes and may not always be successful.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Existing law allows physicians and surgeons and podiatrists to be suspended while incarcerated and there is no reason why other healing arts professionals should not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent a healing arts licensee from practicing while in prison or while released pending appeal of a conviction. Years may pass before a convicted licensee's license can be revoked. There have been instances in which health practitioners had felony records and yet continued to have spotless licenses even while serving time behind bars.
Code Section Affected: Addition of Business and Professions Code Section 1688.3
Page Number: 20

Provision Summary:
This bill provides that any proposed decision issued by an administrative law judge that contains a finding of fact that a licensee has engaged in any act of **sexual contact**, as defined, with a patient, or has committed a sex offense as defined, shall contain an order of revocation. This bill specifies that the revocation shall not be stayed by the administrative law judge.

Provision Analysis:
The Board's current Disciplinary Guidelines specify that the maximum penalty for the commission of act of sexual abuse or misconduct with a patient is revocation, and the minimum penalty is revocation stayed with five years of probation for consensual sex with one patient. This new provision would eliminate the Board's discretion when deciding penalties for crimes relating to sexual contact between patients and licensees.

Existing law, Business and Professions Code Section 1687, authorizes the Board to deny, revoke, or suspend the license of an individual who is required to register as a sex offender. The proposed amendment contradicts existing law, and will effectively repeal it if this bill is enacted.

As amended January 4, 2012, this bill further defines "sexual contact" to include any offenses listed in subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code or a finding that a person committed such an act. (Relevant Penal Code Sections Attached on Page 8)

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Mandatory revocation of a license for acts of sexual exploitation currently applies to physician and surgeons, psychologists, respiratory care therapists, marriage and family

therapists, and clinical social workers. There is no reason why these provisions should not apply to other healing arts licensees.

Code Section Affected: Addition of Business and Professions Code Section 1688.5
Page Number: 22

Provision Summary:
This bill provides that on or after July 1, 2013, the Board shall post on the Internet specified information in its possession, custody, or control regarding every licensee for which the board licenses, including whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice order, as specified, or subject to any of the enforcement actions, as specified; whether or not the licensee or former licensee has been subject to discipline by the Board or by the board of another state or jurisdiction, as described; any felony conviction of a licensee reported to the Board; all current accusations filed by the AG's Office; any malpractice judgment or arbitration award; any hospital disciplinary action imposed against a licensee as a result of termination or revocation of the licensee's hospital staff privileges for a medical disciplinary cause; any misdemeanor conviction of a license that results in the disciplinary action of an accusation that is not subsequently withdrawn or dismissed; and appropriate disclaimers and explanatory statements to accompany the above information. This bill specifies that the information on the Internet will be in accordance with the California Public Records Act and it may not include personal information, as specified.

Provision Analysis:
The Board's license verification web site will need to be modified to accommodate the information required to be disclosed. This will require additional work load of staff to compile this information, modify the Board's web site, add the necessary information to the web site, and maintain of the web site.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Although a number of boards, including healing arts boards, are required to post the aforementioned information regarding a licensee, there are other healing arts boards that do not. One of the issues which has been raised by the media is that the public is unaware of problem licensees, whether they have had prior disciplinary action taken against them, or whether their license is currently in good standing. They cited instances in which they looked up on the Internet, or on the particular health board's Website and never saw prior disciplinary or criminal convictions of the health care practitioner. This provision ensures the uniformity of information about the status of licensees that are posted on the Internet.

Code Section Affected: Addition of Business and Professions Code Section 1688.6
Page Number: 24

Provision Summary:
This bill provides for the automatic suspension of a Board licensee, if the licensee holds a license in another state that has been suspended or revoked, for the duration of the suspension or revocation. This bill requires the Board to notify the licensee of the suspension and their right to have the issue of penalty heard. The Board, upon its own motion for good cause shown, may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so. This bill provides that the issue of penalty will be heard by an administrative law judge alone or with a panel of the Board in the discretion of the Board. This bill provides that the record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license, including a transcript of the testimony, may be received in evidence. These provisions do not apply to a licensee who maintains their primary practice in California, as specified. This bill provides that these provisions will not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason whose suspension or revocation has been stayed. This bill provides that this shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

Provision Analysis:
This will assist the board if quickly suspending a license of a practitioner whose license has been suspended or revoked in another state that is substantially related to their ability to safely practice and with providing better public protection.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
There are certain health boards which require automatic suspension of a license base on the action taken by another jurisdiction or state. To further protect consumers, all health care boards should be allowed to automatically suspend the license of anyone whose license with the federal, state, or another regulatory agency has been suspended or revoked.

Code Section Affected: Amend Business and Professions Code Section 1695
Page Number: 25

Provision Summary:
This bill makes technical changes to Section 1695(a) and adds a new subsection (b) relative to an audit of the Board's Diversion Program. The bill specifies that it is the intent of the Legislature, through a request from the Joint Legislative Audit Committee in 2013, that the Bureau of State Audits conduct a thorough performance audit of the Board's Diversion Program to evaluate the effectiveness and efficiency of the program and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that licensees participating in the program are appropriately monitored and that the public is protected from licensees who are

impaired dut to alcohol or drug abuse or mental or physical illness. The audit is required to be completed by January 1, 2014.

The Board will be required to cooperate with the audit, and provide data, information, and case files as requested by the auditor. The bill specifies that the provision of confidential data, information, and case files by the Board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. The audit shall be paid for with funds from the State Dentistry Fund.

Provision Analysis:
The audit of the Board's Diversion Program could lead to statutory modifications or possible elimination of the program. The Board would not be able to absorb the cost of conducting the audit, unless the $4.4 million loan is repaid to the State Dentistry Fund.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
To ensure full implementation of SB 1441 standards and address problems encountered with the Maximus audit and drug testing requirements, this audit ensures that the above diversion programs are protecting the public and rehabilitating licensees.

Code Section Affected: Add Business and Professions Code Section 1707
Page Number: 26

Provision Summary:
This bill specifies that a person who engages in the practice of dentistry that does not hold a current and valid license, or a person who fraudulently buys, sells, or obtains a license to practice dentistry or violates any provision of the Dental Practice Act shall have committed a public offense. The bill specifies that the public offense would be punishable by a fine not to exceed $100,000, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

Senate BP&ED Committee Analysis (Dated 1-5-2012)
Unlicensed practice presents a serious threat to public health and safety. However, it can be difficult for a board to get a district attorney to prosecute these cases criminally because the penalties are often significantly less than the cost to prosecute the case. While district attorneys do prosecute the most egregious cases, the inconsistent prosecution of these cases diminishes the deterrent effect. If the penalty for unlicensed practice is substantially increased, the deterrent will be increased two-fold; not only will the punishment be more severe, but district attorneys will be more likely to prosecute these cases.

Registered Support & Opposition:
Support:
None on file as of January 4, 2012

Oppose Unless Amended:
California Nurses Association
California Psychiatric Association
California Society of Addiction Medicine

Oppose :
California Psychological Association

Board Position:
The Committee and the Board have previously taken a “watch” position.

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE APRIL 14, 2011

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL No. 544

Introduced by Senator Price

February 17, 2011

An act to amend Sections 116, 155, 159.5, 726, ~~802.1,~~ 803, 803.5, 803.6, ~~822,~~ *1695*, 2246, *2360*, *2662*, *2770*, 2960.1, *3534*, *4860*, 4982.26, and 4992.33 of, and to add Sections ~~40, 42,~~ 44, 505, 734, 735, ~~736,~~ 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, ~~1688.4,~~ 1688.5, 1688.6, *1707*, 1947.1, 1947.2, 1947.3, 1947.4, ~~1947.5,~~ 1947.6, 1947.7, 1947.8, *1954.5*, *2320*, *2458.1*, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, ~~2533.10, 2533.11,~~ 2533.12, 2533.13, 2533.14, *2538.52.5*, 2570.38, 2570.39, 2570.40, 2570.41, ~~2570.42, 2570.43, 2570.44,~~2570.45, 2570.46, 2570.47, *2570.48*, 2661.8, 2661.9, 2661.10, 2661.11, ~~2661.12, 2661.13, 2661.14,~~ 2661.15, 2661.16, 2661.17, *2673*, 2766, 2766.1, 2766.2, 2766.3, ~~2766.4, 2766.5, 2766.6,~~ 2766.7, 2766.8, *2799.2*, 2879.1, 2879.2, 2879.3, 2879.4, ~~2879.5, 2879.6, 2879.7,~~ 2879.8, 2879.10, *2886.5*, 2969.1, 2969.2, 2969.3, 2969.4, *2972*, 3112, 3112.1, 3112.2, 3112.3, ~~3112.4, 3112.5, 3112.6,~~3112.7, 3112.8, 3112.9, *3123*, 3405, 3405.1, 3405.2, 3405.3, ~~3405.4, 3405.5, 3405.6,~~ 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, ~~3531.5, 3531.6, 3531.7,~~ 3531.8, 3531.9, 3531.10, *3533.5*, *3664.5*, 3665, 3665.1, 3665.2, 3665.3, ~~3665.4, 3665.5, 3665.6,~~ 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, ~~3769.8,~~ 3769.9, 3769.10, *3769.11*, 4316, 4316.1, 4316.2, 4316.3, ~~4316.4,~~4316.5, 4316.6, *4344*, 4375, 4526, 4526.1, 4526.2, 4526.3, ~~4526.4, 4526.5, 4526.6,~~ 4526.8, 4526.9, *4543.5*, 4888, 4888.1, 4888.2, 4888.3, ~~4888.4,~~ 4888.5, 4888.6, 4888.7, *4962*, 4964.1, 4964.2, 4964.3, 4964.4, ~~4964.55, 4964.6, 4964.7,~~ 4964.8, 4964.9, 4964.10, *4990.43*, 4990.44, 4990.45,

4990.46, 4990.47, ~~4990.48, 4990.49, 4990.50,~~ 4990.51, 4990.52, and 4990.53 to, ~~to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of,~~ the Business and Professions Code, and to add Section 12529.8 to the Government Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 544, as amended, Price. Professions and vocations: regulatory boards.

(1) Existing law provides for the licensure and regulation of profession and vocation licensees by various boards within the Department of Consumer Affairs. Within the department, there are healing arts boards and nonhealing arts boards. The department is under the control of the Director of Consumer Affairs.

This bill would require ~~cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.~~ *the Department of Justice to serve or submit to a healing arts board for service accusations and default decisions within a specified timeframe and would also require the Department of Justice to set a hearing within a specified timeframe upon receiving a notice of defense, except as specified.*

The bill would prohibit a licensee regulated by a board within the department from including certain provisions in an agreement to settle a civil litigation action arising from his or her practice, as specified.

(2) Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

This bill would authorize healing arts boards to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

The bill would require all healing arts boards within the department to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of complaints closed or resolved without discipline, the total number of complaints and reports referred for formal investigation, and the total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

The bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

~~Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.~~

~~This bill would expand that requirement to a licensee of any healing arts board, as specified, and would further require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government.~~

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of

Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a licentiate has committed a crime or is liable for any death or personal injury resulting in a specified judgment. Existing law also requires the clerk of the court to transmit to certain boards specified felony preliminary transcript hearings concerning a defendant licensee.

The bill would instead make those provisions applicable to all healing arts boards. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

The bill would require a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank prior to, among other things, granting a license to an applicant who is currently residing in another state or granting a petition for reinstatement of a revoked or surrendered license.

This bill would make it a crime to engage in the practice of *certain* healing arts without a current and valid license, ~~except as specified;~~ or to fraudulently buy, sell, or obtain *such* a license to practice *certain* healing arts. By creating new crimes, the bill would impose a state-mandated local program.

(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. These boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a board to appoint an executive officer to, among other things, perform duties delegated by the board.

This bill would authorize a healing arts board to delegate to its executive officer, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.

The bill would also provide that the license of a licensee of a healing arts board shall be suspended if the licensee is incarcerated after the

conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

The bill would ~~prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would~~ provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a healing arts licensee. ~~The bill would impose requirements on boards with respect to individuals required to register as a sex offender.~~

~~This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards' jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care facility that fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.~~

The bill would require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.

The bill would require specified healing arts boards, on or after July 1, ~~2013~~ *2014*, to post on their Internet Web sites specified information in their possession, custody, or control regarding their licensees and their license status, prior discipline, and convictions.

The bill would authorize ~~a~~ *certain* healing arts ~~board~~ *boards* to automatically suspend the license of any licensee who also has an

out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

(4) The bill would declare the intent of the Legislature that the Bureau of State Audits conduct a specified review of the ~~Pharmacists Recovery Program by January 1, 2013~~ *diversion programs administered by the Dental Board of California, the Osteopathic Medical Board of California, the Physical Therapy Board of California, the Board of Registered Nursing, the Physician Assistant Committee, and the Veterinary Medical Board of California by January 1, 2014.*

(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

This bill would authorize a healing arts board to utilize the services of the Health Quality Enforcement Section or licensing section. If utilized, the bill would require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

(6) The bill would delete, revise and recast various provisions of the Physical Therapy Practice Act and would make other conforming changes.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. This act shall be known and may be cited as the
2 Consumer Health Protection Enforcement Act.

SEC. 2. (a) The Legislature finds and declares the following:

(1) In recent years, it has been reported that many of the healing arts boards within the Department of Consumer Affairs take, on average, more than three years to investigate and prosecute violations of law, a timeframe that does not adequately protect consumers.

(2) The excessive amount of time that it takes healing arts boards to investigate and prosecute licensed professionals who have violated the law has been caused, in part, by legal and procedural impediments to the enforcement programs.

(3) Both consumers and licensees have an interest in the quick resolution of complaints and disciplinary actions. Consumers need prompt action against licensees who do not comply with professional standards, and licensees have an interest in timely review of consumer complaints to keep the trust of their patients.

(b) It is the intent of the Legislature that the changes made by this act will improve efficiency and increase accountability within the healing arts boards of the Department of Consumer Affairs, and will remain consistent with the long-held paramount goal of consumer protection.

(c) It is further the intent of the Legislature that the changes made by this act will provide healing arts boards within the Department of Consumer Affairs with the regulatory tools and authorities necessary to reduce the average timeframe for investigating and prosecuting violations of law by healing arts practitioners to between 12 and 18 months.

~~SEC. 3. Section 40 is added to the Business and Professions Code, to read:~~

~~40. (a) Notwithstanding any other provision of law, for purposes of a board investigation, a state agency shall, upon receiving a request in writing from a board for records about a particular licensee, immediately provide to the board all records about a licensee in the custody of the state agency, including, but not limited to, confidential records, medical records, and records related to closed or open investigations.~~

~~(b) If a state agency has knowledge that a person it is investigating is licensed by a board, the state agency shall notify the board that it is conducting an investigation against one of its licentiates. The notification of investigation to the board shall include the name, address, and, if known, the professional license~~

~~type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. The state agency shall cooperate with the board in providing any requested information.~~

~~(c) A board shall maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by federal or state law.~~

~~SEC. 4. Section 42 is added to the Business and Professions Code, to read:~~

~~42. Notwithstanding any other provision of law, all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a board shall provide records to the board upon request prior to receiving payment from the board for the cost of providing the records. These records include, but are not limited to, confidential records, medical records, and records related to closed or open investigations.~~

~~SEC. 5.~~

SEC. 3. Section 44 is added to the Business and Professions Code, to read:

44. (a) A licensee of a board shall not include or permit to be included any of the following provisions in an agreement to settle a civil litigation action filed by a consumer arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(d) If a board complies with Section 2220.7, that board shall not be subject to the requirements of this section.

~~SEC. 6.~~

SEC. 4. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director or his or her designee may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by any of the healing arts boards described in Division 2 (commencing with Section 500). The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

(b) The director shall report to the Chairpersons of the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Health annually regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

~~SEC. 7.~~

SEC. 5. Section 155 of the Business and Professions Code is amended to read:

155. (a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary to properly investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Investigators used by any healing arts board, as described in Division 2 (commencing with Section 500), shall not be required to be employees of the Division of Investigation and a healing arts board may contract for investigative services provided by the Department of Justice.

(d) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

~~SEC. 8.~~

SEC. 6. Section 159.5 of the Business and Professions Code is amended to read:

159.5. There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division. There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards described in Section 720.

Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, shall be in the division and the personnel shall be appointed by the director.

~~SEC. 9.~~

SEC. 7. Section 505 is added to the Business and Professions Code, to read:

505. (a) Each healing arts board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:

(1) The total number of complaints closed or resolved without discipline, prior to accusation.

(2) The total number of complaints and reports referred for formal investigation.

(3) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(4) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(5) The total number of final licensee disciplinary actions taken, by category.

(6) The total number of cases in process for more than 6 months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(7) The average time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(8) The total number of licensees in diversion or on probation for alcohol or drug abuse, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(9) The total number of probation violation reports and probation revocation filings, and their dispositions.

(10) The total number of petitions for reinstatement, and their dispositions.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the healing arts board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(c) A board that complies with Section 2313 shall not be subject to the requirements of this section.

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall become inoperative on October 1, 2016.

~~SEC. 10.~~

SEC. 8. Section 726 of the Business and Professions Code is amended to read:

726. (a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division and under any initiative act referred to in this division.

(b) For purposes of Division 1.5 (commencing with Section 475), the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether

or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board described in this division.

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

~~SEC. 11.~~

SEC. 9. Section 734 is added to the Business and Professions Code, to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

~~SEC. 12.~~

SEC. 10. Section 735 is added to the Business and Professions Code, to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

~~SEC. 13. Section 736 is added to the Business and Professions Code, to read:~~

~~736. (a) The use or prescribing for or administering to himself or herself of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic~~

~~beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or conviction of any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or conviction of any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct.~~

~~(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.~~

~~(c) A violation of subdivision (a) is a misdemeanor, and upon conviction shall be punished by a fine of up to ten thousand dollars ($10,000), or by imprisonment in the county jail of up to six months, or by both that fine and imprisonment.~~

~~SEC. 14.~~

SEC. 11. Section 737 is added to the Business and Professions Code, to read:

737. It shall be unprofessional conduct for any licensee of a healing arts board to fail to comply with the following:

(a) Furnish information in a timely manner to the healing arts board or the board's investigators or representatives if requested by the board.

(b) Cooperate and participate in any investigation or other regulatory or disciplinary proceeding pending against the licensee. However, this subdivision shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require a licensee to cooperate with a request that requires him or

her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

~~SEC. 15. Section 802.1 of the Business and Professions Code is amended to read:~~

~~802.1. (a) (1) A licensee of a healing arts board described in this division shall report any of the following to the entity that issued his or her license:~~

~~(A) The bringing of an indictment or information charging a felony against the licensee.~~

~~(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.~~

~~(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.~~

~~(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or the charging of a felony, or of the arrest, conviction, or disciplinary action.~~

~~(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000) and shall constitute unprofessional conduct.~~

~~SEC. 16.~~

SEC. 12. Section 803 of the Business and Professions Code is amended to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from a healing arts board described in this division, has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the board that issued the license.

~~SEC. 17.~~

SEC. 13. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the appropriate healing arts board described in this division and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

~~SEC. 18.~~

SEC. 14. Section 803.6 of the Business and Professions Code is amended to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to the appropriate healing arts board described in this division where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the appropriate healing arts board.

~~SEC. 19.~~

SEC. 15. Section 803.7 is added to the Business and Professions Code, to read:

803.7. The Department of Justice shall ensure that subsequent reports and subsequent disposition information authorized to be issued to any board identified in Section 101 are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

~~SEC. 20.~~

SEC. 16. Section 803.8 is added to the Business and Professions Code, to read:

803.8. (a) The office of the Attorney General shall serve, or submit to a healing arts board for service, an accusation within 60 calendar days of receipt from the healing arts board.

(b) The office of the Attorney General shall serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.

(c) The office of the Attorney General shall set a hearing date within three days of receiving a notice of defense, unless the healing arts board gives the office of the Attorney General instruction otherwise.

~~SEC. 21. Section 822 of the Business and Professions Code is amended to read:~~

~~822. If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:~~

~~(a) Revoking the licentiate's certificate or license.~~

~~(b) Suspending the licentiate's right to practice.~~

~~(c) Placing the licentiate on probation.~~

~~(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper, including issuing a limited or restricted license.~~

~~The licensing agency shall not reinstate a revoked or suspended certificate or license or lift any restrictions or limitations until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with~~

~~due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.~~

~~SEC. 22.~~

SEC. 17. Section 857 is added to the Business and Professions Code, to read:

857. (a) Each healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California shall query the federal National Practitioner Data Bank prior to any of the following:

(1) Granting a license to an applicant who is currently residing in another state.

(2) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state.

(3) Granting a petition for reinstatement of a revoked or surrendered license.

(b) Notwithstanding subdivision (a), a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California may query the federal National Practitioner Data Bank prior to issuing any license.

(c) A healing arts board shall charge a fee to cover the actual cost to conduct the queries described in this section.

~~SEC. 23. Article 16 (commencing with Section 880) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:~~

~~Article 16. Unlicensed Practice~~

~~880. (a) (1) It is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:~~

~~(A) Any person who does not hold a current and valid license to practice a healing art under this division to engage in that practice.~~

~~(B) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in this division or to violate any provision of this division.~~

~~(2) Subparagraph (A) of paragraph (1) shall not apply to any person who is already being charged with a crime under the specific~~

~~healing arts licensing provisions for which he or she engaged in unauthorized practice.~~

~~(b) Notwithstanding any other provision of law, any person who is licensed under this division, and who supervises the practice of a healing art by any person who does not hold a current and valid license to practice that healing art under this division, is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.~~

~~SEC. 24.~~

SEC. 18. Section 1688 is added to the Business and Professions Code, to read:

1688. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 25.~~

SEC. 19. Section 1688.1 is added to the Business and Professions Code, to read:

1688.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 26.~~

SEC. 20. Section 1688.2 is added to the Business and Professions Code, to read:

1688.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest

of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 27.~~

SEC. 21. Section 1688.3 is added to the Business and Professions Code, to read:

1688.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any

finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 28. Section 1688.4 is added to the Business and Professions Code, to read:~~

~~1688.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 29.~~

SEC. 22. Section 1688.5 is added to the Business and Professions Code, to read:

1688.5. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by

the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 30.~~

SEC. 23. Section 1688.6 is added to the Business and Professions Code, to read:

1688.6. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical

disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 24. Section 1695 of the Business and Professions Code is amended to read:

1695. *(a)* It is the intent of the Legislature that the ~~Board of~~ Dental ~~Examiners~~ *Board* of California seek ways and means to identify and rehabilitate licentiates whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates so afflicted may be treated and returned to the practice of dentistry in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the ~~Board of Dental Examiners~~ *Dental Board* of California shall implement this legislation in part by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions.

(b) It is the intent of the Legislature, through a request in 2013 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the board's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that licensees participating in the program are appropriately monitored and that the public is protected from licensees who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2014. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of his or her duties. The

provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(c) It is the intent of the Legislature that the audit shall be paid for with funds from the State Dentistry Fund.

SEC. 25. Section 1707 is added to the Business and Professions Code, to read:

1707. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice dentistry to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice dentistry or to violate any provision of this chapter.

~~SEC. 31.~~

SEC. 26. Section 1947.1 is added to the Business and Professions Code, to read:

1947.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 32.~~

SEC. 27. Section 1947.2 is added to the Business and Professions Code, to read:

1947.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a

licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 33.~~

SEC. 28. Section 1947.3 is added to the Business and Professions Code, to read:

1947.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 34.~~

SEC. 29. Section 1947.4 is added to the Business and Professions Code, to read:

1947.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 35. Section 1947.5 is added to the Business and Professions Code, to read:~~

~~1947.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter~~

~~5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 36.~~

SEC. 30. Section 1947.6 is added to the Business and Professions Code, to read:

1947.6. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the

conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 37.~~

SEC. 31. Section 1947.7 is added to the Business and Professions Code, to read:

1947.7. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its

possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the

Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 38.~~

SEC. 32. Section 1947.8 is added to the Business and Professions Code, to read:

1947.8. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to

practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 33. Section 1954.5 is added to the Business and Professions Code, to read:

1954.5. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice dental hygiene to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice dental hygiene or to violate any provision of this chapter.

~~SEC. 39.~~

SEC. 34. Section 2246 of the Business and Professions Code is amended to read:

2246. (a) Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(b) Except as otherwise provided, any proposed decision or decision issued under this article in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 35. Section 2320 is added to the Business and Professions Code, to read:

2320. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice medicine to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice medicine or to violate any provision of this chapter.

SEC. 36. Section 2360 of the Business and Professions Code is amended to read:

2360. *(a)* It is the intent of the Legislature that the Osteopathic Medical Board of California seek ways and means to identify and rehabilitate osteopathic physicians and surgeons whose competency may be impaired due to abuse of dangerous drugs and alcohol, so that osteopathic physicians and surgeons so afflicted may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the Osteopathic Medical Board of California shall implement this legislation by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions.

(b) It is the intent of the Legislature, through a request in 2013 from the Joint Legislative Audit Committee, that the Bureau of State Audits shall conduct a thorough performance audit of the board's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that licensees participating in the program are appropriately monitored and that the public is protected from licensees who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2014. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of his or her duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(c) It is the intent of the Legislature that the audit be paid for with funds from the Osteopathic Medical Board of California Contingent Fund.

SEC. 37. Section 2458.1 is added to the Business and Professions Code, to read:

2458.1. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice osteopathic medicine to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice osteopathic medicine or to violate any provision of this chapter.

~~SEC. 40.~~

SEC. 38. Section 2533.5 is added to the Business and Professions Code, to read:

2533.5. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 41.~~

SEC. 39. Section 2533.6 is added to the Business and Professions Code, to read:

2533.6. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section

shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 42.~~

SEC. 40. Section 2533.7 is added to the Business and Professions Code, to read:

2533.7. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the

time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 43.~~

SEC. 41. Section 2533.8 is added to the Business and Professions Code, to read:

2533.8. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain

an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 44. Section 2533.9 is added to the Business and Professions Code, to read:~~

~~2533.9. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 45. Section 2533.10 is added to the Business and Professions Code, to read:~~

~~2533.10. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice~~

~~regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types~~

~~of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 46. Section 2533.11 is added to the Business and Professions Code, to read:~~

~~2533.11. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the~~

~~filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be~~

~~punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

SEC. 42. Section 2533.9 is added to the Business and Professions Code, to read:

2533.9. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice speech-language pathology and audiology to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice speech-language pathology and audiology or to violate any provision of this chapter.

~~SEC. 47.~~

SEC. 43. Section 2533.12 is added to the Business and Professions Code, to read:

2533.12. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 48.~~

SEC. 44. Section 2533.13 is added to the Business and Professions Code, to read:

2533.13. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information including the name and license number in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~2533.11 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 49.~~

SEC. 45. Section 2533.14 is added to the Business and Professions Code, to read:

2533.14. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the

request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 46. Section 2538.52.5 is added to the Business and Professions Code, to read:

2538.52.5. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to fit and sell hearing aids to engage in the fitting and selling of hearing aids.

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

~~SEC. 50.~~

SEC. 47. Section 2570.38 is added to the Business and Professions Code, to read:

2570.38. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 51.~~

SEC. 48. Section 2570.39 is added to the Business and Professions Code, to read:

2570.39. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 52.~~

SEC. 49. Section 2570.40 is added to the Business and Professions Code, to read:

2570.40. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest

of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 53.~~

SEC. 50. Section 2570.41 is added to the Business and Professions Code, to read:

2570.41. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any

finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 54. Section 2570.42 is added to the Business and Professions Code, to read:~~

~~2570.42. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 55. Section 2570.43 is added to the Business and Professions Code, to read:~~

~~2570.43. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the healing arts board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not~~

~~limited to, participation in an interview with investigators or representatives of the healing arts board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 56. Section 2570.44 is added to the Business and Professions Code, to read:~~

~~2570.44. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that~~

~~the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars~~

~~($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 57.~~

SEC. 51. Section 2570.45 is added to the Business and Professions Code, to read:

2570.45. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15

business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 58.~~

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

2570.46. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its

possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~2570.44 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the

Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 59.~~

SEC. 53. Section 2570.47 is added to the Business and Professions Code, to read:

2570.47. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to

practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

~~SEC. 60. Section 2608.5 of the Business and Professions Code is repealed.~~

~~SEC. 61. Section 2660.5 of the Business and Professions Code is repealed.~~

SEC. 54. Section 2570.48 is added to the Business and Professions Code, to read:

2570.48. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice occupational therapy to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice occupational therapy or to violate any provision of this chapter.

~~SEC. 62.~~

SEC. 55. Section 2661.8 is added to the Business and Professions Code, to read:

2661.8. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 63.~~

SEC. 56. Section 2661.9 is added to the Business and Professions Code, to read:

2661.9. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 64.~~

SEC. 57. Section 2661.10 is added to the Business and Professions Code, to read:

2661.10. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made

suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 65.~~

SEC. 58. Section 2661.11 is added to the Business and Professions Code, to read:

2661.11. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 66. Section 2661.12 is added to the Business and Professions Code, to read:~~

~~2661.12. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated~~

~~under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 67. Section 2661.13 is added to the Business and Professions Code, to read:~~

~~2661.13. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 68. Section 2661.14 is added to the Business and Professions Code, to read:~~

~~2661.14. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 69.~~

SEC. 59. Section 2661.15 is added to the Business and Professions Code, to read:

2661.15. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 70.~~

SEC. 60. Section 2661.16 is added to the Business and Professions Code, to read:

2661.16. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information including the name and license number in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~2661.14 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 71.~~

SEC. 61. Section 2661.17 is added to the Business and Professions Code, to read:

2661.17. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 62. Section 2662 of the Business and Professions Code is amended to read:

2662. *(a)* It is the intent of the Legislature that the board shall seek ways and means to identify and rehabilitate physical therapists and physical therapist assistants whose competency is impaired due to abuse of dangerous drugs or alcohol so that they may be treated and returned to the practice of physical therapy in a manner which will not endanger the public health and safety.

(b) It is the intent of the Legislature, through a request in 2013 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the board's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that physical therapists and physical therapist assistants participating in the program are appropriately monitored and that the public is protected from physical therapists and physical therapist assistants who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2014. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of his or her duties.

The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(c) It is the intent of the Legislature that the audit be paid for with funds from the Physical Therapy Fund.

SEC. 63. Section 2673 is added to the Business and Professions Code, to read:

2673. It is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice physical therapy to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice physical therapy or to violate any provision of this chapter.

~~SEC. 72.~~

SEC. 64. Section 2766 is added to the Business and Professions Code, to read:

2766. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 73.~~

SEC. 65. Section 2766.1 is added to the Business and Professions Code, to read:

2766.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a

licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 74.~~

SEC. 66. Section 2766.2 is added to the Business and Professions Code, to read:

2766.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 75.~~

SEC. 67. Section 2766.3 is added to the Business and Professions Code, to read:

2766.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 76. Section 2766.4 is added to the Business and Professions Code, to read:~~

~~2766.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter~~

~~5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 77. Section 2766.5 is added to the Business and Professions Code, to read:~~

~~2766.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence~~

~~during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority~~

~~of the board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 78. Section 2766.6 is added to the Business and Professions Code, to read:~~

~~2766.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to~~

~~assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor~~

~~punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 79.~~

SEC. 68. Section 2766.7 is added to the Business and Professions Code, to read:

2766.7. (a) Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on the Internet the following information, including the name and license number, in its possession, custody, or control regarding every licensee~~ for which~~ *whom* the board licenses:

(1) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(3) Any felony conviction of a licensee reported to the board.

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

~~(5) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.~~

~~(6)~~

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

~~(7)~~

(6) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the healing arts board and shall be adopted by regulation.

(b) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the

Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(c) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, nor the city and county of the licensee's address of record.

~~SEC. 80.~~

SEC. 69. Section 2766.8 is added to the Business and Professions Code, to read:

2766.8. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed

pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 70. Section 2770 of the Business and Professions Code is amended to read:

2770. *(a)* It is the intent of the Legislature that the Board of Registered Nursing seek ways and means to identify and rehabilitate registered nurses whose competency may be impaired due to abuse of alcohol and other drugs, or due to mental illness so that registered nurses so afflicted may be rehabilitated and returned to the practice of nursing in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the Board of Registered Nursing shall implement

this legislation by establishing a diversion program as a voluntary alternative to traditional disciplinary actions.

(b) It is the intent of the Legislature, through a request in 2013 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the board's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that registered nurses participating in the program are appropriately monitored and that the public is protected from registered nurses who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2014. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of his or her duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(c) It is the intent of the Legislature that the audit be paid for with funds from the Board of Registered Nursing Fund.

SEC. 71. Section 2799.2 is added to the Business and Professions Code, to read:

2799.2. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice registered nursing to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice registered nursing or to violate any provision of this chapter.

~~SEC. 81.~~

SEC. 72. Section 2879.1 is added to the Business and Professions Code, to read:

2879.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the

hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 82.~~

SEC. 73. Section 2879.2 is added to the Business and Professions Code, to read:

2879.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 83.~~

SEC. 74. Section 2879.3 is added to the Business and Professions Code, to read:

2879.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the

certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made

suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 84.~~

SEC. 75. Section 2879.4 is added to the Business and Professions Code, to read:

2879.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 85. Section 2879.5 is added to the Business and Professions Code, to read:~~

~~2879.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 86. Section 2879.6 is added to the Business and Professions Code, to read:~~

~~2879.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be~~

~~arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 87. Section 2879.7 is added to the Business and Professions Code, to read:~~

~~2879.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000),~~

~~unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

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

~~received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 88.~~

SEC. 76. Section 2879.8 is added to the Business and Professions Code, to read:

2879.8. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally

decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~2879.7 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 89.~~

SEC. 77. Section 2879.10 is added to the Business and Professions Code, to read:

2879.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board

shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 78. Section 2886.5 is added to the Business and Professions Code, to read:

2886.5. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice licensed vocational nursing to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice licensed vocational nursing or to violate any provision of this chapter.

~~SEC. 90.~~

SEC. 79. Section 2960.1 of the Business and Professions Code is amended to read:

2960.1. (a) Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed

decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 91.~~

SEC. 80. Section 2969.1 is added to the Business and Professions Code, to read:

2969.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 92.~~

SEC. 81. Section 2969.2 is added to the Business and Professions Code, to read:

2969.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a

licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 93.~~

SEC. 82. Section 2969.3 is added to the Business and Professions Code, to read:

2969.3. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has

not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 94.~~

SEC. 83. Section 2969.4 is added to the Business and Professions Code, to read:

2969.4. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated

or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 84. Section 2972 is added to the Business and Professions Code, to read:

2972. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice psychology to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice psychology or to violate any provision of this chapter.

~~SEC. 95.~~

SEC. 85. Section 3112 is added to the Business and Professions Code, to read:

3112. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a certificate of registration has been filed and the registrant has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the certificate of registration has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a certificate of registration has been filed by the board and the registrant has agreed to the revocation or surrender of his or her certificate of registration.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 96.~~

SEC. 86. Section 3112.1 is added to the Business and Professions Code, to read:

3112.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a registrant or applicant in lieu of the issuance of an accusation or statement of issues against that registrant or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a registrant executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 97.~~

SEC. 87. Section 3112.2 is added to the Business and Professions Code, to read:

3112.2. (a) The certificate of registration of a registrant shall be suspended automatically during any time that the registrant is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of registration of the registrant has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the registrant in writing of the certificate of registration suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the registrant was convicted was substantially related to the qualifications, functions, or duties of a registrant, the board shall

suspend the certificate of registration until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a registrant and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a registrant in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a registrant may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the registrant so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a registrant. If the conviction of a registrant who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a certificate of registration issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 98.~~

SEC. 88. Section 3112.3 is added to the Business and Professions Code, to read:

3112.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the registrant engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the certificate.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 99. Section 3112.4 is added to the Business and Professions Code, to read:~~

~~3112.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state~~

~~or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for registration in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is registered under this chapter, the board shall promptly revoke the certificate of registration of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the certificate of registration on probation.~~

~~(3) The board shall not reinstate or reissue the individual's certificate of registration. The board shall not issue a stay of certificate of registration denial nor place the certificate of registration on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a certificate of registration to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 100. Section 3112.5 is added to the Business and Professions Code, to read:~~

~~3112.5. (a) Notwithstanding any other provision of law making a communication between a registrant and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a registrant, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the registrant or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from registrants in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the registrant is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time~~

~~allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a registrant for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The registrant shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 101. Section 3112.6 is added to the Business and Professions Code, to read:~~

~~3112.6. (a) (1) Notwithstanding any other provision of law, a registrant who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the registrant is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to~~

~~the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A registrant who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be~~

~~tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a registrant shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the certificate.~~

~~(d) A failure or refusal of a registrant to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her certificate.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a registrant who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 102.~~

SEC. 89. Section 3112.7 is added to the Business and Professions Code, to read:

3112.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the registrant.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the registrant, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for

cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 103.~~

SEC. 90. Section 3112.8 is added to the Business and Professions Code, to read:

3112.8. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every registrant ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every registrant, whether or not the registrant or former registrant is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a registrant reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a registrant that resulted in the termination or revocation of a registrant's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~3112.6 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 104.~~

SEC. 91. Section 3112.9 is added to the Business and Professions Code, to read:

3112.9. (a) Unless otherwise provided, if a registrant possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the

request. If the order suspending or revoking the certificate or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a registrant who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a registrant's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a registrant whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the registrant by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 92. Section 3123 is added to the Business and Professions Code, to read:

3123. *Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:*

(a) Any person who does not hold a current and valid license to practice optometry to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice optometry or to violate any provision of this chapter.

~~SEC. 105.~~

SEC. 93. Section 3405 is added to the Business and Professions Code, to read:

3405. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 106.~~

SEC. 94. Section 3405.1 is added to the Business and Professions Code, to read:

3405.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 107.~~

SEC. 95. Section 3405.2 is added to the Business and Professions Code, to read:

3405.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest

of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 108.~~

SEC. 96. Section 3405.3 is added to the Business and Professions Code, to read:

3405.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any

finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 109. Section 3405.4 is added to the Business and Professions Code, to read:~~

~~3405.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 110. Section 3405.5 is added to the Business and Professions Code, to read:~~

~~3405.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not~~

~~limited to, participation in an interview with investigators or representatives of the board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 111. Section 3405.6 is added to the Business and Professions Code, to read:~~

~~3405.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist a board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that~~

~~the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six~~

~~months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, a board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records.~~

~~SEC. 112.~~

SEC. 97. Section 3405.7 is added to the Business and Professions Code, to read:

3405.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This

required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) “Gross negligence” means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so

slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 113.~~

SEC. 98. Section 3405.8 is added to the Business and Professions Code, to read:

3405.8. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order,

subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~3405.6 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the

licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 114.~~

SEC. 99. Section 3405.9 is added to the Business and Professions Code, to read:

3405.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation.

Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

~~SEC. 115.~~

SEC. 100. Section 3531.1 is added to the Business and Professions Code, to read:

3531.1. (a) The committee may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The committee may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the committee and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 116.~~

SEC. 101. Section 3531.2 is added to the Business and Professions Code, to read:

3531.2. (a) Notwithstanding Section 11415.60 of the Government Code, the committee may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable committee's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable committee's Internet Web site.

(e) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 117.~~

SEC. 102. Section 3531.3 is added to the Business and Professions Code, to read:

3531.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The committee shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The committee shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the committee shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has

been affirmed on appeal or has otherwise become final, and until further order of the committee.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the committee.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the committee when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the committee from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the committee shall not apply to proceedings conducted pursuant to this section.

~~SEC. 118.~~

SEC. 103. Section 3531.4 is added to the Business and Professions Code, to read:

3531.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 119. Section 3531.5 is added to the Business and Professions Code, to read:~~

~~3531.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state~~

~~or territory, under military law, or under federal law, the committee shall be subject to the following requirements:~~

~~(1) The committee shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the committee shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The committee shall not stay the revocation and place the license on probation.~~

~~(3) The committee shall not reinstate or reissue the individual's license. The committee shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 120. Section 3531.6 is added to the Business and Professions Code, to read:~~

~~3531.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a~~

~~privileged communication, those provisions shall not apply to investigations or proceedings conducted by the committee. Members of the committee, deputies, employees, agents, the office of the Attorney General, and representatives of the committee shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the committee about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the committee and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the committee or any other federal or state law, regulation, or rule relevant to the practice regulated by the committee, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the committee, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the~~

~~required deadline, shall constitute unprofessional conduct. The committee may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the committee to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the committee in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the committee.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 121. Section 3531.7 is added to the Business and Professions Code, to read:~~

~~3531.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the committee within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the committee, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced~~

~~after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the committee in obtaining the patient's authorization. The committee shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee, shall pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the committee, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility~~

~~is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the committee pursuant to this section shall be deposited into the fund administered by the committee.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the committee.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If the committee complies with Section 1684.1, 2225.5, or 2969, the committee shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 122.~~

SEC. 104. Section 3531.8 is added to the Business and Professions Code, to read:

3531.8. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the committee the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The committee shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the committee of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal

law, the committee shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The committee shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The committee shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The committee shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the committee.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 123.~~

SEC. 105. Section 3531.9 is added to the Business and Professions Code, to read:

3531.9. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the committee shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the committee licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the committee.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the committee.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital

staff privileges for a medical disciplinary cause or reason pursuant to Section ~~3531.7 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the committee and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 124.~~

SEC. 106. Section 3531.10 is added to the Business and Professions Code, to read:

3531.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The committee shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to

maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the committee, in the discretion of the committee. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty

conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) If the committee complies with Section 2310 it shall not be subject to the requirements of this section.~~

SEC. 107. Section 3533.5 is added to the Business and Professions Code, to read:

3533.5. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid physician assistant license to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a physician assistant license or to violate any provision of this chapter.

SEC. 108. Section 3534 of the Business and Professions Code is amended to read:

3534. (a) It is the intent of the Legislature that the examining committee shall seek ways and means to identify and rehabilitate physician assistants whose competency is impaired due to abuse of dangerous drugs or alcohol so that they may be treated and returned to the practice of medicine in a manner which will not endanger the public health and safety.

(b) It is the intent of the Legislature, through a request in 2013 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the examining committee's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that physician assistants participating in the program are appropriately monitored and that the public is protected from physician assistants who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2014. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of his or her duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(c) It is the intent of the Legislature that the audit be paid for with funds from the Physician Assistant Fund.

SEC. 109. Section 3664.5 is added to the Business and Professions Code, to read:

3664.5. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice naturopathic medicine to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice naturopathic medicine or to violate any provision of this chapter.

~~SEC. 125.~~

SEC. 110. Section 3665 is added to the Business and Professions Code, to read:

3665. (a) The committee may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The committee may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the committee and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 126.~~

SEC. 111. Section 3665.1 is added to the Business and Professions Code, to read:

3665.1. (a) Notwithstanding Section 11415.60 of the Government Code, the committee may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable committee's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable committee's Internet Web site.

(e) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 127.~~

SEC. 112. Section 3665.2 is added to the Business and Professions Code, to read:

3665.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The committee shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The committee shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the committee shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the committee.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially

related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the committee.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the committee when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 128.~~

SEC. 113. Section 3665.3 is added to the Business and Professions Code, to read:

3665.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 129. Section 3665.4 is added to the Business and Professions Code, to read:~~

~~3665.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the committee shall be subject to the following requirements:~~

~~(1) The committee shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the committee shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The committee shall not stay the revocation and place the license on probation.~~

~~(3) The committee shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 130. Section 3665.5 is added to the Business and Professions Code, to read:~~

~~3665.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names,~~

~~except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the committee and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the committee or any other federal or state law, regulation, or rule relevant to the practice regulated by the committee, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The committee may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the committee to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the committee.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 131. Section 3665.6 is added to the Business and Professions Code, to read:~~

~~3665.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the committee, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the committee in obtaining the patient's authorization. The committee shall pay the reasonable costs of~~

~~copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee, shall pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the committee, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board is guilty of a misdemeanor punishable by a fine payable to the committee not~~

~~to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the committee pursuant to this section shall be deposited into the fund administered by the committee.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If the committee complies with Section 1684.1, 2225.5, or 2969, the committee shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types~~

~~of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 132.~~

SEC. 114. Section 3665.7 is added to the Business and Professions Code, to read:

3665.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the committee the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The committee shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the committee of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the committee shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The committee shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The committee shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 133.~~

SEC. 115. Section 3665.8 is added to the Business and Professions Code, to read:

3665.8. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the committee shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the committee licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the committee.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~3665.8 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 134.~~

SEC. 116. Section 3665.9 is added to the Business and Professions Code, to read:

3665.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The committee shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the committee, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date

of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

~~SEC. 135.~~

SEC. 117. Section 3769.4 is added to the Business and Professions Code, to read:

3769.4. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 136.~~

SEC. 118. Section 3769.5 is added to the Business and Professions Code, to read:

3769.5. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 137.~~

SEC. 119. Section 3769.6 is added to the Business and Professions Code, to read:

3769.6. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 138.~~

SEC. 120. Section 3769.7 is added to the Business and Professions Code, to read:

3769.7. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 139. Section 3769.8 is added to the Business and Professions Code, to read:~~

~~3769.8. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.~~

~~However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 140.~~

SEC. 121. Section 3769.9 is added to the Business and Professions Code, to read:

3769.9. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital

staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 141. Section 3796.10 is added to the Business and Professions Code, to read:~~

~~3796.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.~~

~~(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.~~

~~(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.~~

~~(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.~~

~~(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.~~

~~(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.~~

~~(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.~~

~~(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.~~

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 122. Section 3769.10 is added to the Business and Professions Code, to read:

3769.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation.

Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

SEC. 123. Section 3769.11 is added to the Business and Professions Code, to read:

3769.11. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice respiratory therapy to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice respiratory therapy or to violate any provision of this chapter.

~~SEC. 142.~~

SEC. 124. Section 4316 is added to the Business and Professions Code, to read:

4316. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative

action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 143.~~

SEC. 125. Section 4316.1 is added to the Business and Professions Code, to read:

4316.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 144.~~

SEC. 126. Section 4316.2 is added to the Business and Professions Code, to read:

4316.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the

license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in

subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 145.~~

SEC. 127. Section 4316.3 is added to the Business and Professions Code, to read:

4316.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or

attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 146. Section 4316.4 is added to the Business and Professions Code, to read:~~

~~4316.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for~~

~~purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 147.~~

SEC. 128. Section 4316.5 is added to the Business and Professions Code, to read:

4316.5. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and

statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 148.~~

SEC. 129. Section 4316.6 is added to the Business and Professions Code, to read:

4316.6. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the

administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 130. Section 4344 is added to the Business and Professions Code, to read:

4344. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license to practice pharmacy to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice pharmacy or to violate any provision of this chapter.

~~SEC. 149.~~

SEC. 131. Section 4375 is added to the Business and Professions Code, to read:

4375. (a) It is the intent of the Legislature, through a request in ~~2012~~ *2013* from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the ~~Pharmacists Recovery Program~~ *pharmacists recovery program* to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that pharmacists and intern pharmacists participating in the program are appropriately monitored, and the public is protected from pharmacists and intern pharmacists who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, ~~2013~~ *2014*. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of ~~its~~ *his or her* duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(b) It is the intent of the Legislature that the audit ~~shall~~ be paid for with funds from the Pharmacy Board Contingent Fund.

~~SEC. 150.~~

SEC. 132. Section 4526 is added to the Business and Professions Code, to read:

4526. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the

licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 151.~~

SEC. 133. Section 4526.1 is added to the Business and Professions Code, to read:

4526.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 152.~~

SEC. 134. Section 4526.2 is added to the Business and Professions Code, to read:

4526.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the

license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in

subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 153.~~

SEC. 135. Section 4526.3 is added to the Business and Professions Code, to read:

4526.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or

attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 154. Section 4526.4 is added to the Business and Professions Code, to read:~~

~~4526.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for~~

~~purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 155. Section 4526.5 is added to the Business and Professions Code, to read:~~

~~4526.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General~~

~~or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 156. Section 4526.6 is added to the Business and Professions Code, to read:~~

~~4526.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board~~

~~together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that~~

~~the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the~~

~~licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 157.~~

SEC. 136. Section 4526.8 is added to the Business and Professions Code, to read:

4526.8. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and the license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~4526.6 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 158.~~

SEC. 137. Section 4526.9 is added to the Business and Professions Code, to read:

4526.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it

appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty

conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 138. Section 4543.5 is added to the Business and Professions Code, to read:

4543.5. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid psychiatric technician license to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a psychiatric technician license or to violate any provision of this chapter.

SEC. 139. Section 4860 of the Business and Professions Code is amended to read:

4860. *(a)* It is the intent of the Legislature that the Veterinary Medical Board seek ways and means to identify and rehabilitate veterinarians and registered veterinary technicians with impairment due to abuse of dangerous drugs or alcohol, affecting competency so that veterinarians and registered veterinary technicians so afflicted may be treated and returned to the practice of veterinary medicine in a manner that will not endanger the public health and safety.

(b) It is the intent of the Legislature, through a request in 2013 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the board's diversion program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that veterinarians and registered veterinary technicians participating in the program are appropriately monitored and that the public is protected from veterinarians and registered veterinary technicians who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2014. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of his or her duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption

from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(c) It is the intent of the Legislature that the audit be paid for with funds from the Veterinary Medical Board Contingent Fund.

~~SEC. 159.~~

SEC. 140. Section 4888 is added to the Business and Professions Code, to read:

4888. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 160.~~

SEC. 141. Section 4888.1 is added to the Business and Professions Code, to read:

4888.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section

shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 161.~~

SEC. 142. Section 4888.2 is added to the Business and Professions Code, to read:

4888.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the

time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 162.~~

SEC. 143. Section 4888.3 is added to the Business and Professions Code, to read:

4888.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain

an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 163. Section 4888.4 is added to the Business and Professions Code, to read:~~

~~4888.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 164.~~

SEC. 144. Section 4888.5 is added to the Business and Professions Code, to read:

4888.5. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or

termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 165.~~

SEC. 145. Section 4888.6 is added to the Business and Professions Code, to read:

4888.6. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 166.~~

SEC. 146. Section 4888.7 is added to the Business and Professions Code, to read:

4888.7. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other

than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805,

or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

SEC. 147. Section 4962 is added to the Business and Professions Code, to read:

4962. *Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:*

(a) Any person who does not hold a current and valid license to practice acupuncture to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license to practice acupuncture or to violate any provision of this chapter.

~~SEC. 167.~~

SEC. 148. Section 4964.1 is added to the Business and Professions Code, to read:

4964.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 168.~~

SEC. 149. Section 4964.2 is added to the Business and Professions Code, to read:

4964.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 169.~~

SEC. 150. Section 4964.3 is added to the Business and Professions Code, to read:

4964.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties

of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 170.~~

SEC. 151. Section 4964.4 is added to the Business and Professions Code, to read:

4964.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 171. Section 4964.55 is added to the Business and Professions Code, to read:~~

~~4964.55. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating~~

~~a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 172. Section 4964.6 is added to the Business and Professions Code, to read:~~

~~4964.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the~~

~~documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the healing arts board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 173. Section 4964.7 is added to the Business and Professions Code, to read:~~

~~4964.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the~~

~~penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars~~

~~($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure~~

~~pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 174.~~

SEC. 152. Section 4964.8 is added to the Business and Professions Code, to read:

4964.8. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found

that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, "suspension or termination for cause" or "resignation in lieu of suspension or termination for cause" is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 175.~~

SEC. 153. Section 4964.9 is added to the Business and Professions Code, to read:

4964.9. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, “current accusation” means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee’s hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~4964.7 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 176.~~

SEC. 154. Section 4964.10 is added to the Business and Professions Code, to read:

4964.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

~~SEC. 177.~~

SEC. 155. Section 4982.26 of the Business and Professions Code is amended to read:

4982.26. (a) The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 156. Section 4990.43 is added to the Business and Professions Code, to read:

4990.43. Notwithstanding any other provision of law, it is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(a) Any person who does not hold a current and valid license issued under the chapters the board administers and enforces as described in Section 4990.12 to engage in that practice.

(b) Any person to fraudulently buy, sell, or obtain a license issued under the chapters the board administers and enforces as described in Section 4990.12 or to violate any provision of those chapters.

~~SEC. 178.~~

SEC. 157. Section 4990.44 is added to the Business and Professions Code, to read:

4990.44. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

~~SEC. 179.~~

SEC. 158. Section 4990.45 is added to the Business and Professions Code, to read:

4990.45. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters *into* a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

~~SEC. 180.~~

SEC. 159. Section 4990.46 is added to the Business and Professions Code, to read:

4990.46. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially

related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be ~~had~~ *held* until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

~~SEC. 181.~~

SEC. 160. Section 4990.47 is added to the Business and Professions Code, to read:

4990.47. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code*, or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 182. Section 4990.48 is added to the Business and Professions Code, to read:~~

~~4990.48. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:~~

~~(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government~~

~~Code. The board shall not stay the revocation and place the license on probation.~~

~~(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.~~

~~SEC. 183. Section 4990.49 is added to the Business and Professions Code, to read:~~

~~4990.49. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee~~

~~is limited to records of patients who have complained to the board about that licensee.~~

~~(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:~~

~~(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.~~

~~(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.~~

~~(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.~~

~~(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.~~

~~(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.~~

~~(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.~~

~~(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 184. Section 4990.50 is added to the Business and Professions Code, to read:~~

~~4990.50. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.~~

~~(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.~~

~~(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the~~

~~release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.~~

~~(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.~~

~~(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.~~

~~(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.~~

~~(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.~~

~~(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.~~

~~(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.~~

~~(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.~~

~~(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.~~

~~SEC. 185.~~

SEC. 161. Section 4990.51 is added to the Business and Professions Code, to read:

4990.51. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or

termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the suspension or termination for cause, any resignation in lieu of suspension or termination for cause, and any other relevant information deemed appropriate by the employer.

(c) The board shall be entitled to inspect and copy the following documents in the record for any suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, resulting in action that is required to be reported pursuant to this section:

(1) Any statement for suspension or termination of the licensee.

(2) Any document or exhibits relevant to the suspension or termination.

(d) If, during the investigation by the board of the cause for the termination or suspension or resignation of the licensee, it is found that there has been a violation of existing state or federal law, the board shall report the violation to the appropriate agency.

(e) For purposes of this section, “suspension or termination for cause” or “resignation in lieu of suspension or termination for cause” is defined as resignation, suspension, or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to the extent that it impairs the licensee’s ability to safely practice.

(2) Unlawful sale of a controlled substance or other prescription items.

(3) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

(4) Gross negligence or incompetence.

(5) Theft from a patient or client, any other employee, or the employer.

(f) As used in this section, the following definitions apply:

(1) "Gross negligence" means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) "Incompetence" means the lack of possession of, and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by, a responsible licensee.

(3) "Willful" means a knowing and intentional violation of a known legal duty.

(g) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.

(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).

(h) The board shall investigate the circumstances underlying any report received pursuant to this section within 30 days to determine if an interim suspension order or temporary restraining order should be issued. The board shall otherwise provide timely disposition of the reports received pursuant to this section.

(i) The board shall send to the licentiate a copy of the report along with the reasons for the filing of the report and notice advising the licentiate of his or her right to submit additional statements or other information to the board.

(j) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.

(k) No report is required under this section where a report of the action taken is already required under Section 805.

~~SEC. 186.~~

SEC. 162. Section 4990.52 is added to the Business and Professions Code, to read:

4990.52. Unless otherwise provided, on or after July 1, ~~2013~~ *2014*, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee ~~for which~~ *whom* the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section ~~4990.50 or~~ 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977

(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

~~SEC. 187.~~

SEC. 163. Section 4990.53 is added to the Business and Professions Code, to read:

4990.53. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

~~(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.~~

~~SEC. 188.~~

SEC. 164. Section 4992.33 of the Business and Professions Code is amended to read:

4992.33. (a) The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act.

The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term ~~sex offense~~ *"sex offense"* shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in ~~Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code~~ *subdivisions (a) to (d), inclusive, of Section 243.4, Section 261.5 or 313.1, or subdivision (a) or (d) of Section 647 of the Penal Code,* or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

~~SEC. 189.~~

SEC. 165. Section 12529.8 is added to the Government Code, to read:

12529.8. (a) Any healing arts board described in Division 2 (commencing with Section 500) of~~,~~ the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall assign attorneys to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs.

(b) The report requirements contained in Section 12529.7 shall apply to any healing arts board that utilizes those provisions for enforcement.

(c) This section shall not apply to any healing arts board listed in subdivision (a) of Section 12529.

~~SEC. 190. (a) It is the intent of the Legislature that the Department of Consumer Affairs shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees. The Legislature intends the system to be designed as an integrated system to support all business automation requirements of the department's licensing and enforcement functions.~~

~~(b) The Legislature also intends the department to enter into contracts for telecommunication, programming, data analysis, data processing, and other services necessary to develop, operate, and maintain the enterprise information technology system.~~

~~SEC. 191.~~

SEC. 166. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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Dental Board of California
Bill Analysis

Bill No.: Senate Bill 694 (As Amended January 25, 2012)
Topic: Dental care
Author: Padilla (Co-Authors Senators Emmerson and Price)
Status: In Assembly. Read first time. Held at Desk.
Location: Assembly

Summary:
Existing law requires the Department of Public Health (DPH) to maintain a dental program that includes, but is not limited to, development of comprehensive dental health plans within the framework of a specified state plan. Existing law, establishes the Dental Board of California for the purpose of licensing and regulating the practice of Dentistry within the State.

This bill would create the Statewide Office of Oral Health (Office), and suspends existing law authorizing the current dental program within DPH, provided the Department of Finance (DOF) memorializes in writing, that sufficient funds have been deposited within the state to establish the Office. The provisions of existing law would become operative again on the date DOF memorializes in writing, that the Office has not secured sustainable funding sources to maintain the activities of the Office, or on January 1, 2016, whichever occurs first.

This bill creates the Office within DPH and specifies that a licensed dentist shall serve as the dental director, and that the dental director and staff shall have the responsibilities of:

- Advancing and protecting the oral health of Californians,
- Developing a comprehensive and sustainable state oral health action plan to address oral health needs,
- Encourage private and public collaboration to meet the oral health needs of Californians,
- Securing funds to support infrastructure and statewide and local programs,
- Promote evidence-based approaches to increase oral health literacy, and
- Establishing a system for surveillance and oral health reporting.

This bill specifies that no General Fund moneys shall be used for the purposes of implementing the Office, and would authorize the state to accept other public or private funds for the purpose of implementation of the proposed Office. This bill specifies that DOF shall make a determination regarding the funding status of the Office on January 1, 2014, and annually thereafter.

This bill specifies that the Office shall only be established after DOF determines that public or private funds, in an amount sufficient to fully support the activities of the Office, have been deposited with the State. This bill provides that if DOF makes a

determination that sufficient funding has been secured for the establishment of the Office, DOF shall file a written statement with the Secretary of the Senate, the Chief Clerk of the Assembly, and Legislative Counsel memorializing that this determination has been made.

If the Office becomes established, it will assume responsibility for identifying and securing funding to maintain its function. If DOF makes a determination that the Office has not secured sustainable funding sources to maintain the activities of the Office, DOF shall file a written statement with the Secretary of the Senate, the Chief Clerk of the Assembly, and Legislative Counsel memorializing that this determination has been made.

This bill specifies that the provision establishing the Office shall become inoperative on January 1, 2016.

This bill finds and declares that, as part of a comprehensive integrated system of dental care, with the dentist as the head of that system, additional dental providers who provide basic preventive and restorative oral health care to underserved children, located at or near where children live or go to school, may have the potential to reduce the oral health disease burden in the population most in need.

This bill authorizes the Office to design and implement a scientifically rigorous study to assess the safety, quality, cost-effectiveness, and patient satisfaction of expanded dental procedures for the purpose of informing future decisions about how to meet the state's unmet oral health need for the state's children. This bill requires the research parameters of the study to include public health settings, multiple models of dentist supervision, multiple pathways of education and training, and multiple dental providers. This bill requires procedures performed during the study be performed only by providers within the confines of a university based study.

This bill requires the Dental Director to convene an advisory group, as specified, on study design and implementation, provide input regarding study design and implementation, receive all study data and reports, and develop a report and recommendations to be submitted to the Legislature based on the study findings. This bill requires the Dental Director to consult with the Legislative Analyst's Office in designing the study and selecting contractors.

This bill provides that no General Fund money shall be used to implement the study, and that money to fund the study, including analysis and findings, shall be secured from other public or private sources. This bill provides that no one providers group or interest group may provide more than half the private funding for the study

This bill sunsets the study by January 1, 2014, if it is not sufficiently funded and commenced by that date.

This bill sunsets the Office and the study on January 1, 2016.

Analysis:
This bill is sponsored by The Children's Partnership and is intended to begin addressing the lack of dental health care access in California, especially its impact on children. According to the Author, oral health is often taken for granted, but is in fact a critical component of overall health.

According to the Senate Health Committee Analysis, nearly a quarter of California's children ages 0 to 11 have never been to the dentist despite the recommendation by the American Academy of Pediatric Dentistry that children visit the dentist at the time of first-tooth eruption and no later than one year of age and that they have a dental check-up every six months after that.

On March 23, 2011, President Obama signed the Affordable Care Act, Public Law (P. L.) 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, P. L. 111-152. It is estimated that 4.7 million California children and adults who were uninsured during some part of 2009 will be eligible for health coverage under the Affordable Care Act (ACA). Among its many provisions, the ACA:

a. Requires that insurance plans include oral care for children,
b. Expands school-based sealant programs,
c. Authorizes $30 million for fiscal year 2010 to train oral health workforce,
d. Establishes five-year, $4 million demonstration projects to test alternative dental health care providers,
e. Establishes a public health workforce track, including funding for scholarships and loan repayment programs for dental students and grants to dental schools,
f. Establishes three-year, $500,000 grants to establish new primary care residency programs, including dental programs, and
g. Provides funding for new and expanded graduate medical education, including dental education.

In California, implementation of the ACA is under way with the enactment last year of AB 1602 (Perez), Chapter 655, Statutes of 2010, and SB 900 (Alquist, Steinberg), Chapter 659, Statutes of 2010, establishing the California Health Benefits Exchange within the California Health and Human Services Agency. According to advocates, an estimated 1.2 million California children will soon gain dental coverage due to the recent enactment of the ACA. However, advocates argue that California will not be able to fulfill the promise of improving children's dental health if there are not enough dental providers to meet this growing demand. The following provisions are included in the ACA and will impact dental workforce in California:

- Requires that insurance plans offered under the Exchange to include oral care for children.
- Expands school-based sealant programs.
- Authorizes $30 million for fiscal year 2010 to train oral health workforce.
- Establishes five-year, $4 million demonstration projects to test alternative dental health care providers.

- Establishes a public health workforce track, including funding for scholarships and loan repayment programs for dental students and grants to dental schools.
- Establishes three-year, $500,000 grants to establish new primary care residency programs, including dental programs.
- Provides funding for new and expanded graduate medical education, including dental education.

During the 2011 oversight hearing of the Dental Board of California, the Senate Committee on Business, Professions, and Economic Development raised concerns whether California will be able to meet the increased demand for dental services with the enactment of the Affordable Care Act.

According to information provided by DPH, loss of funding during the past 10 years has forced DPH to significantly cut back the functions of the Oral Health Unit (OHU, formerly the Office of Oral Health). Until 1995, there was a dentist leading the OHU. In 2000, OHU entered into a contract with the University of California, San Francisco to employ a dentist for the Community Water Fluoridation program to provide training and technical assistance to communities. The dentist provided content expertise on other areas of oral health as well. Due to funding reductions from the Preventive Health & Health Services Block Grant (PHHSBG), which funded the Community Water Fluoridation Program, the position for the dentist was terminated in September 2011. OHU has been researching possible funding opportunities to restore partially or fully the California Children's Dental Disease Prevention Program, which had been a cost-effective children's dental program prior to the loss of funding in 2009. OHU has maintained a Community Water Fluoridation Program which has been funded through the PHHSBG.

Currently, the Oral Health Unit within DPH (formerly the Office of Oral Health), currently has one staff and among other functions, is charged with
maintaining a dental program that develops a comprehensive dental health plans, coordinates federal, state, county, and city agency programs related to dental health, and encourages, supports, and augments the efforts of city and county health departments in the implementation of a dental health component. This bill eliminates this unit and will replace it with the Statewide Office of Oral Health.

The sources of public funding, relating to this bill, have not been specified. At this time, staff is unable to determine if the State Dentistry Fund will be impacted as a result of this bill.

Support and Opposition:
Support : (Verified 1/23/12)
The Children's Partnership (source)
American Academy of Pediatrics
California Association of Rural Health Clinics
California Coverage and Health Initiatives
California Dental Association
California School Health Centers Association

California Society of Pediatric Dentistry
Children Now
Children's Defense Fund of California
Los Angeles Area Chamber of Commerce
Mendocino Community Health Clinic, Inc.
The 100% Campaign
Venice Family Clinic
Western Dental Services, Inc.
Worksite Wellness LA

Opposition: (Verified 1/23/12)
California Nurses Association
Machado Maxillofacial Surgery

AMENDED IN SENATE JANUARY 25, 2012

AMENDED IN SENATE JANUARY 12, 2012

AMENDED IN SENATE JANUARY 4, 2012

AMENDED IN SENATE MARCH 29, 2011

SENATE BILL No. 694

Introduced by Senator Padilla
(Coauthors: Senators Emmerson and Price)

February 18, 2011

An act to ~~repeal, add, and repeal Article 2 (commencing with Section 104750) of~~ *add Section 104766 to, to add Article 2.5 (commencing with Section 104767) to* Chapter 3 of Part 3 of Division 103 of*, and to repeal Section 104767.1 of,* the Health and Safety Code, relating to dental care.

LEGISLATIVE COUNSEL'S DIGEST

SB 694, as amended, Padilla. Dental care.

Existing law requires the State Department of Public Health to maintain a dental program that includes, but is not limited to, development of comprehensive dental health plans within the framework of a specified state plan.

This bill would ~~repeal~~ *make* these provisions ~~and would provide for~~ *inoperative for a specified period of time upon* the creation of a Statewide Office of Oral Health within the State Department of Public Health with a licensed dentist who serves as the dental director. This bill would provide that no General Fund moneys shall be used to implement ~~these~~ *the* provisions *creating the office,* but would authorize the state to accept other public and private funds for the purpose of implementing these provisions, and would provide that these provisions become inoperative, as specified, if ~~federal~~ *other public* or private funds

are not deposited with the state in an amount sufficient to fully support the activities of the office. *This bill would authorize the office to conduct a specified study under described circumstances.*

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) Nationally and statewide, tooth decay ranks as the most common chronic disease and unmet health care need of children.

(b) Poor dental health can disrupt normal childhood development, seriously damage overall health, and impair a child's ability to learn, concentrate, and perform well in school. In rare cases, untreated tooth decay can lead to death.

(c) Unmet dental needs have significant human and financial costs. In 2007, it was estimated that California schools lost nearly thirty million dollars ($30,000,000) in attendance-based school district funding due to 874,000 missed school days related to dental problems; and California's hospitals experienced over 83,000 emergency room visits for preventable dental problems at a cost of fifty-five million dollars ($55,000,000).

(d) With full implementation of the federal Patient Protection and Affordable Care Act (Public Law 111-148), approximately 1.2 million additional children in California are expected to gain dental coverage.

(e) The burden of oral disease can be markedly decreased through early intervention, including education, prevention, and treatment. Effective prevention reduces the need for costly treatment of advanced dental disease.

(f) To address this unmet need, a comprehensive coordinated strategy is necessary, at the foundation of which is a strong state oral health infrastructure to coordinate essential public dental health functions, including assessing need and capacity to address that need.

~~SEC. 2. Article 2 (commencing with Section 104750) of Chapter 3 of Part 3 of Division 103 of the Health and Safety Code is repealed.~~

SEC. 2. Section 104766 is added to the Health and Safety Code, to read:

104766. This article shall become inoperative on the date the Department of Finance memorializes in writing, pursuant to paragraph (2) of subdivision (e) of Section 104767, that sufficient funds have been deposited with the state to establish the Statewide Office of Oral Health, and shall become operative again on the date the Department of Finance memorializes in writing, pursuant to paragraph (2) of subdivision (f) of Section 104767, that the office has not secured sustainable funding sources to maintain the activities of the office, or on January 1, 2016, whichever occurs first.

SEC. 3. Article ~~2~~*2.5* (commencing with Section ~~104750)~~*104767)* is added to Chapter 3 of Part 3 of Division 103 of the Health and Safety Code, to read:

Article ~~2.~~*2.5.* Statewide Office of Oral Health

~~104750.~~

104767. (a) There shall be a Statewide Office of Oral Health within the State Department of Public Health.

(b) Within the office there shall be a licensed dentist who serves as the dental director.

(c) The dental director and his or her staff shall have all of, but not be limited to, the following responsibilities:

(1) Advancing and protecting the oral health of all Californians.

(2) Developing a comprehensive and sustainable state oral health action plan to address the state's unmet oral health needs.

(3) Encouraging private and public collaboration to meet the oral health needs of Californians.

(4) Securing funds to support infrastructure and statewide and local programs.

(5) Promoting evidence-based approaches to increase oral health literacy.

(6) Establishing a system for surveillance and oral health reporting.

(d) The state may accept public funds and private funds for the purpose of implementing this article.

(e) (1) No General Fund moneys shall be used for purposes of this section. Moneys to fund the office shall be secured from other

public or private sources. The Department of Finance shall, on January 1, 2014, and annually thereafter, make a determination regarding the funding status of the office. Moneys needed to sufficiently fund and commence the study pursuant to Section 104767.1 shall not be considered for purposes of determining the funding status of the office pursuant to this paragraph.

~~(e) (1)~~

(2) The office shall be established pursuant to this section only after a determination has been made by the Department of Finance that ~~federal~~ *public* or private funds in an amount sufficient to fully support the activities of the office, including staffing the office, have been deposited with the state. *If the Department of Finance makes a determination that sufficient funding has been secured to establish the office, the Department of Finance shall file a written statement with the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel memorializing that this determination has been made.*

~~(2) No General Fund moneys shall be used to fund this section. Moneys to fund the office shall be secured from other public or private sources. If the Department of Finance makes a determination that the amount of federal or private funds deposited with the state is not sufficient to support the activities of the office, it is the intent of the Legislature that this section become inoperative.~~

(f) (1) If the office is established pursuant to this section, the office shall assume responsibility for identifying and securing funding sources in order to maintain the functions of the office.

(2) If *the Department of Finance makes a determination that* the office ~~does not secure~~ *has not secured* sustainable funding sources to maintain the activities of the office pursuant to paragraph (1), ~~this section shall become inoperative on January 1, 2016~~ *the Department of Finance shall file a written statement with the Secretary of the Senate, the Chief Clerk of the Assembly, and the Legislative Counsel memorializing that this determination has been made*.

(g) This section shall become inoperative on January 1, 2016.

~~104751.~~

104767.1. (a) The Legislature finds and declares that, as part of a comprehensive integrated system of dental care, with the dentist as the head of that system, additional dental providers who

provide basic preventive and restorative oral health care to underserved children, located at or near where children live or go to school, may have the potential to reduce the oral health disease burden in the population most in need.

(b) The office may design and implement a scientifically rigorous study to assess the safety, quality, cost-effectiveness, and patient satisfaction of ~~irreversible~~ *expanded* dental procedures ~~performed by traditional and nontraditional providers~~ for the purpose of informing future decisions about ~~scope of practice changes in the dental workforce that include irreversible or surgical procedures~~ *how to meet the state's unmet oral health need for the state's children*. The research parameters of the study shall include public health settings, multiple models of dentist supervision, multiple pathways of education and training, and multiple dental providers~~, including dentists and nondentists~~. *Procedures performed during the study shall be performed only by providers within the confines of a university-based study*.

(c) The dental director shall convene an advisory group on study design and implementation. *The advisory group shall be comprised of representatives of all dental practices, including traditional and nontraditional, as well as nondentists.*

(d) The dental director shall provide input regarding study design and implementation, receive all study data and reports, and develop a report and recommendations to be submitted to the Legislature based on the study findings. *The dental director shall also consult with the Legislative Analyst's Office in designing the study and selecting any contractors.*

(e) ~~(1)~~ There shall be no General Fund moneys used to implement this section. Moneys to fund the study, including analysis and findings, *and all procedures administered by providers during the study,* shall be secured from other public or private sources. *No one provider group or interest group may provide more than half the private funding for the study.*

~~(2) All procedures administered by providers during the study shall be paid for by private or federal funds. No General Fund moneys shall be used to fund procedures performed as part of the study.~~

(f) ~~In the event that~~ *Notwithstanding subdivision (g), if* the study described in this section is not sufficiently funded and commenced

by January 1, 2014, this section shall become inoperative on January 1, 2014.

(g) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

~~104752. This article shall become inoperative on January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.~~

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STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P 916-263-2300 F 916-263-2140 www.dbc.ca.gov

MEMORANDUM

DATE	February 2, 2012
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item LEG 4:** Discussion of Prospective Legislative Proposals

Background
Stakeholders are encouraged to submit proposals in writing to the Board before or during the meeting for possible consideration by the Board at a future meeting.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of the Enforcement Committee of the Dental Board of California will be held as follows:

NOTICE OF ENFORCEMENT COMMITTEE MEETING

Thursday, February 23, 2012
Upon Conclusion of Legislative and Regulatory Committee Meeting
Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101
619-232-3861 or 916-263-2300

ENFORCEMENT COMMITTEE
Chair – Rebecca Downing, Public Member
Vice Chair – Huong Le, DDS
Steven Afriat, Public Member
John Bettinger, DDS
Suzanne McCormick, DDS
Bruce Whitcher, DDS

CALL TO ORDER

ROLL CALL AND ESTABLISHMENT OF QUORUM

ENF 1 – Approval of the November 7, 2011 Enforcement Committee Meeting Minutes

ENF 2 – Enforcement Program – Statistics and Status

ENF 3 – Diversion Statistics

ENF 4 – Discussion and Update Regarding the Board's Proposed Enforcement Tools Requested During the 2011 Legislative Session

ENF 5 – Review of Second Quarter Performance Measures from the Department of Consumer Affairs

PUBLIC COMMENT

ADJOURNMENT

Public comments will be taken on agenda items at the time the specific item is raised. The Committee may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the Committee Chair. For verification of the meeting, call (916) 263-2300 or access the Board's web site at **www.dbc.ca.gov**. The meeting facilities are accessible to individuals with physical disabilities. Please make any request for accommodations to Richard DeCuir at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, no later than one week prior to the day of the meeting.

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
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Enforcement Committee
Meeting Minutes
Monday, November 7, 2011

Sportsmen's Lodge, 12825 Ventura Blvd.
Studio City, CA 91604
DRAFT

Members Present:
Rebecca Downing, Public Member, Chair
John Bettinger, DDS, Vice Chair
Steven Afriat, Public Member
Stephen Casagrande, DDS
Huong Le, DDS
Thomas Olinger, DDS

Members Absent:

Staff Present:
Richard DeCuir, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Dental Assisting Program Manager
Teri Lane, Supervising Investigator I
Jocelyn Campos, Enforcement Coordinator
Adrienne Mueller, Enforcement Analyst
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Roll Call and Establishment of a Quorum:
Chair Rebecca Downing called the meeting to order at 4:03 and established a quorum.

ENF 1 – Approval of the August 11, 2011 Enforcement Committee Meeting Minutes:
M/S/C (Afriat/Bettinger) to approve the August 11, 2011 Enforcement Committee meeting minutes. The motion passed unanimously.

ENF 2 – Enforcement Program – Statistics and Status:
Kim Trefry, Enforcement Chief, reported that statistics for the past 12 month period show that the Complaint Intake and Investigations Unit received an average of 234 complaints per month. There are 535 cases pending (open) as of 9/30/2011. The average caseload for each Consumer Services Analyst was 93. The unit closed 2,813 cases averaging 255 per month. The average number of days to closure of a complaint was 87.

The Investigation Offices currently have 859 open investigative cases, 283 probation cases, and 85 open inspection cases. The average caseload per full time Investigator for the past 12 month period was 42, Special Investigator/Analyst was 45.5 and Inspector was 42.5. The total number of investigation cases closed, filed with the Attorney General's Office or filed with the District/City Attorney

during the last 12 months was 1,192. This was a 75% increase from the previous year. The average number of days to complete an investigation was 383, a 20% decrease from the previous year's average.

Ms. Trefry reported that case aging continues to improve. They are down to 7 cases that are over three years old which is a huge improvement from the previous year's high of 38. Ms. Trefry explained the reasons that a case may age for that length of time include: unlicensed activity where the subject either can't be identified or cannot be found, those cases remain open as long as they feel that there is a chance that they might locate or identify the subject, settlement cases where the subject is unwilling to cooperate and/or provide records and pending criminal matters that are waiting for the criminal case to be adjudicated before they move forward with an administrative case.

Ms. Downing thanked Teri Lane and Nancy Butler for diligently monitoring and focusing resources on the older and high priority cases resulting in closures getting closer and closer to the 18 month standard that the Legislature set.

Ms. Trefry reported a 95% decrease in unassigned cases. Investigative Activity is still in the first year of reporting so the statistics are not complete. The consumer satisfaction survey was implemented about a year ago based on an enforcement monitors' recommendation. Response rates are still very low. Out of 875 case closures during the last quarter, only 11 responses were received.

ENF 3 – Diversion Statistics:
Mr. DeCuir reported that we are still negotiating with our consultant MAXIMUS to change the data fields to be more dental specific in the Diversion report. He gave an overview of the statistics that were provided.

Public Comment:
There was no public comment.

Adjournment:
The committee adjourned at 4:19 p.m.

DRAFT

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P 916-263-2300 F 916-263-2140 www.dbc.ca.gov

MEMORANDUM

DATE	January 31, 2012
TO	Enforcement Committee Dental Board of California
FROM	Kim A. Trefry, Enforcement Chief Lori Reis, Manager, Complaint & Compliance Unit Dental Board of California
SUBJECT	**Agenda Item ENF 2: Enforcement Program** Statistics and Status

Attached please find Complaint Intake and Investigation statistics for the previous 12 month period. Below is a summary of some of the program's trends:

Complaint & Compliance Unit

Complaints Received: The total number of complaint files received during the previous 12 months was 3601, averaging 234 per month.

Pending Cases (as of 12/31/11): **596**
Average caseload per Consumer Services Analyst (CSA) = 132 cases
Cases pending assignment = 0

Chart 1 - Case Aging (as of 09/30/11)

0–3 Months	476	81%
4–6 Months	97	17%
7–9 Months	9	>1%
10–12 Months	6	>1%
1-2 Years	0	0%

Chart 2 - Cases Closed: The total number of complaint files closed during the same time period was 2601, averaging 217 per month. The average number of days a complaint took to close within the last 12 months was 74 days.

Charts 3 & 4 – Allegation Types These charts provide a breakdown of open and closed complaints by allegation type.

Staffing: The Complaint Unit recently filled two (2) vacancies, one (1) CSA Limited Term and one (1) Office Technician (OT) intake position. The Complaint Unit is now fully staffed for the first time since March of last year.

Investigations

Current Open Caseload (As of 1/1/12)
There are currently approximately **823** open investigative cases, **290** probation cases, and **9** open inspection cases.
Average caseload per full time Investigator = 43
Average caseload per Special Investigator/Analyst = 41
Average caseload per Inspector = 4
Cases pending assignment = 29

Chart 5 - Case Aging (As of 1/1/12)

0 – 3 Months	102	11%
3 – 6 Months	131	15%
6 – 12 Months	274	31%
1 – 2 Years	266	30%
2 – 3 Years	93	11%
3+ Years	5	0.5%

Since our last report (November 2011), there has been a decrease in the percentage of cases over 1 year old (from 45% to 41%). This can be attributed to a continued focus on closing our oldest cases. The number of cases in the oldest category (3 years and older) continues to decrease, with only 5 cases remaining.

Chart 6 - Case Closures The total number of investigation cases closed, filed with the Attorney General's Office or filed with the District/City Attorney during the last 12 months is **1245.** This is an 84% increase from the previous year. The average number of days an investigation took to complete within the last 12 months was **389 days**. This is consistent with last quarter's closure rate (a 20% decrease from the previous year's average).

Charts 7 & 8 – Allegation Types These charts provide a breakdown of open and closed investigations by allegation type.

Chart 9 – Unassigned Caseload Over the past 6 month period, the enforcement program has been working to reduce the number of unassigned investigations. From a high of 274 unassigned cases in January 2011, we have reduced that backlog to 34 cases. Some of the oldest unassigned cases can be attributed to unlicensed activity allegations. In many of these instances, the suspects are transient and have not been located.

Charts 10 & 11 – Cases Referred for Discipline The total number of cases referred to the Attorney General's office during the past 12 months was **144**, averaging 12 per month. The average number of days for a disciplinary case to be completed was **1000** days.

Investigative Activity Reporting (IAR) Update The IAR program records investigative time spent performing administrative and criminal casework and probation monitoring tasks, as well as the type of closure when the work is completed. Case

hours are provided to the prosecution for cost recovery purposes and can be used as a budgetary tool. Attached are two charts to illustrate some of the internal data that is used by the Enforcement program managers.

The Case Closure attachment shows the percentage of cases closed in the designated closure categories. The majority (**55%**) of our cases are closed Insufficient Evidence. This is typically the result when a complaint alleging negligent or incompetent treatment is reviewed by a Subject Matter Expert, and is found to be a simple act of negligence or does not rise to the level warranting formal discipline. Of the cases closed during this time period, approximately **23%** were referred to the Attorney General's Office for administrative action. Another **2%** were referred for criminal prosecution.

The Case Category attachment displays the number of case hours dedicated to different allegations being investigated or licensees being monitored. This report shows the majority (**39%**) of our investigative effort is dedicated to Negligence/Incompetence cases. The next two highest categories of case time were spent working Criminal conviction cases (**14%**) and investigating Unlicensed Practice (**3%**).

IAR System Upgrade – Effective May 2011, the system began recording Probation Monitoring time in addition to investigative tasks. At the time of this report, staff are spending approximately **9%** of their investigative time performing probation monitoring tasks. This percentage is comparable to our last reporting period.

Consumer Satisfaction Survey Survey results for the second quarter performance measure (October - December) were not available at the time this report was written. Staff continues to provide both the online survey web address in their closure letters, as well as a postage paid post card which can be returned to the Department to provide feedback.

SB541 –Expert Consultant Contracting Update In late October, the Department finalized the procedures for Boards and Bureaus to follow when entering into a contract with a dental consultant or subject matter expert. Since that time, Enforcement staff have been working diligently to prioritize the needs of the Complaint Intake unit and Investigations to place our expert consultants in three (3) year, $50,000 maximum consulting contracts before the December 31, 2011 deadline. Experts that were scheduled to testify at hearings, or identified to receive cases for review were first to be placed in contract. As administrative cases progress towards hearing dates or new work is completed, we will continue to place experts in contract as needed.

SB541 also requires the Board to "establish policies and procedures for the selection and use of expert consultants." The Enforcement program has revised and updated their existing policies to meet the intent of this regulation. These policies have been forwarded to legal counsel for review.

Stipulation to Probationary License This item is to address changes to current procedures. Until recently, if a Registered Dental Assistant (RDA) application was denied due to the criminal conviction history of the applicant, a request for hearing could

result in a lengthy and costly Statement of Issues hearing unless the Attorney General's office (AGO) offered to stipulate to a probationary license. In 2010, a Statement of Issues case averaged 606 days from denial to resolution. There are currently approximately 80 RDA cases pending with the AGO; of those 30 are RDA Statement of Issues cases.

Pursuant to Business and Professions Code section 1628.7, the Board may issue a probationary license if there is evidence that the applicant does not qualify for a full and unrestricted license. Although this process was utilized in the past, it is believed the practice fell out of use during changes in administration. The alternative of offering a probationary license in specified instances in lieu of a hearing offers a reasonable approach to those applicants with non-violent, criminal convictions that may benefit from structured monitoring during the first three (3) years of licensure.

Using a model developed by the Medical Board and working with the Board's legal counsel, we have developed a procedure to offer standard terms and conditions, and then upon acceptance, the information will be forwarded for the Board's consideration (mail vote).

Beginning in March, the Enforcement Program will begin a 90 day trial to ensure licensing and denial decisions are addressed efficiently and appropriately. We believe re-instituting this process allows the Board the discretion to license appropriate applicants, while utilizing its limited AG resources on cases that are more likely to result in meaningful discipline.

STATISTICAL SUMMARY OF ENFORCEMENT ACTIVITY - DENTAL BOARD OF CALIFORNIA
January 2011 - December 2011

COMPLAINT UNIT	Charts	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	YTD
Initial Pending	1, 3	744	800	695	659	770	628	542	546	562	554	530	554	
Total Received		335	388	349	377	309	302	218	335	207	256	264	261	3601
Closed in Complaint Unit	2,4	261	214	259	212	275	299	125	238	175	203	173	167	2601
With Merit		48	35	72	64	127	167	53	108	70	48	81	71	944
w/o merit		213	179	187	148	148	132	72	130	105	155	92	96	1657
Referred for Investigation		51	284	129	66	181	114	89	86	78	85	71	55	1289
Pending at end of Period		800	695	659	770	628	542	546	562	554	530	554	596	
Unassigned at end of period		6	9	30	2	2	1	0	0	0	0	0	0	

INVESTIGATIONS	Charts	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	YTD
Initial Pending	5,7	652	820	1040	1069	990	970	963	974	913	859	846	827	
Assigned		381	546	759	820	747	737	897	906	879	843	821	798	
Unassigned		271	274	281	249	243	233	66	68	34	16	25	29	
Total Received from Complaint Unit		51	284	134	66	181	100	89	86	65	77	67	52	1252
Closed in Current Month	6,8	72	64	105	132	201	107	78	147	119	90	86	56	1257
With Merit		63	54	62	71	185	92	63	111	107	79	74	51	1012
w/o Merit		9	10	43	61	16	15	15	36	12	11	12	5	245
Referred to AG		18	15	19	15	20	11	10	28	13	21	17	13	200
Referred for Criminal		0	0	1	0	4	1	1	0	3	0	0	0	6
Pending at end of period		820	1040	1069	990	970	963	974	913	859	846	827	823	
Assigned		546	759	820	747	737	897	906	879	843	821	798	789	
Unassigned	9	274	281	249	243	233	66	68	34	16	25	29	34	

STATISTICAL SUMMARY OF ENFORCEMENT ACTIVITY - DENTAL BOARD OF CALIFORNIA
January 2011 - December 2011

ATTORNEY GENERAL	Charts	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	**YTD**
Initial Pending		176	177	181	193	192	198	192	193	201	198	202	211	
Referrals from Investigations		18	15	19	15	20	11	10	28	13	21	17	13	200
Referred to the AG	10	5	13	19	12	18	10	5	15	14	11	15	10	147
Accusations Filed		9	10	9	7	11	7	9	10	4	3	9	8	96
Statement of Issues Filed		2	4	0	0	2	0	4	1	1	3	5	1	23
Petition to Revoke		3	0	2	1	4	0	3	0	6	3	4	3	29
Surrender of License		2	0	1	0	0	2	1	0	2	2	1	4	15
Cases Closed	11	12	9	6	6	7	15	8	7	10	8	5	7	100
Pending at end of period		177	181	193	192	198	192	193	201	198	202	211	213	

Statistical Summary of Complaint Age
January 2011 - December 2011

Chart 1 - Open Complaints by Age

Breakdown by Age	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
0 - 3 Months	684	639	604	699	505	443	444	481	464	459	476	476
4-6 Months	95	46	55	61	109	65	71	56	45	39	54	97
7-9 Months	16	13	22	18	12	3	20	18	23	15	10	9
10-12 Months	13	6	0	0	5	0	3	2	3	8	7	6
1-2 Years	7	5	0	0	0	0	1	2	1	1	0	0
2-3 Years	0	0	0	0	0	0	0	0	0	0	0	0
3+ Years	0	0	0	0	0	0	0	0	0	0	0	0
Total*	**815**	**709**	**681**	**778**	**631**	**511**	**539**	**559**	**536**	**522**	**547**	**588**

*Totals will not match **Pending at end of Period** due to coding variations within Open Case Aging reports.

Chart 2 - Closed Complaints by Age

Breakdown by Age	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	YTD
0 - 3 Months	155	124	157	138	220	191	93	179	124	123	119	111	1734
3-6 Months	72	69	91	57	53	107	29	51	42	66	44	51	732
6-12 Months	29	16	7	15	2	1	3	9	8	14	10	5	119
1-2 Years	5	4	4	2	0	0	0	0	1	0	0	0	16
2-3 Years	0	0	0	0	0	0	0	0	0	0	0	0	0
3+ Years	0	0	0	0	0	0	0	0	0	0	0	0	0
Total*	**261**	**213**	**259**	**212**	**275**	**299**	**125**	**239**	**175**	**203**	**173**	**167**	**2601**

Statistical Summary of Complaint Categories
January 2011 - December 2011

Chart 3 - Open Complaints by Allegation Type

Allegation	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
Fraud (F)	62	89	120	153	109	32	29	31	30	23	17	16
Non-Jurisdictional (J)	14	14	15	15	13	10	16	13	14	20	16	17
Incompetence/Negligence (N)	483	452	425	394	380	371	357	383	400	378	406	422
Other (O)	14	21	26	22	22	39	55	45	31	38	44	49
Unprofessional Conduct (R)	61	50	34	28	28	22	25	42	39	26	32	25
Sexual Misconduct (S)	0	0	0	0	0	0	0	0	0	2	1	0
Unlicensed/Unregistered (U)	10	4	4	4	4	5	0	1	9	5	4	5
Drug Related Offenses (D)	0	3	1	1	0	1	0	1	1	2	1	0
Criminal Charges (V)	152	56	26	147	68	55	58	43	29	34	32	59
Unsafe/Unsanitary Conditions (E)	2	4	8	6	4	7	6	3	1	2	1	3
Discipline by Another State (T)	1	0	0	0	0	0	0	0	0	0	0	0
Substance Abuse, Mental/Physical Impairment (A)	1	2	0	0	0	0	0	0	0	0	0	0
Total*	**800**	**695**	**659**	**770**	**628**	**542**	**546**	**562**	**554**	**530**	**554**	**596**

*Totals will not match **Pending at end of Period** due to coding variations within Open Case Allegation reports.

Statistical Summary of Complaint Categories
January 2011 - December 2011

Chart 4 - Closed Complaints by Allegation Type

Allegation	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	YTD Totals
Fraud (F)	14	9	15	10	53	84	4	9	5	13	9	2	**227**
Non-Jurisdictional (J)	46	27	31	27	42	24	6	27	21	19	21	12	**303**
Incompetence/Negligence (N)	139	142	169	133	140	121	87	115	84	119	82	105	**1436**
Other (O)	9	4	14	10	11	21	8	27	27	22	26	10	**189**
Unprofessional Conduct (R)	37	19	24	18	9	9	5	9	8	18	8	6	**170**
Sexual Misconduct (S)	0	0	0	0	0	0	1	0	0	0	0	0	**1**
Unlicensed/Unregistered (U)	1	7	1	1	3	3	1	0	1	0	0	0	**18**
Drug Related Offenses (D)	0	0	0	0	1	0	0	0	1	0	0	0	**2**
Criminal Charges (V)	8	0	0	2	11	33	7	45	23	9	23	27	**188**
Unsafe/Unsanitary Conditions (E)	7	4	4	11	5	4	6	7	5	3	4	5	**65**
Discipline by Another State (T)	0	1	0	0	0	0	0	0	0	0	0	0	**1**
Sub. Abuse, Mental/Physical Impairment (A)	0	0	1	0	0	0	0	0	0	0	0	0	**1**
Total	**261**	**213**	**259**	**212**	**275**	**299**	**125**	**239**	**175**	**203**	**173**	**167**	**2601**

rev. 1/31/2012

Statistical Summary of Investigation Age
January 2011 - December 2011

Chart 5 - Open Investigations by Age

Breakdown by Age	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
0 - 3 Months	68	237	264	141	152	202	149	133	101	117	113	102
3 - 6 Months	87	127	143	193	187	182	194	170	165	146	155	131
6 - 12 Months	264	272	244	266	252	205	249	242	246	236	242	274
1 - 2 Years	256	260	275	268	265	271	290	296	288	290	279	266
2 - 3 Years	147	140	142	131	124	123	111	92	91	89	79	93
3+ Years	21	16	10	13	14	9	13	11	7	7	4	5
Total	**843**	**1052**	**1078**	**1012**	**994**	**992**	**1006**	**944**	**898**	**885**	**872**	**871**

Chart 6 - Closed Investigations by Age

Breakdown by Age	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	YTD
0 - 3 Months	11	8	18	67	65	27	8	25	12	10	12	9	**272**
3 - 6 Months	4	3	12	14	56	22	14	39	31	15	9	8	**227**
6 - 12 Months	20	8	14	13	24	20	23	33	24	20	21	15	**235**
1 - 2 Years	11	21	31	12	14	21	15	17	37	31	25	16	**251**
2 - 3 Years	16	18	22	21	37	12	16	20	12	11	16	7	**208**
3+ Years	10	5	8	0	4	5	2	8	3	3	3	1	**52**
Total	**72**	**63**	**105**	**127**	**200**	**107**	**78**	**142**	**119**	**90**	**86**	**56**	**1245**

*Numbers in Chart 5 & 6 may not match the main statistical summary.
Aging reports are captured at the end of each month.
Summary reports are captured at the end of each quarter and may reflect changes to the data.

Statistical Summary of Investigation Categories
January 2011 - December 2011

Chart 7 - Open Investigations by Allegation Type

Allegation	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
Substance Abuse, Mental/Physical Impairment (A)	9	8	8	8	7	5	6	6	6	6	8	8
Drug Related Offenses (D)	25	25	26	28	25	28	25	31	24	25	31	32
Unsafe/Unsanitary Conditions (E)	5	5	6	4	4	4	4	6	4	3	3	4
Fraud (F)	49	60	58	64	63	62	63	66	60	55	57	58
Non-Jurisdictional (J)	1	1	0	1	1	1	1	1	1	1	1	1
Incompetence/Negligence (N)	399	396	396	397	385	372	355	372	347	356	335	323
Other (O)	44	43	41	45	41	38	39	35	39	38	35	37
Unprofessional Conduct (R)	75	89	88	86	87	89	87	84	88	95	98	104
Sexual Misconduct (S)	17	17	16	13	13	10	11	12	10	9	9	10
Discipline by Another State (T)	50	46	31	31	31	31	33	32	29	31	30	30
Unlicensed/Unregistered (U)	85	96	97	98	103	100	112	106	109	124	125	128
Criminal Charges (V)	64	258	306	236	235	248	214	259	182	149	141	134
Total	**823**	**1044**	**1073**	**1011**	**995**	**988**	**950**	**1010**	**899**	**892**	**873**	**869**

Statistical Summary of Investigation Categories
January 2011 - December 2011

Chart 8 - Closed Investigations by Allegation Type

Allegation	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
Substance Abuse, Mental/Physical Impairment (A)	2	2	1	1	1	2	1	0	0	0	0	1
Drug Related Offenses (D)	2	2	1	2	3	1	9	2	1	2	1	4
Unsafe/Unsanitary Conditions (E)	1	1	0	2	1	0	3	1	1	1	0	0
Fraud (F)	4	2	3	1	5	5	7	3	4	8	1	2
Non-Jurisdictional (J)	0	0	1	0	0	0	0	0	0	0	0	0
Incompetence/Negligence (N)	27	29	32	27	47	33	37	24	35	27	36	22
Other (O)	7	4	5	1	5	6	11	6	5	4	6	1
Unprofessional Conduct (R)	10	2	10	7	7	4	8	8	16	7	8	5
Sexual Misconduct (S)	0	0	1	4	0	3	1	0	2	1	2	0
Discipline by Another State (T)	2	4	15	0	0	0	0	0	5	0	1	0
Unlicensed/Unregistered (U)	11	6	9	7	10	10	8	8	9	3	11	4
Criminal Charges (V)	6	11	27	75	119	43	57	26	41	37	20	17
Total	**72**	**63**	**105**	**127**	**198**	**107**	**142**	**78**	**119**	**90**	**86**	**56**

Unassigned Investigations by Case Age
January 2011 - December 2011

Chart 9

Breakdown by Age	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11
0 - 3 Months	16	22	21	23	24	5	14	2	2	9	10	12
3 - 6 Months	21	26	27	24	20	10	10	3	1	3	5	8
6 - 12 Months	114	102	56	62	62	9	6	1	0	0	1	1
1 - 2 Years	102	105	122	103	102	34	33	26	12	12	12	12
2 - 3 Years	19	23	21	29	22	4	2	1	1	1	1	1
3 + Years	2	3	2	2	3	3	3	1	0	0	0	0
Total	**274**	**281**	**249**	**243**	**233**	**65**	**68**	**34**	**16**	**25**	**29**	**34**

Disciplinary Referrals by Category
January 2011 - December 2011

Chart 10 - Disciplinary Referrals by Category

Allegation	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	YTD
Cases referred to the Attorney Generals Office	5	13	19	7	18	10	5	15	14	11	16	11	144
Accusations Filed	9	10	9	7	11	7	8	10	4	3	9	8	95
Statement of Issues Filed	2	4	0	0	2	0	4	1	1	3	5	1	23
Petition for Reinstatement	0	2	1	0	2	0	0	0	1	0	0	0	6
Petition to Revoke Probation	3	0	1	0	1	0	1	1	1	0	1	1	10
Petition for Early Termination of Probation	0	1	0	0	0	0	1	0	0	1	0	0	3
Petition to Modify Probation	0	0	0	0	0	0	0	0	0	0	0	0	0
Request for Interim Susp Order / PC23 / TRO	1	0	0	1	0	1	0	0	1	0	1	0	4

Disciplinary Actions Taken
January 2011 - December 2011

Chart 11 - Disciplinary Actions

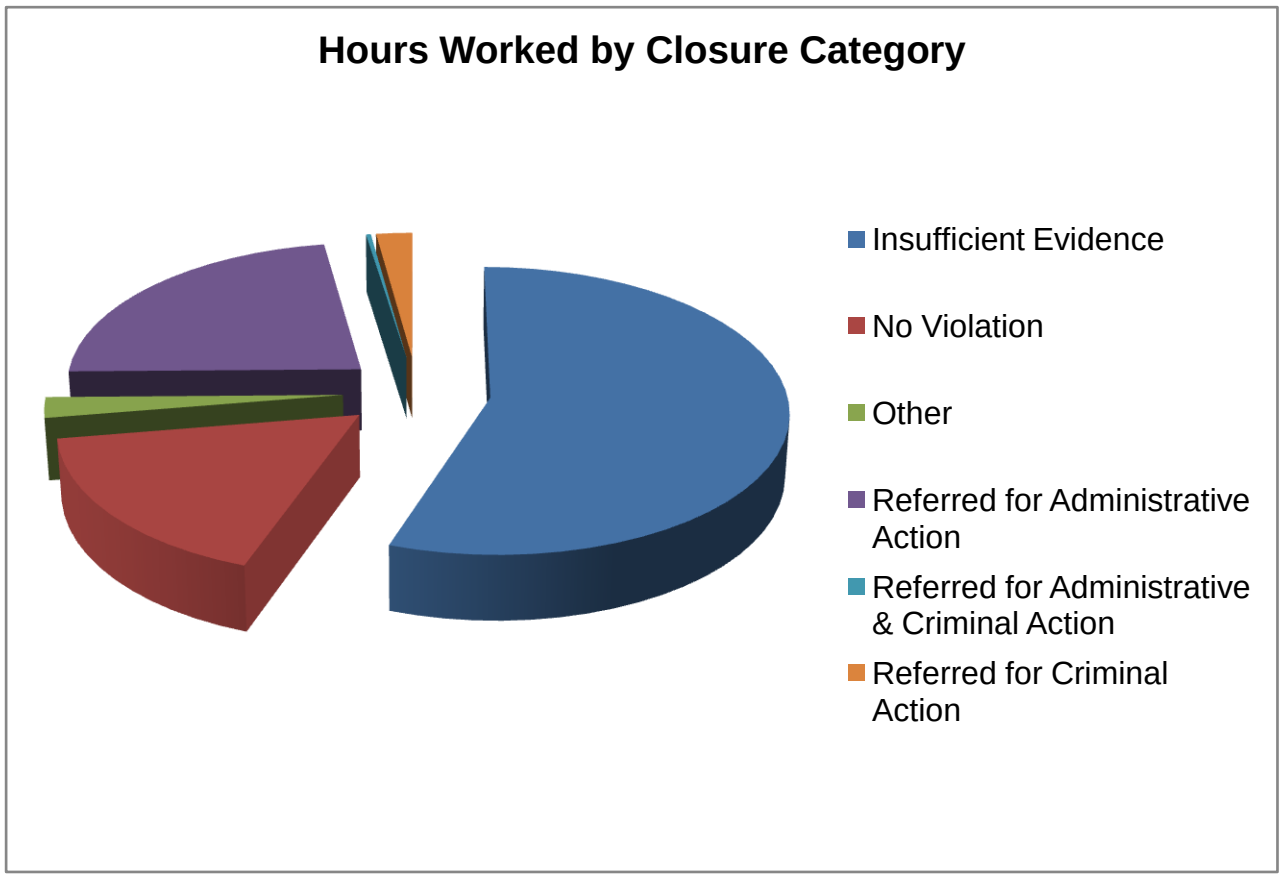
Allegation	Jan-11	Feb-11	Mar-11	Apr-11	May-11	Jun-11	Jul-11	Aug-11	Sep-11	Oct-11	Nov-11	Dec-11	YTD
Probation	8	6	2	5	6	6	5	2	2	3	4	5	54
Suspension	1	0	0	0	0	0	0	1	1	0	0	0	3
Revocation	1	0	2	4	5	6	2	1	1	2	2	4	30
Public Reprimand	1	1	1	0	0	1	0	3	2	0	0	0	9
License Denial	0	1	0	0	0	0	0	0	2	2	0	0	5
License Surrender	2	0	1	0	0	2	1	0	2	0	0	0	8
Interim Suspension Order/PC23	1	0	0	0	0	0	0	0	0	0	1	0	2
Other*	2	1	0	3	2	3	3	1	5	3	0	0	23
No Discipline	0	0	0	2	5	3	1	1	2	2	0	1	17
Accusation Withdrawn	0	0	2	0	1	0	0	0	2	2	1	0	8
Accusation Dismissed	0	0	0	0	0	0	0	0	0	0	0	0	0
Accusation Declined	0	0	0	0	2	0	0	0	0	1	0	0	3

* Represents cases *Opened in Error* & cases rejected for filing by the Executive Officer

Investigator Activity Report
Hours Worked by Closure Category

Case Closure Categories	Case Hours	# of Cases	% of Total
Insufficient Evidence	3198	502	55%
No Violation	984	113	17%
Other	134	1	2%
Referred for Administrative Action	1314	155	23%
Referred for Administrative & Criminal Action	17	1	0%
Referred for Criminal Action	126	8	2%
Total	5773	780	100%

12/02/2010 - 1/26/2012



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MEMORANDUM

DATE	January 31, 2012
TO	Enforcement Committee Members Dental Board of California
FROM	Lori Reis, Manager Dental Board of California
SUBJECT	**Agenda Item ENF 3:** Diversion Statistics

Attached are the Diversion Program statistics for quarter ending 12/31/2011. These statistics reflect the participant activity in the Diversion (Recovery) Program and are presented for information purposes only.

These statistics are derived from the MAXIMUS reports and are approximated numbers.

NOTE: There were no intakes into the Diversion Program during the month of October, 2011. In November, there was one (1) probation referral and December there was one (1) investigative referral and one (1) probation referral totaling three (3) for the quarter ending 12/31/2011.

The next DEC meeting is scheduled for March 1st and 2nd at the Board's Sacramento Office.

Dental Board of California
Diversion Program
Statistical Summary
As of 12/31/2011

	Current Quarter	Fiscal Year To Date	Program To Date
I INTAKES INTO PROGRAM			
1. Self Referral	0	1	27
2. Investigative Referral	1	4	62
3. Probation Referral	2	3	56
Group Totals	**3**	**8**	**145**
II APPLICANTS INTERVIEWED BY EACH DEC			
1. DBC Northern CA	2	3	54
2. DBC Southern CA	4	8	74
Group Totals	**6**	**11**	**128**
III APPLICANTS ACCEPTED BY EACH DEC			
1. DBC Northern CA	2	3	49
2. DBC Southern CA	3	7	60
Group Totals	**5**	**10**	**109**
IV STATUS CHANGES IN PROGRAM			
1. Closed	4	NA	NA
V CLOSED CASES			
1. Applicant Not Accepted by DEC	1	1	19
2. Applicant Public Risk	0	0	1
3. Applicant Withdrawn - Pre DEC	0	0	14
4. Clinically Inappropriate - Post DEC	1	1	7
5. Clinically Inappropriate - Pre DEC	0	0	7
6. Completed	2	4	69
7. No Longer Eligible - Post DEC	0	0	1
8. Terminated - Expired	0	0	3
9. Terminated - Failure to Receive Benefit	0	0	6
10. Terminated - Non Compliant	0	0	17
11. Terminated - Public Risk	3	4	19
12. Withdrawn - Post DEC	0	0	11
Group Totals	**7**	**10**	**174**
VI PARTICIPANT POPULATION TOTALS			
1. Active Participants at Beginning of Quarter	41		
2. Active Participants served this Quarter	41		
3. Active Participants at the End of the Quarter	37		
VII RECIDIVISM, INTAKE OF KNOWN PRIOR PARTICIPANTS			
Intake of Known Prior Participants	0	1	16
VIII GENDER AT INTAKE			
1. Female	1	4	47
2. Male	2	4	96
3. Unknown	0	0	2
Group Totals	**3**	**8**	**145**

	Current Month	Fiscal Year To Date	Program To Date
IX AGE CATEGORY AT INTAKE			
1. 20 - 24	0	0	2
2. 25 - 29	0	0	6
3. 30 - 34	0	1	13
4. 35 - 39	1	1	20
5. 40 - 44	0	1	24
6. 45 - 49	1	3	29
7. 50 - 54	0	1	21
8. 55 - 59	0	0	16
9. 60 - 64	0	0	9
10. 65 +	1	1	5
Group Totals	**3**	**8**	**145**

X WORKSITE OF PRACTICE SETTING AT INTAKE			
1. Corporation	0	1	1
3. Dental Private Practice	2	4	70
4. Doctor's Office	0	2	11
5. Group Practice - profit	1	1	2
6. Hospital	0	0	1
7. Lab	0	0	1
8. Other	0	0	4
9. Undetermined	0	0	23
10.Unemployed	0	0	32
Group Totals	**3**	**8**	**145**

XI SPECIALTIES AT INTAKE			
1. General Dentist	2	7	65
2. HMO	0	0	1
3. Medical Surgical	0	0	1
4. Other	1	1	45
5. Undetermined	0	0	33
Group Totals	**3**	**8**	**145**

XII PRESENTING PROBLEM AT INTAKE			
1. Alcohol	1	1	28
2. Alcohol and Mental Illness	0	0	7
3. Alcohol and Mono Drug	1	2	21
4. Alcohol and Poly Drug	0	2	18
5. Alcohol, Mono Drug and Mental Illness	0	0	1
6. Alcohol, Poly Drug and Mental Illness	0	0	5
7. Mental Illness	0	0	2
8. Mono Drug	0	1	32
9. Mono Drug and Mental Illness	0	0	7
10. Poly Drug	1	1	14
11. Poly Drug and Mental Illness	0	1	8
12. Undetermined	0	0	2
Group Totals	**3**	**8**	**145**

XIII SUBSTANCE USED DURING 12 MONTHS PRIOR TO INTAKE Collection of statistical information for Substance began September 2004			
1. Coumadin	0	0	1
2. Aciphex	0	0	1
3. Advair Diskus	0	0	1
4. Alcohol	1	1	58
5. Aleve	0	0	11

	Current Month	Fiscal Yr To Date	Program To Date
6. Alprazolam (Xanax)	1	1	4
7. ASA	1	1	3
8. Aspirin	1	1	2
9. Atenolol (Tenormin)	0	0	5
10. Ativan	0	0	3
11. Benadryl (Diphenhydramine HCL)	0	0	3
12. Benazepril (Lotensin)	0	0	2
13. Benzodiazepenes Unspecified	0	0	1
14. Butalbital (Fiorinal, Esgic)	0	0	1
15. Celexa	0	0	1
16. Chlordiazepoxide (Librium)	0	0	1
17. Claritin	1	1	3
18. Cocaine	0	0	8
19. Codeine (Various Names)	0	0	2
21. Diazepam (Valium)	0	0	4
22. Folic Acid	1	1	2
23. Hydrocodone (Vicodin / Lortabs / Hycodan)	0	0	11
24. Ibuprofen	1	3	7
25. Lexapro	0	0	2
26. Lorazepam (Ativan)	0	0	1
27. Marijuana	1	2	10
28. Maxalt	0	0	1
29. Methadone and/or Metabolite	0	0	1
30. Methamphetamine	1	1	11
31. Morphine	0	0	2
32. Motrin	1	1	2
33. Nazoril	0	0	1
34. None	0	0	5
35. Norco	0	0	2
36. Other Opiates	0	0	1
37. Oxycodone (Oxycontin)	0	0	2
38. Oxycodone (Percodan, Percocet)	0	0	2
39. Percocet	0	0	1
40. Prevacid	0	0	1
41. Undetermined	0	0	12
42. Wellbutrin	0	0	2
43. Zolpidem Tartrate (Ambien)	0	0	3
XIV MARITAL STATUS AT INTAKE			
1. Divorced	2	5	33
2. Married	1	3	61
3. Remarried	0	0	3
4. Separated	0	0	5
5. Significant Other	0	0	3
6. Single	0	0	37
7. Undetermined	0	0	2
8. Widowed	0	0	1
Group Totals	**3**	**8**	**145**

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MEMORANDUM

DATE	February 8, 2012
TO	Enforcement Committee Dental Board of California
FROM	Kim A. Trefry, Enforcement Chief Dental Board of California
SUBJECT	**Agenda Item ENF 4: Discussion and Update Regarding the Board's Proposed Enforcement Tools Requested During the 2011 Legislative Session**

Background In March 2011, the Board provided the Senate Business, Professions and Economic Development Committee staff with three proposed statutory amendments to enhance the Board's enforcement authority while maximizing consumer protection. These amendments included specific time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. Additional enforcement measures, as proposed to the Senate Business and Professions Committee staff are as follows:

1) Administrative Citation One of the current enforcement tools available is the issuance of an administrative citation. This method is currently used by the Medical Board and the Nursing Board to address technical violations that do not warrant disciplinary action against the license. However, because the Dental Boards' laws require a citation to remain on the licensee's record indefinitely, and the information is available to the public via the Internet, licensees routinely request an informal hearing to challenge the merits of the allegation. In most cases, the licensee questions the fairness of a permanent mark against their license for a lesser violation of the Dental Practice Act. The amount of time devoted to the informal hearing process limits the efficiency of the citation as an intermediate disciplinary tool. By comparison, citations issued by other Boards have a statute of limitations placed on the length of time posted for public disclosure (e.g. Medical Board of California, 5 years; Board of Registered Nursing, 3 years). The Board is seeking a comparable statute so that citations can be utilized while reducing the time and expense associated with informal hearings.

2) Letter of Admonishment As used by the Board of Pharmacy and Chiropractors Board, a Letter of Admonishment would be used by the enforcement staff who have already performed an investigation and have identified areas of concern that do **not** rise to the level of filing of a formal accusation. The results of the investigation need to be brought to the attention of the practitioner so that they can take the necessary steps to

address the deficiency (e.g. record keeping course and remedial education). This method allows for an additional level of consumer protection without the lengthy administrative hearing process, and would be publically disclosed, including via the Internet.

3) Notice of Correction The final proposed method is the implementation of a Notice of Correction, as also currently used by the Board of Pharmacy and the Chiropractic Board. As opposed to the Letter of Admonishment, this would be used as an alternative to an administrative citation during an inspection of a licensee's workplace when an incident does not warrant a citation and fine, but should be brought to the practitioner's attention (e.g. name of licensed practitioners not posted in the office, failure to wear a name tag, failure to post auxiliary duties). The notice will serve as internal documentation for the Board in the event of a repeated violation, but is not publically disclosed.

During the past month, the Enforcement Program Managers conducted a review of 2011 cases that were closed "With Merit" but were not referred to the Attorney General's office for discipline. Cases were then further scrutinized to determine whether an Administrative Citation or Letter of Admonishment would better serve the board's mission. The results of that evaluation were:

Total investigations closed in 2011 = 1257
Investigations closed "With Merit" but not referred for discipline = 1012 (80%)

Investigative closures meeting Administrative Citation criteria = 320 (31%)
[Examples include – Failure to meet Continuing Education requirements, Failure to report a hospitalization within established timeframes, Single criminal conviction, Failure to maintain adequate and accurate records – single patient.]

Investigation closures meeting Letter of Admonishment criteria = 314 (31%)
[Examples include – Single prescribing issue, Failure to meet the standard of care – one event/no priors, Unnecessary treatment – single patient, single billing error.]

Inspections performed in 2011 were also reviewed. Site visits that did not result in the citation were reviewed to determine the number of instances wherein a Notice of Correction could document areas of concern within the office setting.

Total Inspections performed in 2011 = 124

Total Inspections resulting in citations issued = 5 (4%)

Inspection closures meeting Notice of Correction criteria = 106

The statistics delineated above are being provided to the Board in order to give better clarity into instances where Board staff might take alternative action on certain cases rather than simply close with merit.

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March 24, 2011

Bill Gage, Chief Consultant
Senate Business, Professions and Economic Development Committee
State Capitol
10th & L Streets
Sacramento, CA 95814

RE: Consumer Protection Enforcement Initiative (CPEI) Statutory Amendments and Regulatory Update

Dear Mr. Gage:

This letter is intended to provide the Senate Business, Professions and Economic Development Committee staff with an update of the regulatory changes to implement provisions of SB 1111. Specifically, the Board has initiated regulations to provide it with the means to expedite the enforcement process by further defining unprofessional conduct, and to authorize the Board to require the examination of an applicant for licensure who may be impaired by a physical or mental illness affecting competency. Additionally, Board staff has identified vital statutory additions which will greatly enhance the Board's enforcement authority to maximize consumer protection.

Consumer Protection Enforcement Initiative Proposed Regulations:

The Department of Consumer Affairs (Department) distributed a list to the healing arts boards consisting of nine goals that were included in SB 1111. The Department requested that the healing arts boards review the goals and determine if they could be accomplished through the regulatory process. Of the nine goals, the Board currently has statutory provisions for three:

1. The denial of an application of a registered sex offender;
2. The failure of a licensee to comply with a court order constitutes unprofessional conduct; and
3. The committing of any act of sexual misconduct constitutes unprofessional conduct.

On November 5, 2010, the Board approved language and the proposed regulation was filed with the Office of Administrative Law on February 8, 2011. The 45-day public comment period began on February 18, 2011 and will end on April 4, 2011. A regulatory hearing will be held the same day. To date, the Board has not received any public comments. Specifically, the proposed regulation adopts new section 1018.05 to define

the term “conviction” for the purposes of the section, and to specify that the following acts constitute unprofessional conduct:

- Failure to provide records requested by the Board within 15 days;
- Failure of a licensee to report an indictment within 30 days;
- Failure of a licensee to report a felony charge within 30 days;
- Failure of a licensee to report a conviction within 30 days; and
- Failure of a licensee to report disciplinary action taken by another professional licensing entity or other specified agency within 30 days.

Furthermore, the proposed regulation amends section 1020 to provide the Board with the authority to require an examination of an applicant by a physician and surgeon or psychologist if it appears the applicant may be unable to safely practice due to a mental illness or a physical illness that affects competency.

Enforcement Tools Requiring Statutory Amendments

Currently, the Board’s enforcement program is limited to two methods to address violations of the Dental Practice Act; issuance of a citation and administrative filings with the Office of the Attorney General. The Board has identified additional enforcement methods that will require legislative action. These additional methods include specific time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. The Board will be able to utilize these tools to address minor to moderate violations of the Dental Practice Act.

One of the current methods available is the issuance of an administrative citation. This method is used to address minor violations that do not warrant more severe disciplinary measures. However, because a citation remains on the licensee’s record indefinitely, and the information is available to the public via the Internet, licensee’s routinely request an informal hearing to challenge the merits of the allegation. In most cases, the licensee questions the fairness of a permanent mark against their license for a minor violation of the Dental Practice Act. The amount of time devoted to the informal hearing process limits the efficiency of the citation as an intermediate disciplinary tool. By comparison, citations issued by other Boards have a statute of limitations placed on the length of time posted for public disclosure (i.e. Medical Board of California, 5 years; Board of Registered Nursing, 3 years). The Board is seeking a comparable statute so that the citation method will be efficiently utilized and reduce the time and expense associated with informal hearings.

In addition, the Letter of Admonishment, as used by the Board of Pharmacy, would be used by the enforcement staff who have already performed an investigation and have identified areas of concern that do **not** rise to the level of filing of a formal accusation. The results of the investigation need to be brought to the attention of the practitioner so that they can take the necessary steps to address the deficiency (i.e. record keeping course, remedial education). This method allows for an additional level of consumer protection without the lengthy administrative hearing process, and would be publically disclosed, including via the Internet.

The final proposed method is the implementation of a Notice of Correction, as also currently used by the Board of Pharmacy. As opposed to the Letter of Admonishment, this would be used as an alternative to the method of citation during an inspection of a

licensee's workplace when an incident does not rise to or warrant a formal citation but should be brought to the practitioner's attention (i.e. name of licensed practitioners not posted in the office, failure to wear a name tag, failure to post auxiliary duties). The notice will serve as documentation for the Board in the event of a repeated violation, but is not publically disclosed.

Board staff has drafted proposed statutory language for the Senate Business, Professions and Economic Development Committee's consideration. The language is currently pending legal review, and will be provided in the near future.

Again, thank you for the opportunity to provide an update regarding the Boards Consumer Protection Enforcement Initiative proposed regulations, as well as our recommended statutory additions. If you have any questions or concerns, please feel free to contact me at your convenience.

Sincerely,

Richard E. DeCuir
Executive Officer

cc: The Honorable Curren D. Price, Jr.
The Honorable Bill Emmerson
Dental Board of California, Board Members
Brian Stiger, Acting Director, Department of Consumer Affairs
Rosielyn Pulmano, Consultant

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MEMORANDUM

DATE	January 31, 2012
TO	Enforcement Committee Dental Board of California
FROM	Kimberly Trefry, Enforcement Chief Lori Reis, Manager, Complaint & Compliance Unit Dental Board of California
SUBJECT	**Agenda Item ENF 5: Second Quarter (Q2) Performance Measures**

The Background
To ensure the Department of Consumer Affairs (DCA) and its stakeholders can review DCA's progress in meeting its enforcement goals and targets, DCA has developed an easy-to-understand transparent system of accountability and performance measures. The performance measures are critical, particularly during the current climate of budget constraint and economic downturn, which clearly demonstrates that DCA is making and will continue to make the most efficient and effective use possible of its resources.

Performance measures are linked directly to an agency's mission, vision and strategic objectives/initiatives. In some cases, each Board, Bureau, and program was allowed to set their individual performance targets, or specific levels of performance against which actual achievement would be compared. In other cases, some standards were established by DCA. As an example, a target of an average of 540 days for the cycle time of formal discipline cases was set by the Director.

The Measures
Specific enforcement measures include:

Volume:
- Number of complaints and convictions received per quarter.

Cycle Time:
- **Intake –** Average cycle time from complaint receipt, to the date the complaint was acknowledged and assigned to an analyst in the Complaint Unit for processing (This time frame is mandated by Business and Professions Code section 129 (b)) ;
- **Intake & Investigation –** Average time from complaint receipt to closure of the investigation process (does <u>not</u> include cases sent to the Attorney General (AG) or other forms of formal discipline);

- **Formal Discipline –** Average number of days to complete the entire enforcement process for cases resulting in formal discipline (Includes intake and investigation by the Board, and prosecution by the AG);
- **Probation Intake –** Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer; and
- **Probation Violation Response –** Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Data is collected quarterly and reported on the Department's website at: http://www.dca.ca.gov/about_dca/cpei/index.shtml

Intake and Investigation performance measures for the second quarter of the fiscal year (October through December 2011) showed enforcement staff within the Complaint Intake Unit and Investigation completed their work below the average cycle time for these functions.

Formal Discipline A number of factors (both internally and externally) can contribute to case aging at the Attorney General's office. Board actions which may extend case aging include when additional investigations are combined with a pending accusation and can set back the overall time to resolve. Amending an accusation or requesting additional expert opinions can also cause delays in case adjudication. Other matters are outside the control of the Board and include: availability of hearing dates, continuance of hearing dates, changes to opposing party counsel, and requests for a change of venue.

Probation Intake Probation Intake measures the time between when the probation monitor is assigned the case file and the date they meet with their assigned probationer to review monitoring terms and conditions. The Board's probation monitors are assigned a case file within a few days of the probationary order being signed. Monitors attempt to schedule their initial meeting on or soon after the effective date of the decision; thereby resulting in a 20 – 30 day intake average. We believe this Q2 average of 21 days is reasonable. It should also be noted that in some cases, probation monitoring may not take place until an applicant has completed all their licensing requirements, or returned to California (if the applicant is out-of-state). These exceptions may skew this average.

Violation Response In general, once a violation is discovered, the decision to take action is made immediately. However, the monitor must collect any supporting evidence (arrest/conviction records, positive drug test results) and write a report documenting the event. Once the report is referred for discipline, "appropriate action" has been initiated and the clock stops. Factors which may affect the turnaround time on this measure include how the violation is reported; (incoming complaints or arrest/conviction reports from the Department of Justice may take several days to be processed) and how quickly the monitor can write up and file the violation.

The Department's charts are attached for your review.

Department of Consumer Affairs

Dental Board of California

Performance Measures

Q2 Report *(October - December 2011)*

To ensure stakeholders can review the Board's progress toward meeting its enforcement goals and targets, we have developed a transparent system of performance measurement. These measures will be posted publicly on a quarterly basis.

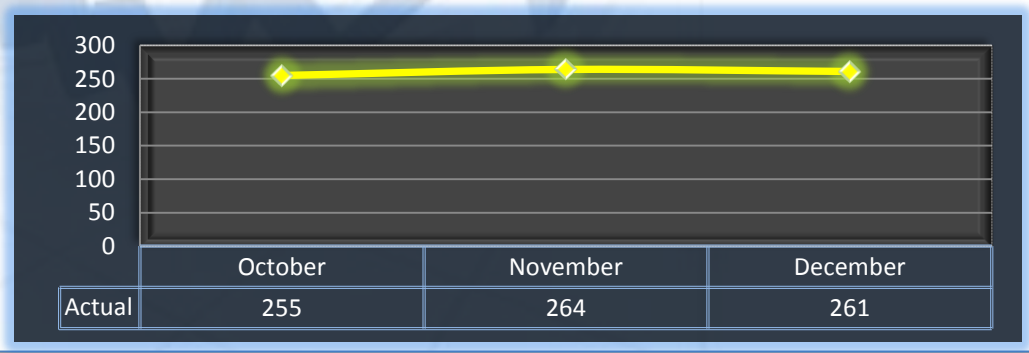
Volume

Number of complaints and convictions received.

Q2 Total: 780

Complaints: 665 Convictions: 115

Q2 Monthly Average: 260



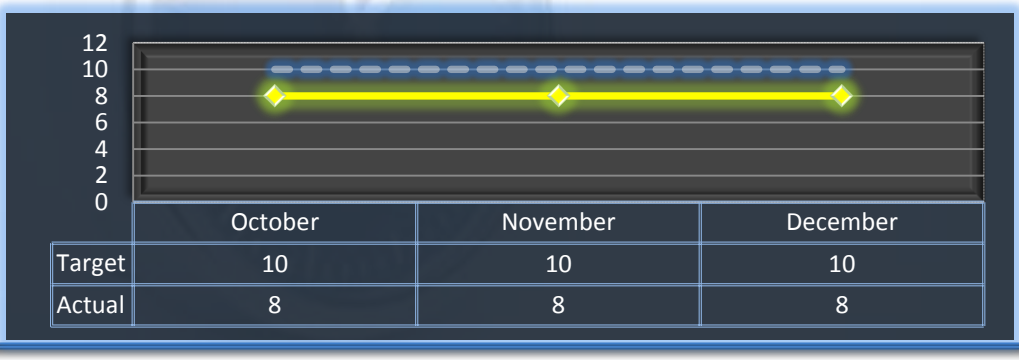
	October	November	December
Actual	255	264	261

Intake

Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator.

Target: 10 Days

Q2 Average: 8 Days



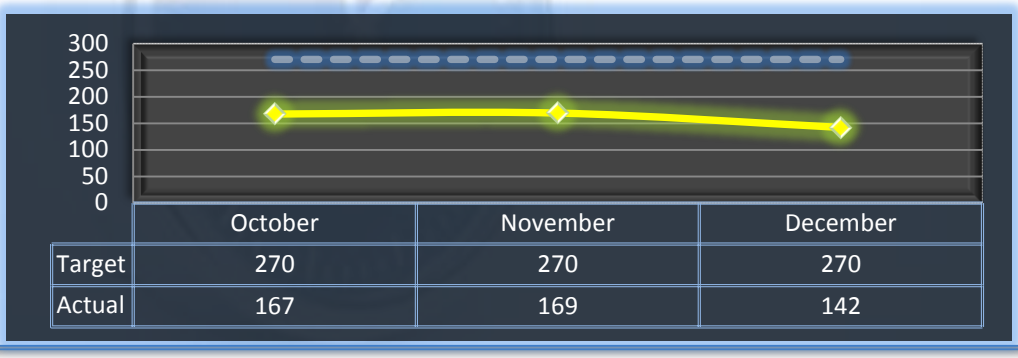
	October	November	December
Target	10	10	10
Actual	8	8	8

Intake & Investigation

Average cycle time from complaint receipt to closure of the investigation process. Does not include cases sent to the Attorney General or other forms of formal discipline.

Target: 270 Days

Q2 Average: 160 Days



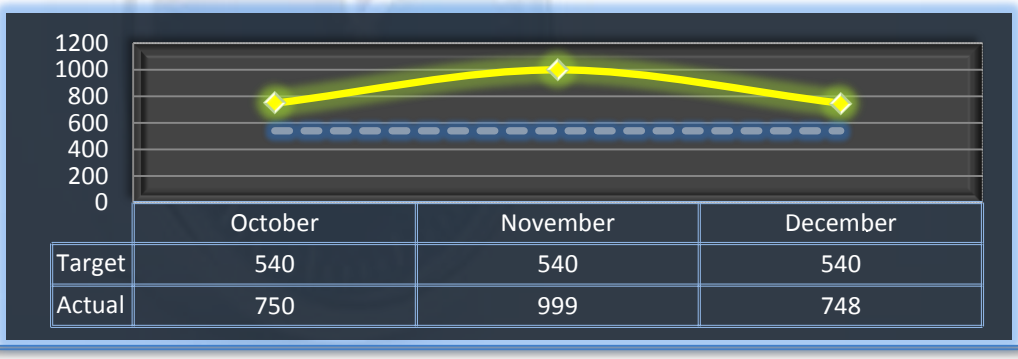
	October	November	December
Target	270	270	270
Actual	167	169	142

Formal Discipline

Average number of days to complete the entire enforcement process for cases resulting in formal discipline. (Includes intake and investigation by the Board, and prosecution by the AG)

Target: 540 Days

Q2 Average: 804 Days



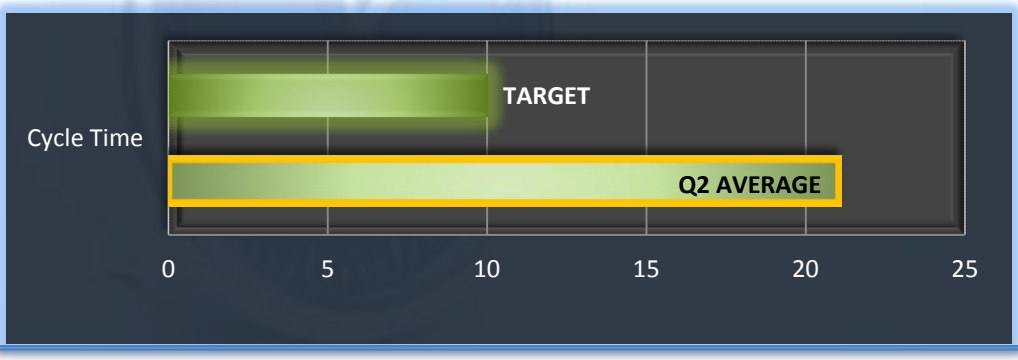
	October	November	December
Target	540	540	540
Actual	750	999	748

Probation Intake

Average number of days from monitor assignment, to the date the monitor makes first contact with the probationer.

Target: 10 Days

Q2 Average: 21 Days

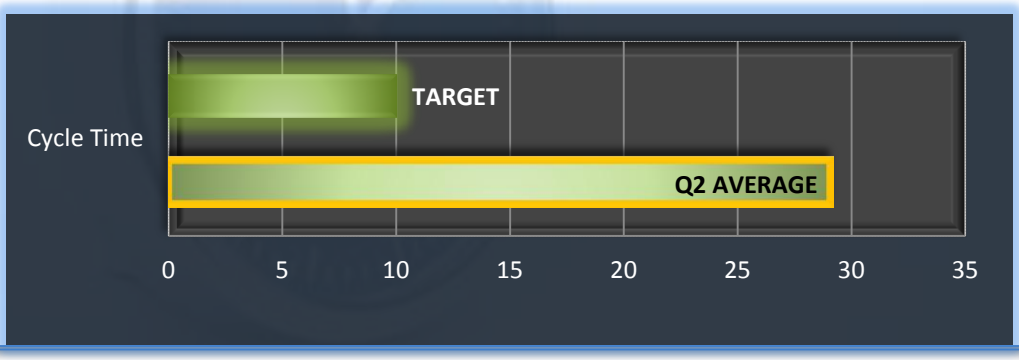


Probation Violation Response

Average number of days from the date a violation of probation is reported, to the date the assigned monitor initiates appropriate action.

Target: 10 Days

Q2 Average: 29 Days



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MEMORANDUM

DATE	February 2, 2012
TO	Dental Board of California
FROM	Donna Kantner, Manager Licensing and Examination Unit
SUBJECT	**Agenda Item 4:** Subcommittee Update of Universidad De La Salle's Renewal application and site review

Background:
At the Board's August 26, 2011 meeting, Dr. Le and Dr. Morrow, the Subcommittee tasked with the review of the Universidad De La Salle's renewal application for its dental program, gave its report that the renewal application initially received on April 29, 2011 was not entirely in English and had to be translated. They reported that the translation was received on June 15, 2011 and when reviewed by the Subcommittee, the application was determined to be incomplete. The Dental Board sent a letter on August 2, 2011 notifying the school of areas that must be addressed to complete the application.

At that meeting Legal Counsel Shellans clarified that if the completed application was not submitted prior to the program's expiration date November 4, 2011, then the school's current approval would expire, and further that the Board has the authority to grant dental school approvals but does not have authority to grant an approval for a dental school to offer only a specified curriculum within the dental school. She stated statutes and regulations are clear that the Board's approval authority of the foreign dental school is institutional rather than programmatic.

The school was notified on August 15, 2011 that all of its dental programs must conform to California's statutory and regulatory requirements and that the Board must receive a complete renewal application no later than November 4th, 2011 or the school's approval would expire.

The Board received the additional materials as requested in its letter of August 2nd on Friday, November 4th immediately preceding the Board's meeting on November 7th and 8th, 2011. At that meeting the Board voted to extend the current approval of the Universidad de la Salle until the conclusion of the next Board meeting on February 24, to permit the subcommittee time to review the materials to determine whether the application is complete, and if the subcommittee determines that the application is complete per the Board's prior order, extend the university's current approval for another 225 days in order for the Board to make a decision on its renewal application.

Update:
After the last Board meeting, the Subcommittee reviewed the materials received on November 4th and on December 14, 2011 the Board sent a letter to the school that clarification was needed for certain items with the request that the information be submitted by January 18, to allow the Subcommittee to review it prior to the February 2012 Board meeting. On January 18th the requested clarifications were received and sent to the Subcommittee for review. On February 2, 2012 the Board sent a letter to the school indicating that the application is now complete and provided information regarding the upcoming site visit in March 2012.

The Subcomittee will provide additional information at the February Board meeting.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
Dental Board of California
2005 Evergreen Street, Suite 1550, Sacramento, California 95815
P 916.263.2300 | F 916.263.2140 | www.dbc.ca.gov

February 2, 2012

Dental School, Universidad De La Salle
1123 Tomo 1. Av.
Col. Lomas Del Campestre, Universidad 602
Apdo. Postal 1-444
C.P. 37150
Leon, Guanajuato, Mexico

RE: Board Determination of Complete Renewal Application and Upcoming Onsite Inspection and Evaluation

Dear President Govela Gutierrez and Dr. Mary Jean McGrath Bernal:

On January 19, 2012 the Dental Board of California received your response to the additional information requested in its letter dated December 14, 2011. Based on review of the information and supporting documentation submitted to date, the renewal application is now considered to be complete. However, during the onsite inspection, the Site Team will seek more detailed information and clarification regarding the Universidad De La Salle dental program's compliance with the Institutional Standards stated in Chapter 2, Article 1 Section 1024.1 of the California Code of Regulations.

The onsite inspection and evaluation is scheduled to take place during the week of March 12 – 16, 2012. The Site Team has been selected in accordance with Standard 1024.6 of the California Code of Regulations and consists of the following members:

Dr. Nelson Artiga – California licensed dental educator
Dr. Ernie Garcia – California licensed dentist
Dr. Timothy Martinez – California licensed dental educator
Dr. Steven Morrow – Member, Dental Board of California

A letter will be sent to you shortly regarding the necessary arrangements for the Site Team members. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Richard DeCuir, Executive Officer
Dental Board of California

Cc: Dr. Huong Le, Dental Board Member
Dr. Steven Morrow, Dental Board Member
Dr. Bruce Whitcher, Dental Board President

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P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov

MEMORANDUM

DATE	February 7, 2012
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 5:** Discussion and Possible Action Regarding a Response to the American Dental Association (ADA) Formal Request to Allow Out-of-State Licensed Dentists to Conduct Live-Patient Continuing Education Classes at the 2012 ADA Annual Session as Permitted by Business and Professions Code Section 1626(d)

Background:
On January 10, 2012, the American Dental Association (ADA) formally requested that the Dental Board again allow out-of state licensed dentists to conduct live-patient continuing education classes at the 2012 ADA Annual Session under exemption (d) to Business and Professions Code 1626 which reads: *The practice of dentistry by licensed dentists of other states or countries in conducting or making a clinical demonstration before any bona fide dental or medical society, association, or convention; provided, however, the consent of the Dental Board of California to the making and conducting of the clinical demonstration shall be first had and obtained.*

Board Action Requested:
1. Staff requests a motion to approve the ADA's request to allow out-of state licensed dentists to conduct live-patient continuing education classes at the 2012 ADA Annual Session

2. After discussion, staff requests a motion to approve delegation of authority to the Executive Officer for future requests related to Business and Professions Code Section 1626(d)

From: Schuch, Richard L.
Sent: Wednesday, January 11, 2012 7:51 AM
To: dentalboard@dca.ca.gov
Cc: richard.decuir@dca.ca.gov
Subject: Request for out of state doctors to perform live patient procedures at the 2012 ADA Annual Session

Attention:
Dr. Bruce L. Whitcher, DDS
Board President, Dental Board of California
2005 Evergreen Street, Suite 1550
Sacramento, CA 95815

The American Dental Association is excited to bring the Annual Session back to the state of California for our 153rd meeting this October 18th-21st at the Moscone Center in San Francisco. This meeting is typically the largest meeting we hold and we are proud to work hand-in-hand with the California Dental Association to make it a success.

The last time we were in San Francisco in 2007, we launched a new educational initiative that involved dentists performing live patient procedures for the purpose of educating their peers. Because of the national scope of our educators, we worked with the Dental Board of California to grant us an exemption to the California Dental Practice Act, California Business & Professions Code 1626, and allow out-of-state doctors to perform these procedures at our meeting for the purpose of education.

Please accept this letter as our formal request to the Dental Board of California to again allow out-of-state doctors to conduct live-patient continuing education classes at the 2012 ADA Annual Session under exemption (d) to B&P Code 1626, that allows: *The practice of dentistry by licensed dentists of other states or countries in conducting or making a clinical demonstration before any bona fide dental or medical society, association, or convention; provided, however, the consent of the Dental Board of California to the making and conducting of the clinical demonstration shall be first had and obtained.*

Of the courses we request to hold at the meeting, four doctors have current California licenses as instructors. The other courses have licensed dentists from the states of Georgia, Illinois, Texas and Florida. The instructors are chosen by dentists on the 2012 Council on ADA Sessions who are appointed by their district to serve a four- year term with the ADA. The full line-up of speakers and courses are as follows:

1. *Making Class II Resin-Based Composites Predictable, Long-lasting & Profitable*

This live demonstration includes proven and new concepts for class II resin restorations including: identification of minimal class II carious lesions, minimal tooth preparations, tooth desensitization, liners, the best matrices, comparison of composite brands, finishing for optimum longevity, fees and third party payment.

Instructor: Gordon Christensen, DDS, MSD, PhD
California License #: 15482

2. *Live Patient Demonstration of Immediate Lower Denture Stabilization Using Mini Dental Implants*

Live patient demonstration of immediately stabilizing lower denture to restore function and comfort using mini dental implants. Both surgical and direct chairside restorative protocol will be demonstrated.
Instructor: Raymond Choi, DDS
California License #: 35383

3. *Soft Tissue Surgery for Augmentation of Keratinized Gingiva*

This live patient surgical demonstration will enhance knowledge and skills for gingival enhancement prior to dental implant placement and prosthetic procedures. Medical and medication issues will be included in the surgical treatment plan. Post op management of the patient will be discussed at the conclusion of the surgery.

Instructor: Jon B. Suzuki, DDS, MBA, PhD
California License #: 52246

4. *User Friendly Technique for Atraumatic Extraction of Teeth and Socket Grafting*

This live patient demonstration will show a very user friendly approach to removing teeth atraumatically followed by a very clinically user friendly method for socket grafting.

Instructor: Lee H. Silverstein, DDS, MS
Georgia License #: DNO10742

5. *Examination, Diagnosis and Treatment of the Restorative-TMD Patient*

The TM joint is the foundation of the occlusion. This live program will begin with the new patient exam and conclude with the insertion of an occlusal appliance. The course will show both clinical techniques and verbal skills that will help increase clinical predictability and case acceptance.

Instructor: James McKee, DDS
Illinois License #: 19019247

6. *Lasers in the Dental Practice - A Live Patient Demonstration*

Drs. Hoopingarner, Roshkind and Coluzzi will present a short lecture about laser fundamentals and then perform some typical soft and hard tissue laser procedures on patients. These demonstrations will illustrate the utility and ease of use of these wonderful instruments.

Instructor: Charles Hoopingarner, DDS
Texas License #: 10126

Instructor: David Roshkind, DMD, MBA
Florida License #: DN7407
Pennsylvania license #: DSO19261L

Instructor: Donald Coluzzi, DDS
California License #: 21107

We have worked diligently over the last five years to bring state dental board approved live-patient education to our members at our Annual Session. Over 5,000 dental professionals have taken advantage of these opportunities to learn from their peers in a fully functional operatory that we built in each convention center. Each year we work closely to dutifully follow all regulations from each state's dental board to ensure compliance, standards and safety regulations are fully met.

We respect the Dental Board of California and the guidelines set forth by the California Dental Practice Act that protect and promote the health and safety of consumers of the State of California. We make the commitment to you that we will uphold these standards to the highest level while educating our attendees in your state. Please let me know if you need any additional information.

Thank you for your time and consideration. I also attached this letter for your reference.

<< File: request for live patients in CA.pdf >>

Rich Schuch, Ed.D schuchr@ada.org
Senior Manager, Annual Session Innovative Learning and Industry Relations
Council on ADA Sessions
312.440.2663