FRIDAY

May 20, 2011

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

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

Friday, May 20, 2011

Embassy Suites SFO - 150 Anza Blvd.
Burlingame, CA 94010
650-342-4600 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*

Friday, May 20, 2011

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

8:00 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD

ROLL CALL ..... Establishment of a Quorum

AGENDA ITEM 5 ..... Approval of the Full Board Meeting Minutes from February 24-25, 2011

AGENDA ITEM 6 ..... President's Report

AGENDA ITEM 7 ..... Executive Officer's Report

AGENDA ITEM 8 ..... DCA Director's Report

AGENDA ITEM 9 ..... Update on Dental Hygiene Committee of California (DHCC) Activities

AGENDA ITEM 10 ..... Budget Reports: Dental Fund & Dental Assisting Fund

AGENDA ITEM 11 ..... Update on Dental Board of California's Sunset Review Process and Discussion and Possible Action Regarding SB 540 (Price)

AGENDA ITEM 12 ..... Discussion and Possible Action Regarding SB 544 (Price), Professions and Vocations: Regulatory Boards Relating to the Consumer Health Protection Enforcement Act

AGENDA ITEM 13 ..... Examination Committee Report
The Board may take action on any items listed on the attached Examination Committee agenda.

AGENDA ITEM 14 ..... Examination Appeals Committee Report
Recommendations to the Board to grant/deny appeals of exam candidates

AGENDA ITEM 15 ..... Licensing, Certification & Permits Committee Report
(a)The Board may take action on any items listed on the attached Licensing, Certification & Permits Committee agenda.
(b)Recommendations to the Board regarding issuance of new licenses to replace cancelled licenses

AGENDA ITEM 16 ..... Dental Assisting Committee Report
The Board may take action on any items listed on the attached Dental Assisting Committee agenda.

AGENDA ITEM 17 ..... Legislative and Regulatory Committee Report
The Board may take action on any items listed on the attached Legislative and Regulatory Committee agenda.

AGENDA ITEM 18 ..... Enforcement Committee Report
The Board may take action on any items listed on the attached Enforcement Committee agenda.

AGENDA ITEM 19 ..... Update from Subcommittee Regarding Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

AGENDA ITEM 20 ..... Report on the April 27, 2011 meeting of the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee, Discussion and Possible Action to Accept Committee and Subcommittee Recommendations for:

(a) Issuance of Permits and Changes to the Board's Web Site to Clarify the EFCS Permit Application Process

(b) Appointments of Credentialing Committee Member(s)

AGENDA ITEM 21 ..... Discussion and Possible Action Regarding Subcommittee Report on Record Retention of Inactive Patient Records.

AGENDA ITEM 22 ..... Discussion and Possible Action to Conduct a Feasibility Study for a Continuing Competency Program

PUBLIC COMMENT

ADJOURNMENT

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**. 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, or by calling (916) 263-2300 no later than one week prior to the day of the meeting.

AGENDA ITEM 5

Meeting Minutes

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Dental Board of California Meeting
Thursday, February 24, 2011
San Diego
DRAFT

Members Present:
John Bettinger, DDS, President
Bruce Whitcher, DDS, Vice President
Luis Dominicis, DDS, Secretary
Fran Burton, Public Member
Stephen Casagrande, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA
Huong Le, DDS
Suzanne McCormick, DDS
Steven Morrow, DDS, MS
Thomas Olinger, DDS

Members Absent:
Steven Afriat, Public Member

Staff Present:
Richard DeCuir, Executive Officer
Kim A. Trefry, Enforcement Chief
Jocelyn Campos, Enforcement Coordinator
Donna Kantner, Licensing & Examination Unit Manager
Karen Fischer, Administrative Analyst
Sarah Wallace, Legislative/Regulatory Analyst
Linda Byers, Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Thursday, February 24, 2011

8:00 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD

ROLL CALL: Establishment of a Quorum
President Bettinger called the meeting to order at 8:08 a.m. Secretary Dominicis called the roll and established a quorum. Mr. Afriat was absent. Dr. Bettinger thanked all the Board Members for taking time away from their families and work to be a part of this Board for the purpose of public protection. Dr. Bettinger asked that we observe a moment of silence in remembrance of Dr. Jeanne Savage-Adams the first female President of the Dental Board. The Board immediately went into Committee Meetings.

The Full Board reconvened at 11:20 p.m.

AGENDA ITEM 1: Subcommittee Report on the need to Revise the Dental Restorative Materials Fact Sheet
Dr. Morrow reported that he and Dr. Dominicis were appointed by Dr. Bettinger as a subcommittee to review and make recommendations regarding the Dental Materials Fact Sheet. The subcommittee reviewed the available literature relating to biomaterials and biological effects of materials and at this

time report that there is no scientific evidence to support any change in the Dental Materials Fact Sheet. M/S/C (Dominicis/Forsythe) to accept the subcommittee's report. The motion passed unanimously.

AGENDA ITEM 2: Discussion and Possible Action Regarding:
(A) Report on renewal application of the Universidad De La Salle and Board procedures and options

Dr. Dominicis recused himself and left the dais. Dr. Bettinger stated that the reason that this is on the agenda is that the Universidad De La Salle is up for renewal this year. Dr. Bettinger, Dr. Le and Richard DeCuir met with representatives from the Universidad De LaSalle to discuss their renewal and open direct lines of communication. Dr. Arianna Terlet, former Board member and part of the original certification team gave a verbal report. Just as this was the first foreign Dental School Program to receive approval, it is also the first to apply for renewal. Communication will be the key to making this process work. The Dean brought the renewal application that the Board had mailed to them, to the meeting in February and they reviewed it and went over expectations. Dr. Bettinger stated that we are waiting for them to return the application and documentation. Once we receive this and determine it is adequate, we will hopefully have a site team and try to get a waiver for out of the country travel for a site visit. Dr. Olinger voiced his concern about accrediting a foreign Dental School that we have not regularly visited. He speculated that it may put us at risk for successful litigation especially if we are not doing the required site visits. Kristy Shellans suggested that we wait until we get the renewal application before we start speculating on what may or may not happen. Dr. McCormick asked what the next step is. She asked if a technical advisory group should be formed. Dr. Bettinger stated that the technical advisory group is only necessary for the initial accreditation but is not necessary for the renewal. Dr. McCormick asked if given the Board's scheduled meetings, are we going to be able to meet the November deadline for re-accreditation. Dr. Bettinger stated that that will depend on when they return the application and if the documentation is sufficient. Dr. Le stated that because the Board is ever changing, members come and go, if the school were to seek CODA accreditation there would be set standards to insure that those students who attended the school would be eligible to obtain California licensure instead of ever changing standards due to new Board Members. Dr. McCormick stated that we should wait until we get the application back before we do anything. She stated that transparency and a level playing field are the most important points. Dr. Olinger stated that how can we have a level playing field when we don't accredit any other schools. M/S/C (Burton/Bettinger) to authorize creation of a subcommittee to review renewal documentation from De La Salle upon submittal. The motion passed unanimously. Bill Lewis of CDA publicly commented that we should look at the options given the statute. Kristy Shellans stated that her opinion is that there are only two options and those are to either approve or deny.

(B) Proposed Legislation to Amend Business and Professions Code Section 1636.4 Relative to the Provisional or Full Accreditation Process for Foreign Dental Schools

Dr. Bettinger stated that now that we have International CODA, do we want to require it for Foreign Dental Schools and give the Board authority to accept that accreditation as its own. Dr. McCormick stated that in light of the extensive regulatory packages that we already have she suggested that this item be tabled at this time. M/S/C (Olinger /Morrow) to recommend a statutory change to 1636.4 which would mirror 1024(B). The motion passed with 10 ayes and 1 nay. Bill Lewis publicly commented that by May the Board should have a better picture of where the process is going. You should have the application by then and with Sunset Review still open you may be able to get some of these changes inserted into the Sunset Review Bill. Earl Johnson speaking for himself stated that we should not be in the business of Dental school approval. We are not qualified. We need to pass this off to CODA because that's their line of business. We need to get the statute changed so we don't have to go through this again.

PUBLIC COMMENT - FOR ITEMS NOT ON THE AGENDA

There was no public comment.

Recess - Lunch Break
The Board recessed at 12:23 p.m. for lunch

Dr. Bettinger reconvened the Board at 2:10 p.m. Dr. Dominicis called the roll and established a quorum.

The Board went into closed session to discuss disciplinary matters and litigation.

The Board returned to open session at 6:00 pm.

PUBLIC COMMENT
There was no public comment.

The meeting recessed at 6:05 pm.

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Dental Board of California Meeting
Friday, February 25, 2011
San Diego
DRAFT

Members Present:
John Bettinger, DDS, President
Bruce Whitcher, DDS, Vice President
Luis Dominicis, DDS, Secretary
Steven Afriat, Public Member
Fran Burton, Public Member
Stephen Casagrande, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA
Huong Le, DDS
Suzanne McCormick, DDS
Steven Morrow, DDS, MS
Thomas Olinger, DDS

Members Absent:

Staff Present:
Richard DeCuir, Executive Officer
Kim A. Trefry, Enforcement Chief
Jocelyn Campos, Enforcement Coordinator
Donna Kantner, Licensing & Examination Unit Manager
Karen Fischer, Administrative Analyst
Sarah Wallace, Legislative/Regulatory Analyst
Linda Byers, Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Friday, February 25, 2011

8:00 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD

ROLL CALL: Establishment of a Quorum
President Bettinger called the meeting to order at 8:08 a.m. Secretary Dominicis called the roll and established a quorum. Dr. Bettinger thanked all the Board Members for taking time away from their families and work to be a part of this Board for the purpose of public protection.

AGENDA ITEM 1: Approval of the Full Board Meeting Minutes from November 4-5, 2010 and December 14, 2010.
Karen Fischer, Administrative Analyst stated that there was a correction to the Thursday November 4, 2010 minutes. In the first paragraph it should be stated that "Dr. Bettinger thanked all Board Members for taking time away from their families and work to be a part of this Board for the purpose of public protection." The next correction was to Friday November 5, 2010, on page 2, Agenda item 2 to delete that whole section and put under the first paragraph on page 1 that Dr. Bettinger recognized Dr. William Langstaff, President of the California Academy of General Dentistry and under Agenda item 2 the President's report, insert that "Dr. Bettinger stated that this was the first Dental Board Meeting in

California to be webcast live. Future meetings should be retrievable from archive on our website. Openness allows the public to see how we work on the many issues before us. Statute created last minute without collaboration can result in increased costs and more time required to formulate regulations. Ideally, private groups, foundations, professional associations and organizations that influence public policy would function with equal transparency. Our Dental Board welcomes stakeholder opinions on policy issues and we thank those who come to our meeting to give their opinions. Thank you to all who collaborated to make the new Portfolio Pathway to Licensure in California a reality. Recognition goes to the Dental Schools in California, Dental Board members, staff and the California Dental Association." Additionally, any reference to Kristy Schieldge was changed to Kristy Shellans.

AGENDA ITEM 2: President's Report

Dr. John Bettinger reported that our enforcement committee Chair, Rebecca Downing's work has been noticed by DCA and has reflected positively on our board. Rebecca Downing will be participating in the Sunset Review hearing March 14. Also participating will be Fran Burton, Legislative Chair. It is Fran's committee that has empowered the Board to better comply with our Vision, to be the leader in public protection, promotion of oral health and access to quality care. Dr. Casagrande and Dr. Bettinger traveled to Chicago to discuss Portfolio pathway to licensure with ADEX. Dr. Dominicis and Dr. Bettinger met with the Panjabi International Dental Association along with Greg Salute and Teresa Lane to discuss infection control and California law and enforcement. Dr Le, Richard DeCuir and Dr. Bettinger met with the Dean and head of the international dental program of De La Salle Bajio at Pomona College for the purpose of establishing direct contact between the school and the Dental Board. Dr. Le, Richard DeCuir and Dr. Bettinger met with the Dean of the Western Sciences College of Dentistry in Pomona to discuss mobile dentistry/portable dentistry. Dr Bruce Whitcher has been very active in numerous board regulatory packages and the GA/CS calibration issues. Dr. McCormick has been active with the Elective facial plastic surgery committee and GA/CS calibration issues. Dr. Steve Morrow plans to present portfolio to the AADS in Anaheim in a panel with Carrie Gordon from CDA. Dr's. Olinger and Morrow worked on the Dental Fact Sheet renewal project subcommittee. Judy Forsythe and Dr. Whitcher have been very active with the Dental Assistant Forum and Dental Assistant issues. Dr Casagrande and Dr. Morrow have been active on the Portfolio issue. Dr. Dominicis has been active as the WREB liaison and as a long time liaison to De La Salle. Now that direct communication has opened up between the school and Richard DeCuir and staff, more direct communication with the school will continue for mutual benefit. Dr. John Bettinger participated in the recent CODA site visit to UCLA as a Dental Board Representative as part of the Dental School accreditation process. The position was to fully participate in the visit but not to vote on the outcome. An initial study of the School's Self Study was done which contained extensive documentation about the school. The Site visit began with an orientation session followed by 2 full days at the school. The benefit of this task was to learn the accreditation process first hand by fully participating in the process at a California School. Insight gained will enable the Board Subcommittee to better analyze the documentation submitted by De La Salle and in assembling a site visit team for De La Salle. We will need to develop guidelines for the site visit team based in part on the results of review of the documentation that is returned with their application. But this is a future topic. Please forgive me if any of your efforts have not been recognized today. The future newsletters will be available on the internet. Expanding interest in visiting our website will be an important outreach goal. Collecting and expanding our e-mail contact list should be incorporated into mailings so that we eventually can reach all our license holders by e-mail. Thanks again to all the Board members and Staff for working together harmoniously in the conduct of our business.

AGENDA ITEM 3: Executive Officer's Report

Richard DeCuir, Executive Officer reported that the Newsletter and the Strategic Plan are done thanks to Karen Fischer. The 2011 Dental Practice Act should be out by the end of this month. Due to the new Administration and the new Governor, there were many changes made including a 50% reduction in the number of cell phones provided to the Dental Board. Mr. DeCuir reported that staff made him aware of the need for more Expert Consultants due to the growing number of investigations. An email blast was sent out via our website asking interested parties to contact the office as well as letters to specialty organizations seeking applicants. April Alameda's new Investigative Analysis Unit has relieved the Investigators of over 160 cases that they are now taking over and working which otherwise would have

been put off for more egregious cases. Mr. DeCuir reported that most agencies work on 1-2 regulations per year, our Legislative and Regulatory Analyst, Sarah Wallace, is now working on 8. This is a huge workload. Dr. Bettinger recognized from CDA, Bill Lewis, Fred Noteware, and Alan Felsenfeld and welcomed them back. Dr. Bettinger asked for a moment of silence in remembrance of Dr. Jean Savage-Adams, the first female President of the Dental Board.

AGENDA ITEM 4: DCA Director's Report: (A) Update on Department of Consumer Affair's Substance Abuse Coordination Committee's Recommendations for the Board's Diversion and Probation Monitoring Programs, Pursuant to SB 1441

LaVonne Powell, former Legal Counsel for the Dental Board spoke on behalf of the Director of Consumer Affairs. She reported that the new hiring freeze implemented by Governor Brown does not seem to be as strict as the former one. She asked that Boards request exemptions and they will advocate on our behalf. She reported that there was a 50% cut in cell phones throughout DCA and they are looking at reducing the number of state vehicles again. She stated that boards were told that they needed to enter a more formal contract for their Expert Consultants. DCA is trying to find a way to streamline this process so that Enforcement processes are not held up. Ms. Powell stated that now that our Disciplinary Guidelines are done we need to reopen them and insert SB 1441, Uniform Standards for Drug Abusing Practitioners. Ms. Powell stated that the new "Breeze" computer system that will integrate our existing applicant tracking system and the CAS system which is the Enforcement system. Ms. Powell then read a statement regarding tax withholding. Ms. Powell thanked the Board for webcasting their meeting. She stated that more and more people are watching the webcast, not necessarily live but the archived version at their own convenience. Dr. Bettinger asked if there was any way to track how many are watching or have watched the webcast. Mr. DeCuir stated that there is a tracking system and that he will report those numbers at the next meeting in his Executive Officer's report.

AGENDA ITEM 5: Update on Dental Hygiene Committee of California (DHCC) Activities

Rhona Lee, President of DHCC, reported that Lori Hubble and Tom Jurach were with her to help put on a PowerPoint Presentation. Ms. Lee stated that Dr. William Langstaff is now a member of the Committee. At the last DHCC meeting in December 2010, the majority of the time was spent reviewing, revising and then adopting statutes and then promulgating regulations specifically focused on enforcement, licensing and education. Ms. Lee stated that they intend to focus their efforts this year on that as well in order to establish an infrastructure. Ms. Lee reported that during the past year, 682 candidates took the DHCC examination with only a 19% failure rate. This statistic correlates with the past four years when failure rates ranged from 14% - 21%. Western Regional Examination Board (WREB) tested about 117 California candidates who were also granted licensure. All of these statistics and others are available on their website: dhcc.ca.gov. Lori Hubble, Executive Officer of DHCC, reported that they have had an incredible year as evidenced by the video shown.

AGENDA ITEM 6: Update Regarding Dental Board of California's Sunset Review

Richard DeCuir stated that generally speaking Sunset Reviews are done every 4-6 years. The last time this Board went through the Sunset Review process was in 2001. The Board has been Sunset twice since then but not for reasons of performance and not for performance review. We submitted the initial document to the staff of the Business and Professions' and Economic Development Committee on October 1, 2010. We began answering questions from the staff in January. The majority of questions centered on the need for fee increases, the Enforcement program, specifically case aging. Mr. DeCuir suspects that the Diversion program will come into question especially regarding SB 1441 and possibly some Dental Assisting issues. Mr. DeCuir stated that he has been told that the staff report will be sent to Senator Price the chair of the Committee the week of 2/21/11 - 2/25/11. Our hearing was scheduled for March 14, 2011. Mr. DeCuir, Board Members, and all of the managers have devoted an extensive amount of time to this Sunset Review process. Dr. Casagrande asked how far back the Committee looks at this Sunset Review. Mr. DeCuir answered that we won't know until we get their report back. Dr. Casagrande stated that if they look back far enough, they will see that there was a time when there was such disinterest that they couldn't even gather a quorum of Board Members for a Meeting. Since then there have been many changes especially in the composition of the Board Members and now they are accomplishing many, many good things. Dr. Casagrande wanted to send the message to the Committee

that the Board is a constantly improving entity on a steady climb up to do bigger and better things. Dr. Morrow asked Mr. DeCuir what the reasons were for the last two Sunsets of the Board. Mr. DeCuir stated that the first time it was surrounding the Dental Materials Fact Sheet and a bill introduced by Senator Figueroa. The second time the Board was Sunset and became a Bureau involved a Dental Hygiene Bill. There was a Bill that was introduced to make Hygiene a separate Board which was vetoed by the Governor. There was a second Bill that was introduced the next year, again to make the Hygiene Board independent but there was a spin on that Bill that said if the Governor vetoed the Bill then the Dental Board would no longer be in existence. The Governor vetoed the Bill and the Board became a Bureau for about 6 months until it was reconstituted into a Board again. Dr. Morrow stated that we should look at Sunset Review as a positive experience of self evaluation to insure that we are achieving the goals and standards that we set out to achieve. Mr. Afriat stated that as a Legislative appointee he will stay in regular communication with the Speaker's office to keep us informed of potential changes that could have an impact on the Board. Mr. DeCuir stated that he sees this as an opportunity to investigate what avenues other Board's are using, for example, in their Enforcement units that may be useful, more efficient tools that the Dental Board may want to incorporate. Dr. Bettinger stated that Dr. Morrow's comment was very insightful because as the Dental Board went through the process of Sunset Review staff did see areas where they could improve so it was a learning experience for all of us. LaVonne Powell stated that obviously the focus of this Sunset Review is Enforcement, how far the Board has gotten with SB 1441 Substance Abuse developing regulations and implementing those standards and the Diversion Program. We know that these are the areas that they are focusing on. She urges the Board to be prepared to answer questions on these subjects.

AGENDA ITEM 7: Budget Reports: Dental Fund & Dental Assisting Fund

Richard DeCuir reported that originally part of the Governor's Budget was the repayment of $3 million of the $4.4 million still owed to the Board from prior loans. The Legislative hearings have reduced the repayment amount this year to $1.2 million. Our Revenues and Expenditures have been nearly the same amount around $7.8 million per year indicating that we have been operating within our yearly revenue base. With the implementation of the Consumer Protection Enforcement Initiative (CPEI) this balance will be thrown off. We will not be taking in as much as we will have to spend. Mr. DeCuir reported that the Dental Assisting Fund is running pretty much even as far as revenues and expenditures go.

AGENDA ITEM 8: Discussion and Possible Action to Consider:
(A)Comments Received During the 15-Day Third Modified Text Notice Comment Period Relative to Amendments to Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1071, and Proposed Additions to Title 16, CCR, Section 1070.6, 1070.7, 1070.8 for Dental Assisting Educational Programs and Courses, and

Sarah Wallace, Legislative and Regulatory Analyst, stated that at the December teleconference the board decided to modify the text. The notice of modified text went out on December 24, 2010. The comment period began on December 27, 2010 and ended on January 11, 2011. During that comment period the board received a comment of support from the California Association of Dental Assisting Teachers (CADAT) and we received and adverse comment from the Dental Assisting Alliance. After the comment period closed, we received an email from Karen Wyant from the Dental Assisting Alliance wishing to withdraw their comment. Ms. Wallace stated that the request to withdraw came after the comment period closed so she consulted with the Office of Administrative Law who informed her that there are no provisions in the Administrative Procedure Act dealing with the withdrawal of public comment. They suggested that it would be in the best interest of the board to be sure there was a clear record in the rulemaking about how the board dealt with it. Staff requests that the board either grant or deny the request to withdraw the comment. Dr. Olinger asked if it would be best to reject the comment on the grounds that the comment was withdrawn. Ms. Wallace agreed that that was an option as well. Dr. Olinger stated that to him that seems procedurally cleaner than to try to withdraw. M/S/C (Afriat/Morrow) to reject the comment on the grounds that the maker of the comment asked that the comment be withdrawn. The motion passed unanimously.

(B) Adoption of Amendments to Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1071, and Proposed Additions to Title 16, CCR, Section 1070.6, 1070.7, 1070.8 for Dental Assisting Educational Programs and Courses

Ms. Wallace stated that the final step in this rulemaking process would be for the board to adopt the third modified text as its regulatory language to file with administrative law as the final rulemaking. Kristy Shellans stated that the only modification she would suggest making to the motion is that at the very end she would add "as noticed in the third modified text notice" so that the Office of Administrative Law knows which notice you're adopting as your final text version. M/S/C (Forsythe/Burton) to 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 none substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1071, and proposed additions to Title 16, CCR, Section 1070.6, 1070.7, 1070.8 as noticed in the third modified text. The motion passed unanimously.

Public Comment: Dr. Lori Gagliardi wanted to thank the staff and board for all their hard work. Bill Lewis also wanted to thank everyone involved.

AGENDA ITEM 9: Discussion and Possible Action to Consider:
(A) A Policy Decision to Extend Licensure Exemption for Out-of-State Licensed Dentists and Registered Dental Assistants to Provide Healthcare Services at Sponsored Free Health Care Events Pursuant to Business and Professions Code Section 901

Ms. Wallace stated that this policy deals with the regulations related to AB 2699 that was enacted into law last year. This bill provides for an out-of-state licensed practitioner to come in to California as an exemption and practice, for a sponsored event, on a voluntary basis to uninsured or under-insured populations in California. It is an "access to care" bill. The department has strongly encouraged the healing arts boards to pursue regulatory language as soon as possible due to the time constraints and especially due to Sunset hearings. Ms. Wallace stated that some language has been drafted. The first part of this language deals with regulations and forms for dentists. Licensing requirements and scope of practice for out-of-state dentists are similar from state to state. Staff was unable to come up with language for out-of-state dental auxiliaries as the licensing and scope of practice varies widely from state to state. Staff requested that the board discuss the necessity of authorizing out-of-state auxiliaries and if they find it necessary, help staff come up with the language. Dr. Olinger asked why we would bring in out-of-state Dental Assistants when we have local people available. Dr. Bettinger asked if CDA had a stand on this issue. Bill Lewis, CDA, stated that they don't have a stand on this particular issue. Dr. McCormick asked if on a similar vein, this would be an opportunity to do outreach with our Dental Hygiene community to make it one package. Kristy Shellans stated that DHCC would have the authority to do their own package. We don't have the authority to combine regulatory packages. Mr. Afriat stated that for his own clarification are we trying to decide whether or not to establish policy to allow registered dental assistants from out of state to come in and do voluntary clinical work for these special events as opposed to unlicensed dental assistants. He doesn't understand why it would be better to use unlicensed California assistants as opposed to licensed out-of-state assistants. Mr. Afriat stated that he feels that a licensed assistant from any other state is a better option than an unlicensed dental assistant from California. Judith Forsythe stated that the scope of duties varies widely from state to state. Most states don't even have RDA's so to have these people come in to California, we don't really know what they are qualified to do so her recommendation would be to have them come in to function as a DA. Dr. Olinger stated that we really haven't established that there is even a need for dental assistants since many of the programs have local RDA's who volunteer and in the interest of regulatory expediency we can bring in a non-licensed person without any regulations much quicker plus, if there is a need for RDA duties they're available locally. Dr. Dominicis stated that he had participated in the 2 events down south along with Judy Forsythe and they could see that the need was dentists. Dr. Morrow stated that hearing that there really doesn't seem to be a need for assistants, let's expedite the process and go forward with just dentists. M/S/C (Morrow/Afriat) to move ahead with the process to initiate a rulemaking to extend licensure exemption to out-of-state licensed dentists to provide healthcare services at sponsored free health care events pursuant to Business and Professions Code 901 and, if in the future there is a demonstrated need, consider extending it to out-of-state dental auxiliaries. The motion passed unanimously.

Lori Gagliardi, CADAT, stated to keep in mind that most states do not have an RDA license; they have a certification program which is not a license.

(B) Initiation of a Rulemaking to Add Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, 1023.18 and 1023.19 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, stated that this is the actual language we have drafted pertaining to dentistry exemptions for out-of-state dentists. We've modeled this language after the licensure by credential requirements. This language includes information regarding the sponsoring entity registering with the board to notify the board that there will be a sponsored event. There is an application tied to this regulation and that form is included in this language. This language also pertains to the out-of-state practitioner authorization to participate in the sponsored event. That participant would need to meet specified requirements. There is a form included in this language for acceptance as well. The language also outlines the requirements for termination of the authorization and finally there is a notice to patients regarding the practitioners' background information. There is a $100 processing fee for the out-of-state practitioner to pay the board for the authorization processing. Another key part of this language is that participation is limited to a maximum of 3 events per year with each event being no more that 10 days. M/S/C (Burton/Afriat) to accept the proposed regulatory language based on the provisions of AB 2699 and direct staff to take all the necessary steps to initiate the formal rulemaking process, authorize the Executive Officer to make any non-substantive changes to the rulemaking package, and set the proposed regulations for a public hearing. The motion passed unanimously.

AGENDA ITEM 10: Discussion and Possible Action to Consider the Initiation of a Rulemaking to Amend Title 16, CCR, Section 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Healing Arts Licensees and Disciplinary Guidelines

Ms. Wallace stated that SB 1441 was signed into law in 2008 and established the Substance Abuse Coordination Committee comprised of all the executive officers of the healing arts boards of DCA. That committee created the 16 uniform standards for substance abusing licensees. The department is encouraging those boards to incorporate those standards into their disciplinary guidelines. There was lengthy discussion about the process. M/S/C (Afriat/McCormick) to initiate a rulemaking of the proposed regulatory amendments to the Dental Board's Disciplinary Guidelines to incorporate the Uniform Standards Related to Substance Abuse as established by the Department of Consumer Affairs Substance Abuse Coordination Committee, April 2010 and direct staff to take all steps necessary to initiate the formal rulemaking process, authorize the Executive Officer to make any non-substantive changes to the rulemaking package, and set the proposed regulations for a public hearing. The motion passed unanimously.

AGENDA ITEM 11: Discussion and Possible Action Regarding Proposals for Legislation to Exempt from Public Contracts Code Personal Services – Subject Matter Experts.

LaVonne Powell from DCA stated that she just came from a meeting at B & P where they are working hard to exempt most of the Boards and Bureau's from many parts of this contract. M/S/C (Casagrande/ Le) to support a legislative proposal to allow the board to exempt subject matter experts it uses for administrative cases and exam development from the Public Contracts Code and authorize the Executive Officer and the Board President to pursue such a proposal on behalf of the Board. The motion passed unanimously.

AGENDA ITEM 12: Discussion and Possible Action Regarding Participation in the Office of Statewide Health Planning and Development's Phase 1 of the Clearinghouse Test Data Collection and the Impact on the Board's Staff Workload

Senita Robinson, Chief of OSHPD's Research Policy and Planning Section gave a report regarding this program that would serve as the central source of health care workforce and educational data in the state.

AGENDA ITEM 13: Examination Committee Report
The Board may take action on any items listed on the attached Examination Committee agenda.
Dr. Casagrande reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. The calendar of upcoming Dental and Registered Dental Assisting Examinations was reviewed and there was a comment that we would like to see more RDA exams in the south because there seem to be none scheduled at this time. Dr. Dominicis gave an update on WREB activities. Dr. Bettinger asked if staff could provide several years of data on the trends in the PTY1 pathway to licensure. M/S/C (Bettinger/Burton) to accept the Examination Committee report. The motion passed unanimously.

AGENDA ITEM 14: Licensing, Certification & Permits Committee Report
The Board may take action on any items listed on the attached Licensing, Certification & Permits Committee agenda.
Dr. Whitcher reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. Dr. Whitcher reviewed licensing statistics and talked about trends. General Anesthesia and Conscious Sedation evaluations and permit statistics were discussed. Dr. Whitcher stated that the GA/CS program is current and seems to be functioning well however, they are experiencing a shortage of Conscious Sedation evaluators. Outreach is being done in an attempt to address that issue. The LCP committee then moved into Closed Session. They had 3 RDA applications to replace cancelled licenses. Those 3 RDA applications were reviewed, all met the criteria and 3 RDA licenses to replace cancelled licenses were issued. M/S/C (Dominicis/ Olinger) to accept the committee's recommendation to approve the 3 applications for replacement of cancelled license. The motion passed unanimously. M/S/C (Afriat/McCormick) to accept the Licensing, Certification and Permits Committee report. The motion passed unanimously.

AGENDA ITEM 15: Dental Assisting Committee Report
The Board may take action on any items listed on the attached Dental Assisting Committee agenda.
Judy Forsythe reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. Board action was requested to accept, reject or table the Dental Assisting Forum's recommendation to consider changes to the examination outline to include infection control, dental radiation safety and preventative procedures after the current examination review is complete. The committee passed a motion to accept the DAF's recommendation to consider changes to the examination outline to include infection control, dental radiation safety and preventative procedures and to have staff incorporate this recommendation into the annual review of the examination. Ms. Forsythe stated that staff is working hard to secure a contract for a southern testing site for the RDA practical exam. Ms. Forsythe stated that there was a 3 part CADAT request, first, to allow RDA programs seeking to use a CPR provider who may not meet the Board's approval, to submit a request for approval as an equivalent provider. The second part is to consider for approval an RDA program to use CPR providers recognized by the Dental Assisting National Board (DANB). The committee passed a motion to have staff develop equivalency standards relating to CPR providers and bring them back to the committee at a future meeting. The third part of CADAT's request was to consider allowing clinical hours required for certification in coronal polishing, radiation safety and sealant education within the RDA programs to be performed within the school setting and still allow for those hours to be considered clinical in light of the new regulations requiring extramural facilities for all clinical training hours. The committee passed a motion to not reopen the regulatory comment period, which would be required to make these changes. Dr. Casagrande asked that alternative pathways to RDA licensure be put on the next agenda. Dr. Bettinger asked that the Board take action on each issue individually. M/S/C (Morrow/Afriat) to accept DAF's recommendation to consider changes to the examination outline to include infection control, dental radiation safety and preventative procedures after the current examination review is complete. The motion passed unanimously. M/S/C (Afriat/McCormick) to have staff develop equivalency standards relating to CPR providers and bring them back to the committee at a future meeting. The motion passed unanimously. M/S (Dominicis/Forsythe) to not reopen the regulatory comment period. Dr. Whitcher stated that he thought the intent was to include the hours but as written was confusing. Kristy Shellans stated that she would review the proposed regulations and see if it's possible to interpret them as intended. Dr.

Whitcher asked to amend the motion. M/S/C (Whitcher/Afriat) to amend the previous motion to: move ahead with the regulatory process and direct staff to further look at the issue of extramural settings and how clinical instruction might be done and to report back to the Board at the next meeting. The motion passed unanimously. M/S/C (Dominicis/Casagrande) to accept the Dental Assisting Committee's report. The motion passed unanimously.

AGENDA ITEM 16: Legislative and Regulatory Committee Report
The Board may take action on any items listed on the attached Legislative and Regulatory Committee agenda.

Fran Burton reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. Ms. Burton went down the list of positions the Committee recommended taking on each of the Bills. A "Watch" position was recommended for: AB 28, AB, SB 100, SB 103, AB 536, AB 675, AB 958, AB 1207, AB 1328, SB 227, SB233, SB 399 and SB 544. A "Neutral" position was recommended for SB 540 and an "Oppose" position was recommended for AB 127. M/S/C (Afriat/Olinger) to accept the Committee's recommended positions on the Bills. The motion passed unanimously. Ms. Burton gave an update on pending legislation. Ms. Wallace reported on the prospective legislative proposal regarding Advertising of Specialty Licensure. Ms. Burton reported that the Committee voted unanimously to recommend that the language be forwarded to the full Board for approval and direct the Executive Officer to incorporate the language into Sunset Review or seek an author to introduce this language as an urgency measure during the 2011-2012 Legislative session to repeal Business and Professions Code Sections 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii). M/S/C (Olinger/Casagrande) to accept the committee's recommendation. The motion passed unanimously. M/S/C (Downing/Forsythe) to accept the committee's report. The motion passed unanimously.

AGENDA ITEM 17: Enforcement Committee Report
The Board may take action on any items listed on the attached Enforcement Committee agenda.

Rebecca Downing reported that roll was called and a quorum was established. The minutes from the November 4, 2010 meeting were approved. Ms. Downing reported that the Investigator Activity Reporting (IAR) system was up and running on a limited basis beginning in December 2010. This new system will assist the managers and chief in tracking how the investigators are spending their time as well as an efficiency and quality measure. Ms. Downing reported that the complaint unit is continuing to show a favorable downward trend in the amount of days it takes to close their cases. The Investigation unit is also showing a downward trend in its unassigned and pending cases equaling 36%. This decrease is largely due to the new non-sworn unit picking up some of the less egregious cases. Ms. Downing reported that the new contract, now in place, with Phamatech relieves staff from the duty of specimen collection. There was discussion regarding the Cite and Fine program and the fact that investigators are reluctant to use it because of the perception that licensee's will challenge them, resulting in a very time consuming hearing process. Ms. Downing is working with staff to come up with more streamlined reporting that would be more of a single page snapshot of the pathway of complaints and investigations. Ms. Downing again recognized Kim Trefry and Richard DeCuir and thanked them for encouraging staff to work harder, better and faster to do more to make improvements and to be proactive. M/S/C (Burton/Whitcher) to accept the committee's report. The motion passed unanimously.

AGENDA ITEM 18: Discussion and Possible Action regarding the Dental Board of California's Public Records Act Policy

Richard DeCuir, Executive Officer, requested that this item be deferred to the next Board Meeting. M/S/C (Afriat/McCormick) to defer the discussion and possible action regarding the Dental Board of California's Public Records Act Policy to the next Board Meeting in May. The motion passed unanimously.

AGENDA ITEM 19: Update from Subcommittee Regarding Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

Dr. Casagrande reported that Portfolio became law on January 1, 2011. Dr. Casagrande recognized Bill Lewis and Dr. Alan Felsenfeld of CDA who contributed immensely to this project along with Dr. Suzanne McCormick and Dr. Steven Morrow. Dr. Casagrande reported that the all day marathon meeting with Drs. Morrow and Casagrande, Kristy Shellans, Sarah Wallace, and Donna Kantner produced 3 things. The

first was that they were able to provide staff with the information that they needed about Portfolio. The second was that in going over the draft regulations, Ms. Shellans and Ms. Wallace helped everyone to understand the requirements for inclusion with the regulations. The third part was the readying of the Comira contract for signature in preparation of their implementation of Portfolio. Dr. Morrow also expressed his appreciation to staff, legal, and Dr. Casagrande for the long day spent finalizing some of the important details. Dr. Morrow reported that we are getting some notoriety around the country regarding the Portfolio process. Many other states and licensing authorities are looking at what we have developed. Dr. Bettinger and Dr. Casagrande have been to at least 2 out-of-state meetings to present this concept and the American Student Dental Association has invited them to its annual meeting in March. Dr. Casagrande also thanked Georgetta Coleman for her invaluable contribution to this project. Dr. Felsenfeld, CDA - Speaker of the House of Delegates, stated that the work that the Dental Board has done on Portfolio is a very high profile examination process. We understand that the process will be long and we must be very careful to do everything right. Dr. Felsenfeld stated that we collectively have put together a very fine piece of legislation that is the first of its kind in the nation. He believes it will have long term implications that the rest of the nation will follow. Dr. Bettinger stated that this is a fine example of what collaboration can do.

AGENDA ITEM 20: Report on the January 19, 2011 meeting of the Elective Facial Cosmetic Surgery Permit Credentialing Committee, Discussion and Possible Action to Accept Committee Recommendations for Issuance of Permits, and Appointments of Credentialing Committee Member(s)

Dr. McCormick reported that the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee met in January, 2011. She reported that this is the first meeting in over a year. Dr. McCormick thanked Karen Fischer for her eloquent summary of the committee's duties and oversight. The committee essentially reviews applications for Elective Facial Cosmetic Surgery Permits and brings recommendations back to the Board. On January 19, 2011, the committee met and reviewed three applications during closed session. The committee tabled one application (Applicant #1 – Dr. JPD) and is asking the applicant for additional information. The committee deemed another applicant ineligible (Applicant #2 – Dr. JAB) because he is only licensed by the Medical Board and therefore ineligible for the permit according to Business & Professions Code, Section 1638.1. Applicant #3 – Dr. Erik Feider's application was reviewed and the committee recommends issuance of an EFCS permit without limitation. The Credentialing Committee recommends approval of Category I and Category II permit issuance without limitation. M/S/C (Whitcher/Afriat) to accept the committee's recommendation to approve and issue a permit for Elective Facial Cosmetic Surgery in Categories I and II to Dr. Feider. The motion passed unanimously. Dr. McCormick reported that Dr. Karas tendered his resignation from the Committee on January 19, 2011 creating a vacancy. Staff asked that a 2 person subcommittee be appointed to review resumes which will then be taken to the Board. Ms. Fischer stated that the letters were mailed on February 22, 2011 and recipients were asked to respond by April 15, 2011 in order to give the subcommittee, if appointed, time to review and interview candidates to bring back a recommendation to the Board at the May Meeting. Dr. McCormick states that additionally the Committee is working on drafting regulations. M/S/C (Olinger/Afriat) to accept the subcommittee's report. The motion passed unanimously. Dr. Bettinger appointed Dr. McCormick and Dr. Whitcher to the subcommittee to review the applications and bring back recommendations to the Board at the May Board Meeting.

AGENDA ITEM 21: Discussion and Possible Action Regarding Length of Time for Retention of Inactive Patient Records

Dr. Casagrande reported that when this subject was brought up 2 years ago, it was found that 7 years seems to be the consistent number with many of the healing arts Boards. Kristy Shellans stated that she believes that the Board has Regulatory authority to set retention timeframes. Our standards would only apply to us. CDA, IRS, managed care and Medicare all have their own standards that must be adhered to. Dr. Dominicis stated that he thinks we should explore what we should do. He stated that Denti-Cal has one standard while Delta Dental requires another. Maybe start with 7 years and go from there. Dr. Le stated that community clinics require 7 years past 18 years of age. However, now, with electronic medical records, maybe we're supposed to keep them forever. Dr. Morrow stated that he questions the advisability of the Dental Board going on record as requiring a retention timeframe. He suggests that we

make a recommendation as to how long to retain the records rather than making it a regulation. Kristy Shellans stated that record retention does protect the public. Ms. Shellans recommends setting a standard. Dr. Bettinger appointed a subcommittee of Dr. Morrow and Dr. Olinger to look into this matter and bring a recommendation back to the Board at the next Board meeting.

PUBLIC COMMENT
Dr. Earl Johnson, California Association of Orthodontists, stated that he was starting his ninth year coming to these meetings. He's seen the agenda all kinds of different ways. He stated that he'd like to vote to have the Board arrange their schedules so that the Closed Session is the first thing on the first day so that the public who can't go to the Closed Session can use that time to travel. The second thing Dr. Johnson stated was that in all these 8 years he's always had access to one of the books that had all the paperwork for the meeting. He received a letter stating that the materials would be available on the website but the materials would not be mailed out. He printed out the 160 pages from the website but finds them useless. He stated that he was under the impression that no one would get the book but he stated that he thinks everyone in the room got a book except him. He says he talked to the President who will take care of this issue. The third thing Dr. Johnson wanted to say was that he is personally really impressed with Dr. Morrow and what he's done and how he's gotten involved with this Board and has produced good thoughts and good works in a very short period of time.

The meeting adjourned at 12:20 p.m.

AGENDA ITEM 6

President's Report

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	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 6:** President's Report

Dr. John Bettinger will give a verbal report.

AGENDA ITEM 7

Executive Officer's Report

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
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MEMORANDUM

DATE	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 7:** Executive Officer's Report

Richard DeCuir, Executive Officer, will give a verbal report.

AGENDA ITEM 8

DCA Director's Report

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	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 8:** DCA Director's Report

A representative(s) from the Department of Consumer Affairs Executive Office will give a verbal report on behalf of the Director.

AGENDA ITEM 9

DHCC Report

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	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 9:** Dental Hygiene Committee of California (DHCC) Activities Update

Lori Hubble, Executive Officer of the Dental Hygiene Committee and Rhona Lee, Committee President will give a verbal report.

AGENDA ITEM 10

Budget Reports

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, California 95815
P 916.263.2300 | F 916.263.2140 | www.dbc.ca.gov

MEMORANDUM

DATE	April 29, 2011
TO	Board Members
FROM	Sharon Langness, Budget Analyst
SUBJECT	**Agenda Item 10: Budget Reports: Dental Fund & Dental Assisting Fund**

According to the most recent CALSTARS report as of March 1, 2011, the Dental Board has spent approximately 62% of its annual Dentistry budget appropriation (roughly $6.8 million). Of the Dental Assisting appropriation, the Board has spent approximately 56% (roughly $945, 000). The maylay at the state capitol continues to cause a domino effect of budget sqeeze at every level. The latest issues effecting the Dental Board are highlighted below.

1) The Board's highest hurdle comes as a result of Executive Order B-3-11, which implements a mandatory hiring freeze throughout state agencies. The order allows for agencies to submit freeze exemptions for critical positions, and applied a formula for the number of exemptions allowed. Of the Board's 13 vacant positions, we were only allowed to submit an exemption for 4 of those vacancies, the outcome of which is yet undecided.

2) With Executive Order B-2-11, came a requirement to reduce home storage of state vehicles by 32%. The emphasis was to not only on cutting costs, but also on reducing pollution by lowering fuel consumption. There is still a debate as to whether those goals are realistically being met, given that staff is using more fuel to bring the vehicles back to the office and drive their personal vehicles home, then back to pick up the vehicle in the morning. At any rate, the Board is working to bring vehicle home storage into compliance with the order.

3) Contracts for the Portfolio Examination and RDA Examination have been executed, and consultants for both examinations have begun the work outlined in the contracts. A progress report for each will be forethcoming at the next Board meeting;

I have attached a copy of the current budget projections (based upon the March 2011 CALSTARS report) for your review. Please remember that when reviewing this document, it is only an estimate for a particular point in time. The expenditure projections can fluctuate and funds can be internally redirected for many of the line items listed as needed.

Richard DeCuir will address any questions you have at the Board Meeting.

0741 - Dental Board of California
Analysis of Fund Condition

Prepared 4/6/11

(Dollars in Thousands)

Proposed FY 2011-12 Governor's Budget
Includes Repayment of Outstanding GF Loan ($4.4M)

		Actual 2009-10	CY 2010-11	Governor's Budget BY 2011-12	BY + 1 2012-13	BY + 2 2013-14	BY + 3 2014-15
BEGINNING BALANCE		$ 7,318	$ 7,865	$ 4,941	$ 2,935	$ 361	$ -2,349
Prior Year Adjustment		$ 180	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance		$ 7,498	$ 7,865	$ 4,941	$ 2,935	$ 361	$ -2,349
REVENUES AND TRANSFERS							
Revenues:							
125600	Other regulatory fees	$ 22	$ 34	$ 34	$ 34	$ 34	$ 34
125700	Other regulatory licenses and permits	$ 834	$ 918	$ 907	$ 907	$ 907	$ 907
125800	Renewal fees	$ 6,919	$ 6,595	$ 6,688	$ 6,688	$ 6,688	$ 6,688
125900	Delinquent fees	$ 70	$ 82	$ 84	$ 84	$ 84	$ 84
131700	Misc. Revenue from Local Agencies						
141200	Sales of documents	$ -	$ -	$ -	$ -		$ -
142500	Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -
150300	Income from surplus money investments	$ 55	$ 44	$ 4	$ 4	$ -	$ -
150500	Interest Income From Interfund Loans	$ -	$ -	$ -	$ -	$ -	$ -
160400	Sale of fixed assets	$ 4	$ 4	$ 4	$ 4	$ 4	$ 4
161000	Escheat of unclaimed checks and warrants	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3
161400	Miscellaneous revenues	$ 13	$ 13	$ 13	$ 13	$ 13	$ 13
164300	Penalty Assessments	$ -	$ -	$ -	$ -	$ -	$ -
Totals, Revenues		$ 7,920	$ 7,693	$ 7,737	$ 7,737	$ 7,733	$ 7,733
Transfers from Other Funds							
F00001	Rpymt of GF loans per Item 1250-011-0741, BAs of 2002 & 2003			$ 1,700	$ 1,300	$ 1,400	
F00683	Teale Data Center (CS 15.00, Bud Act of 2005)						
Transfers to Other Funds							
T00001	GF loan per Item 1250-011-0741, BA of 2002	$ -	$ -	$ -	$ -	$ -	$ -
T00001	GF loan per Item 1250-011-0741, BA of 2003	$ -	$ -	$ -	$ -	$ -	$ -
T03039	Transfer to Dentally Underserved Account						
Totals, Revenues and Transfers		$ 7,920	$ 7,693	$ 9,437	$ 9,037	$ 9,133	$ 7,733
Totals, Resources		$ 15,418	$ 15,558	$ 14,378	$ 11,972	$ 9,494	$ 5,384
EXPENDITURES							
Disbursements:							
0840 State Controller (State Operations)		$ 6	$ 15	$ 12			
8880 FISCA			$ 6	$ 48			
1110 Program Expenditures (State Operations)		$ 7,547	$ 10,610	$ 11,383	$ 11,611	$ 11,843	$ 12,080
BreEZe Redistribution			$ -14				
8880 Financial Information System of California (State Operations)							
Total Disbursements		$ 7,553	$ 10,617	$ 11,443	$ 11,611	$ 11,843	$ 12,080
FUND BALANCE							
Reserve for economic uncertainties		$ 7,865	$ 4,941	$ 2,935	$ 361	$ -2,349	$ -6,696
Months in Reserve		8.9	5.2	3.0	0.4	-2.3	-6.5

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2011-12

DEPARTMENT OF CONSUMER AFFAIRS
Dental Board

BUDGET REPORT
FY 2010/11 Expenditure Projection
Month 9 Calstars

Month(s)	9
Mo. Remaining	3

OBJECT DESCRIPTION	FY 2009/10 ACTUAL EXPENDITURES (MONTH 13)	FY 2009/10 PY Expenditures (MONTH 9)	FY 2010/11 BUDGET ALLOTMENT	FY 2010/11 CY EXPENDITURES (MONTH 9)	FY 2010/11 PERCENT SPENT	FY 2010/11 PROJECTIONS TO YEAR END	FY 2010/11 UNENCUMBERED BALANCE 4/30/2009
PERSONNEL SERVICES							
Civil Service - Perm	1,979,125	1,412,108	2,970,113	1,918,348	65%	2,558,000	412,113
Temp Help Exper Examiners			40,000				
Phys Fitness Incentive	780	520		1,625		2,000	(2,000)
Temp Help 907	239,932	210,885	222,403	207,974	94%	312,000	(89,597)
Exam Proctor (915)			45,447		0%	0	45,447
Allocated Proctor Cost	1,160	1,160				0	0
Separated Proctor Cost							
Statutory-Exempt	89,587	67,272	103,608	72,124	70%	96,000	7,608
Bd/Commsn (901,920)	15,100	11,300	45,950	13,100	29%	18,000	27,950
Comm Member (911)	5,500	4,600	58,686	3,500		5,000	53,686
Overtime	25,685	19,529	25,208	785	3%	1,000	24,208
Benefits	864,846	688,443	1,629,394	975,721	60%	1,301,000	328,394
Special Adjustments - Personal Services							
Salary Savings			(325,303)		0%		(325,303)
TOTAL PERS SVS	3,221,715	2,415,817	4,815,506	3,193,177	66%	4,293,000	522,506
OPERATING EXPENSES & EQUIPMENT							
Fingerprints	8,849	5,118	25,777	5,613	22%	8,000	17,777
General Expense	175,428	80,076	234,365	79,441	34%	174,000	60,365
Minor Equipment 226	92,349	52,481	107,000	33,639	31%	59,000	48,000
Printing	47,612	27,329	41,502	17,867	43%	31,000	10,502
Communication	55,606	34,602	36,949	42,981	116%	69,000	(32,051)
Postage	62,194	45,076	59,791	42,365	71%	64,000	(4,209)
Insurance	2,033	2,033	6,972	2,016	29%	3,000	3,972
Travel In state	115,643	70,317	100,755	75,598	75%	124,000	(23,245)
Travel Out of state	53					0	0
Training	3,900	2,557	23,148	4,277	18%	7,000	16,148
Facilities Ops	389,619	330,316	351,656	457,511	130%	540,000	(188,344)
Utilities							0
C&P Serv. Internal	52,606	48,997	134,917	53,294	40%	80,000	54,917
Health & Med-Interdept.							0
**C&P Serv. External	201,099	217,309	282,274	217,783	77%	202,000	80,274
Departmental Services (pro rata)	893,709	714,870	1,009,017	746,488	74%	1,009,000	17
Interagency Svcs			881		0%		881
Teale (Data Centers)	38,893	27,000	18,907	27,000	143%	39,000	(20,093)
Data Processing	9,168	8,868	10,366	300	3%	10,000	366
Central Adm. Services (statewide pro rata)	312,553	234,415	373,091	279,818	75%	373,000	91
EXAMS	184,524	114,936	756,298	87,636	12%	141,000	
Other Items of Expense	3,085	788	661	363	55%	1,000	(339)
Vehicle Operations	38,891	25,766	9,055	32,456	358%	49,000	(39,945)
ENFORCEMENT							
Attorney General	1,271,981	847,066	1,778,310	1,086,547	61%	1,449,000	329,310
Off of Admin Hearings	216,972	150,362	406,720	104,610	26%	157,000	249,720
Evidence/Witness	457,841	314,327	243,959	313,151	128%	470,000	(226,041)
Court Reporter Services	27,856	21,674		9,353		12,000	(12,000)
Div of Investigations							0
Major Equipment			32,000			32,000	0
Settlement						675,000	(675,000)
Total OE & E	4,662,464	3,376,283	6,044,371	3,720,107	62%	5,778,000	266,371
Special Items of Expense							
Interest - Settlement							
Tort Payments			0				
Board of Control Claims						0	
Total Special I of E	0	0	0	0	0%	0	0
TOTAL EXPENDITURES	7,884,179	5,792,100	10,859,877	6,913,284	64%	10,071,000	788,877
Fingerprint Reimb.	(24,397)	(5,406)	(53,000)	(17,599)		(53,000)	
Reimb. Other	(72,103)	(195,360)	(197,000)	(54,639)		(197,000)	
Reimb. Unscheduled	(241,851)	(13,880)		(157,966)			
Total Reimbursements	(338,351)	(214,646)	(250,000)	(230,204)	92%	(250,000)	0
NET APPROPRIATION	7,545,828	5,577,454	10,609,877	6,683,080	63%	9,821,000	788,877

Surplus/Deficit	7.4%

NOTES/ASSUMPTIONS
1. CY expenditures include YTD+ Encumbrances

3142 - Registered Dental Assistant Program
Analysis of Fund Condition

Prepared 3.28.11

(Dollars in Thousands)

Proposed FY 2011-12 Governor's Budget

	Actual 2009-10	CY 2010-11	Governor's Budget BY 2011-12	BY +1 2012-13	BY +2 2013-14
BEGINNING BALANCE	$ -	$ 1,931	$ 1,857	$ 1,640	$ 1,390
Prior Year Adjustment	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ -	$ 1,931	$ 1,857	$ 1,640	$ 1,390
REVENUES AND TRANSFERS					
Revenues:					
125600 Other regulatory fees	$ 14	$ 13	$ 13	$ 13	$ 13
125700 Other regulatory licenses and permits	$ 243	$ 308	$ 310	$ 310	$ 310
125800 Renewal fees	$ 1,225	$ 1,186	$ 1,079	$ 1,079	$ 1,079
125900 Delinquent fees	$ 73	$ 61	$ 51	$ 51	$ 51
141200 Sales of documents	$ -	$ -	$ -	$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -
150300 Income from surplus money investments	$ 4	$ 18	$ 15	$ 14	$ 11
160400 Sale of fixed assets	$ -	$ -	$ -	$ -	$ -
161000 Escheat of unclaimed checks and warrants	$ -	$ -	$ -	$ -	$ -
161400 Miscellaneous revenues	$ 5	$ 5	$ 5	$ 5	$ 5
164300 Penalty Assessments	$ -	$ -	$ -	$ -	$ -
Totals, Revenues	$ 1,564	$ 1,591	$ 1,473	$ 1,472	$ 1,469
Transfers from Other Funds					
0380 - Committee on Dental Auxilliaries	$ 1,619	$ -	$ -	$ -	$ -
Transfers to Other Funds					
	$ -	$ -	$ -	$ -	$ -
	$ -	$ -	$ -	$ -	$ -
Totals, Revenues and Transfers	$ 3,183	$ 1,591	$ 1,473	$ 1,472	$ 1,469
Totals, Resources	$ 3,183	$ 3,522	$ 3,330	$ 3,112	$ 2,859
EXPENDITURES					
Disbursements:					
0840 State Controller (State Operations)	$ 1	$ 2	$ 2	$ -	$ -
1110 Program Expenditures (State Operations)	$ 1,251	$ 1,670	$ 1,688	$ 1,722	$ 1,756
BreEZe BCP		$ (7)			
Total Disbursements	$ 1,252	$ 1,665	$ 1,690	$ 1,722	$ 1,756
FUND BALANCE					
Reserve for economic uncertainties	$ 1,931	$ 1,857	$ 1,640	$ 1,390	$ 1,103
Months in Reserve	13.9	13.2	11.4	9.5	7.4

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. EXPENDITURE GROWTH PROJECTED AT 2% BEGINNING FY 2011-12

DEPARTMENT OF CONSUMER AFFAIRS

Dental Assistants

BUDGET REPORT

FY 2010/11 Expenditure Projection

Month 9 Calstars

Month(s)	9
Mo. Remaining	3

OBJECT DESCRIPTION	FY 2009/10 ACTUAL EXPENDITURES (MONTH 13)	FY 2009/10 PY Expenditures (MONTH 9)	FY 2010/11 BUDGET ALLOTMENT	FY 2010/11 CY EXPENDITURES (MONTH 9)	FY 2010/11 PERCENT SPENT	FY 2010/11 PROJECTIONS TO YEAR END	FY 2010/11 UNENCUMBERED BALANCE 4/30/2009
PERSONNEL SERVICES							
Civil Service - Perm	260,909	198,494	330,342	236,793	72%	311,000	19,342
Temp Help Exper Examiners							
Temp Help Consultants			158			0	
Phys Fitness Incentive							0
Temp Help 907							0
Exam Proctor (915)							0
Allocated Proctor Cost	1,275	756	4,604	1,794	39%	3,000	1,604
Separated Proctor Cost							
Statutory-Exempt							0
Bd/Commsn (901,920)	1,000	500		400		1,000	(1,000)
Comm Member (911)							0
Overtime	17,223	12,586	17,023	6,441	38%	10,000	7,023
Benefits	137,523	105,720	185,706	122,425	66%	160,000	25,706
Salary Savings			(32,393)		0%		(32,393)
TOTAL PERS SVS	417,930	318,056	505,440	367,853	73%	485,000	20,440
OPERATING EXPENSES & EQUIPMENT							
Fingerprints	2,056	1,447	7,780	254	3%	500	7,280
General Expense	7,698	3,642	48,276	2,273	5%	5,000	43,276
Minor Equipment 226	4,034	4,034	0			0	0
Printing	15,656	8,180	28,518	5,536	19%	11,000	17,518
Communication	281	264	11,732	22	0%	100	11,632
Postage	17,446	13,682	53,014	11,363	21%	17,000	36,014
Insurance							0
Travel In state	46,842	33,247	39,802	21,209	53%	30,000	9,802
Travel Out of state							0
Training			4,119		0%	0	4,119
Facilities Ops	43,089	42,287	63,950	79,718	125%	81,000	(17,050)
Utilities							0
C&P Serv. Internal			283,755		0%	0	283,755
Health & Med-Interdept.							0
**C&P Serv. External	634	634	532	7,500	1410%	7,500	(6,968)
Departmental Services (pro rata)	218,933	189,210	261,131	224,624	86%	261,131	0
Interagency Svcs			72,554		0%	0	72,554
Teale	4	4	1,576		0%	0	1,576
Data Processing			1,369		0%	0	1,369
Central Adm. Services (statewide pro rata)	62,909	47,182	66,754	50,066	75%	66,754	0
SWCAP							0
EXAMS	200,216	171,002	152,238	95,141	62%	127,000	
Other Items of Expense			285		0%	0	285
Vehicle Operations							0
ENFORCEMENT							
Attorney General	213,125	90,703	67,536	137,535	204%	183,000	(115,464)
Off of Admin Hearings			2,740		0%	0	2,740
Evidence/Witness			87		0%	0	87
Court Reporter Services							0
Div of Investigations							0
Major Equipment			13,000		0%	13,000	0
Special adjustment							0
Total OE & E	832,923	605,518	1,180,748	635,241	54%	802,985	377,763
Special Items of Expense							
Interest - Settlement							
Tort Payments			0				
Board of Control Claims						0	
Total Special I of E		0	0	0	0%	0	0
TOTAL EXPENDITURES	1,250,853	923,574	1,686,188	1,003,094	59%	1,287,985	398,203
Fingerprint Reimb.	(121)		(13,000)	0		(100)	
Reimb. Other	(480)		(3,000)			(500)	
Reimb. Unscheduled							
Total Reimbursements	(601)	0	(16,000)	0	0%	(600)	0
NET APPROPRIATION	1,250,252	923,574	1,670,188	1,003,094	60%	1,287,385	382,803

Surplus/Deficit	22.9%

NOTES/ASSUMPTIONS

1. CY expenditures include YTD+ Encumbrances

AGENDA ITEM 11

Sunset Review

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
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MEMORANDUM

DATE	May 10, 2011
TO	Dental Board of California
FROM	Karen Fischer, Administrative Analyst Dental Board of California
SUBJECT	**Agenda Item 11:** Update on Dental Board of California's Sunset Review Process and Discussion and Possible Action Regarding SB 540 (Price) Dental Board of California's Sunset Review

Sunset Review Process

The Sunset Review process has been very intense since the last Board meeting in February, 2011. The Senate BP&ED Committee published its initial staff report and recommendations on March 7, 2011. **(Attachment A)** In addition to this report, and in preparation for the oversight hearing schedule for March 14, 2011, Senate BP&ED staff provided additional questions to Board staff and suggested that these questions be addressed at the hearing.

Staff worked with board members to draft testimony to answer the questions the Senate BP&ED staff had provided. The following people presented testimony at the March 14th oversight hearing: Dr. John Bettinger, Board President, Ms. Fran Burton, public member, Ms. Rebecca Downing, public member, Mr. Richard DeCuir, Executive Officer, Ms. Kim Trefry, Enforcement Chief, and Ms. Teri Lane, Supervising Investigator. Also in attendance were Dr. Bruce Whitcher, Board Vice President, Dr. Stephen Casagrande, Board member, and Denise Johnson, Assistant Executive Officer. The hearing was webcast.

After the oversight hearing, we continued to respond to follow-up questions from Senator Price, Committee Chair and Senate BP&ED Committee staff. Specifically, Senator Price had additional questions about consumer Tina Gomes' testimony, and our comments about Issue #21(Diversion program) as presented in the Senate Committee recommendations. Mr. DeCuir took this opportunity to request that the Senate BP&ED Committee consider including statutory language in the Board's sunset review legislation that would expand the enforcement units authority to address violations of the Dental Practice Act and asked that the language include time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. **(Attachment B)**

In addition to responding to follow-up questions regarding the oversight hearing, Board staff drafted a written response to the Committee staff's issues and recommendations, with the assistance of Ms. Fran Burton and Dr. Bruce Whitcher. The Board's response was submitted to the Senate BP&ED Committee on April14, 2011. **(Attachment C)**

In the meantime, Senate Bill 540 (Price), was introduced as the vehicle to address the Dental Board issues identified through the sunset review process. On April 25, 2011, SB 540 was amended to include the Senate BP&ED Committee's recommendations. **(Attachment D)**

When the April 25th amended version of SB 540 appeared in print, Dr. John Bettinger, Board President appointed a two person subcommittee, Ms. Fran Burton and Dr. Bruce Whitcher, to work with Board staff to review the proposed amendments to SB 540 and to draft a response. Because the full Board has not yet met to review the legislation, it was decided that at this time the Board's response would be to ask for further clarification of a number of issues raised in the legislation. The letter was delivered April 29, 2011. **(Attachment E)**

Senate Bill 540

Senate Bill 540, as amended April 25, 2011 prior to the May 2, 2011 Senate BP&ED Committee meeting does the following:

1) Does NOT yet include the Board's request for statutory language to expand the enforcement units authority to address violations of the Dental Practice Act.
2) Deletes existing law requirements relating to advertising by a dentist of specialization or accreditation in a specialty area of practice unless certain requirements are met.
3) Extends the sunset date of the DBC comprised of eight practicing dentists, one registered dental hygienist, one registered dental assistant and five public members to January 1, 2016.
4) Establishes, on and after January 1, 2016, a DBC which shall consist of eight practicing dentists and seven public members. States that this provision shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. States that this repeal renders the DBC subject to review by the appropriate policy committees of the Legislature. States that members of the DBC shall be appointed for a term of four years, and that the Governor appoints the 8 dentists and five of the public members, and the Senate Rules Committee and the Speaker of the Assembly each appoint a public member.
5) States that on and after January 1, 2016, all members of the DBC, except the public members, shall have been actively and legally engaged in the practice of dentistry, as specified. Provides that the public members shall not be licentiates of the DBC or any other board, as specified.

6) Requires the DBC, by January 1, 2013, to comply with existing statute that requires boards within DCA, including the DBC, to adopt regulations to require licensees to provide notice to clients or customers that the licensee is licensed by the state. Requires the notice to include a provision indicating that the DBC is the entity that regulates dentists and provide the telephone number and Internet address of the DBC. States that the DBC should require the notice to be posted in a conspicuous location accessible to public view.

7) Extends the sunset date of the appointment of the executive officer to January 1, 2018.

8) Requires the DBC to adopt written guidelines on how to make probation assignments, and to ensure that probationary and evaluation reports are conducted consistently and regularly.

9) Requires the DBC to ensure that the law and ethics examination reflect current law and regulations, and to ensure that the examinations are randomized.

10) Provides that if requested by the Legislature through the Joint Legislative Audit Committee in 2012, the Bureau of State Audits shall conduct a thorough performance audit of the DBC'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. Requires this audit to be paid for with moneys from the State Dentistry Fund. (Note: the requirement was taken out of the Nursing Board's Diversion Program requirements.)

11) Deletes existing law provision requiring a licentiate to sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the DBC of diversion treatment records in disciplinary or criminal proceedings.

12) Requires that if a licentiate withdraws or is terminated from the diversion program for failure to comply or is determined to be a threat to the public or their own health and safety, all diversion records for that licentiate shall be provided to the DBC's enforcement program and may be used in any disciplinary proceeding.

13) States that if a licentiate in a diversion program tests positive for any banned substance, the board's diversion program manager shall immediately notify the DBC's enforcement program and provide the documentation evidencing the positive test result to the enforcement program. Provides that this documentation may be used in a disciplinary proceeding. (Note: This is not a requirement of the Nursing Board's Diversion Program.)

14) Deletes the requirement that dental assisting fees that relate to licensing and permitting be established by DBC resolution and instead requires these fees to be

established by regulation.

15) Deletes existing intent language for the DBC to create and implement an effective forum for dental assisting matters, as specified.

16) Creates a Dental Assisting Council (Council) of the DBC, which shall consider all matters relating to dental assistants in this state, including matters that relate to standards for approval of dental assisting educational programs and courses, and make appropriate recommendations to the DBC, as specified.

17) Requires that members of the Council to be appointed by the DBC president, and shall consist of two members of DBC, and five members who are either registered dental assistants or registered dental assistants in extended functions. Requires the Council to meet in conjunction with other DBC Committees, and at other times as deemed necessary.

18) Provides that the Council members shall serve a term of four years, except that, of the initial appointments of the nonboard members, one of the members shall serve a term of one year, two members shall serve a term of two years, and two members shall serve a term of three years.

19) Requires the Council to be the sole entity of the DBC that will provide recommendations on dental assisting matters.

20) Extends the California Dental Corps Loan Repayment Program of 2002 until all the moneys in the account are expended.

The Bottom Line

SB 540(Price) was heard in the Senate Business, Professions, and Economic Development Committee on May 2, 2011. Ms. Fran Burton and Dr. Bruce Whitcher, along with Mr. Richard DeCuir and Ms. Kim Trefry attended and testified at the hearing. One important amendment was made by the author at the hearing to move up the date of the Boards re-composition to eight dentists and seven public members, from January 1, 2016 to January 1, 2012.

Subsequent to the May 2nd Committee hearing, SB 540 was amended in the Senate May 9, 2011. The bill has been referred to Senate Appropriations Committee but has not been scheduled for hearing. The last day for fiscal committees to hear and report to the floor bills introduced in their house is May 27, 2011.

SB 540 Amendments Resulting from the May 2nd Hearing:

- Change the composition of the board to eight practicing dentists and seven public members as of January 1, 2012. The RDA member and the RDH member requirements have been repealed as of January 1, 2012.

- Provide that the next sunset date of the Dental Board is January 1, 2016 (all references to the sunset date of January 1, 2018 have been deleted).

The amendments do not include any of the following:

- Provide an amendment to ensure that the Board will be able to continue to collect fees on or after January 1, 2012; but that any increase in fees on or after January 1, 2012 would need to be adopted by regulation rather than resolution. The Board will be unable to collect current dental assisting fees after January 1, 2012 until the regulations become effective.

- Additional enforcement methods that would assist staff in closing minor to moderate violations more quickly (time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment).

- Clarification regarding the Dental Assisting Council assuming disciplinary functions. Conflict of interest language for the qualifications of the Dental Assisting Council appointees. Clarification on the Board's ability to hear dental assisting issues in its other committees such as Enforcement, Examinations, Licensing/Certification/Permits, and Legislation/Regulatory as a result of the establishment of the Dental Assisting Council.

- Delete "mental or physical illness" from Section 1695(b) pertaining to the Diversion Program audit.

- Clarification on the Board's requirement to adopt written guidelines on how to make probation assignments and ensure that probationary evaluation reports are conducted consistently and regularly – to whom the section would apply (applicants, licensees, or both?)

A follow-up meeting is anticipated between the Senate BP&ED Committee staff and Ms. Burton/Dr. Whitcher to discuss further changes to the bill. Ms. Burton and Dr. Whitcher will be providing their respective perspectives of the May 2nd hearing at the Board meeting.

Action Requested

The Board may wish to take a position on SB 540: Support, Support with amendments, Oppose, Watch, no position, etc.

ATTACHMENT A

The Senate Committee on Business, Professions and Economic Development's Background Paper for the Dental Board of California Oversight Hearing
March 14, 2011

Identified Issues, Background and Recommendations Regarding the Dental Board of California

BACKGROUND PAPER FOR THE DENTAL BOARD OF CALIFORNIA

(Oversight Hearing, March 14, 2011, Senate Committee on Business, Professions and Economic Development)

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE DENTAL BOARD OF CALIFORNIA

BRIEF OVERVIEW OF THE DENTAL BOARD OF CALIFORNIA

The Dental Board of California (DBC) was created by the California Legislature in 1885, and was originally established to regulate dentists. Today, DBC is responsible for regulating the practice of approximately 71,000 licensed dental health professionals in California, including 35,500 dentists, 34,300 registered dental assistants (RDAs), and 1,300 registered dental assistants in extended functions (RDAEFs). In addition, DBC is responsible for setting the duties and functions of approximately 50,000 unlicensed dental assistants. DBC, as a whole, generally meets at least four times throughout the year to address work completed by various committees of DBC and hear disciplinary cases.

The Dental Practice Act provides that the "[p]rotection of the public shall be the highest priority of the Dental Board of California in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." In concert with this statutory mandate, DBC formally adopted a mission statement in its 2010/2012 Strategic Plan, as follows: "The mission of the Dental Board of California is to protect and promote the health and safety of consumers of the State of California." The Strategic Plan also included a vision statement which indicated that DBC will be the leader in public protection, promotion of oral health, and access to quality care.

DBC implements regulatory programs and performs a variety of functions to protect consumers. These programs and activities include setting licensure requirements for dentists, and dental assistants, including examination requirements, issue and renew licenses, issue special permits, monitor probationer dentists and RDAs and manage a Diversion Program for dentists and RDAs whose practice may be impaired due to chemical dependency or mental illness.

DBC is composed of 14 members; 8 practicing dentists, 2 dental auxiliaries (RDH and RDA), and 4 public members. The 8 licensed dentists, the registered dental hygienist, the registered dental assistant, and 2 public members are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each get a public member appointment. According to DBC, public membership is 29% of the Board's composition. Of the 8 practicing dentists, 1 must be a member of a dental school faculty, and one shall be a dentist practicing in a nonprofit clinic.

Members of DBC are appointed for a term of 4 years, and each member may continue to hold office until the appointment and qualification of his or her successor or until 1 year has elapsed since the

expiration of the term, whichever occurs first. Each member may serve no more than 2 full terms. The following is a listing of the current members of the DBC with a brief biography of each member, their current status, appointment and term expiration dates and the appointing authority:

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
John Bettinger, DDS, Board President Dr. Bettinger is a member of the American Dental Association, California Dental Association and Western Los Angeles Dental Society. He is a Life Member with Fellowship status in the Academy of General Dentistry. He served on the Western Los Angeles Dental Society Peer Review Committee for 10 years and on the Diversion Evaluation Committee of DBC for 2 years. Dr. Bettinger has been affiliated with Saint John's Hospital and the UCLA/Santa Monica Hospital and Health Care Center (formally the Santa Monica Hospital).	March 26, 2009	January 1, 2013	Governor
Bruce L. Whitcher, DDS, Board Vice President Dr. Whitcher has maintained a private practice of Oral and Maxillofacial Surgery in San Luis Obispo since 1987. Dr. Whitcher is a member of the Central Coast Dental Society, the California Dental Association, the California Association of Oral and Maxillofacial Surgeons, and the American Association of Oral and Maxillofacial Surgeons. He maintains hospital affiliations with French Hospital Medical Center, Sierra Vista Regional Medical Center, and Twin Cities Hospital Medical Center.	January 2, 2011	January 1, 2015	Governor
Luis Dominicis, DDS, Board Secretary Dr. Dominicis is a general dentist in private practice in the City of Downey, California since 1993. Dr. Dominicis is the President of Los Angeles Dental Society, Past President of the Latin American Dental Association; he has also served in various Councils in the California Dental Association such as Council on Legislative Affairs, Council on Community Health and in the Reference Committee for the House of Delegates. Dr. Dominicis is presently a member of the Dental Forum, which represents the ethnic dental societies in California.	March 26, 2009	January 1, 2012	Governor
Steven Afriat Mr. Afriat is President of the Los Angeles County Business License Commission. He was also the Los Angeles City Councilmember's Chief of Staff. Mr. Afriat has also served as President of the Los Angeles City Animal Services Commission, the LA City Council Redistricting Commission, and on the Boards of the Valley Community Clinic, Equality California, the West Hollywood Chamber of Commerce, and the Valley Industry and Commerce Association. Mr. Afriat owns his own Governmental Relations firm in Burbank.	July 2010	January 1, 2013	Speaker of the Assembly
Fran Burton Ms. Burton served twenty-one years in California in the Legislative and Executive branches of government. She currently consults on health policy issues. She holds a Master of Social Work degree from California State University, Sacramento.	June 2009	January 1, 2013	Senate Rules Committee
Stephen Casagrande, DDS Dr. Casagrande has been a dentist in private practice since 1974. He was previously the director of the Sacramento District Dental Society, a past member of the peer review committee, an advisor to the Sacramento City College Dental Hygiene Program Advisory Board Member to Hi-Tech Institute, a Proprietary School for Dental Assistants. Dr. Casagrande is a member of the American Dental Association, California Dental Association, and Sacramento District Dental Society.	March 27, 2009	January 1, 2012	Governor

Rebecca Downing Ms. Downing was appointed by Governor Schwarzenegger to the Dental Board in March of 2009. She is an attorney and the Chief Legal Officer for Western Health Advantage, a Sacramento-based health plan. Previously, she served as general counsel for Landmark Healthcare, Inc., a chiropractic / acupuncture health care company. In addition, Ms. Downing was the Executive Director of the California Chiropractic Association, and served in various capacities with the California Veterinary Medical Association and the California Dental Association. She received her Juris Doctorate degree from University of Southern California Gould School of Law and her Bachelor's degree from California State University, Sacramento.	March 26, 2009	January 1, 2012	Governor
Judith Forsythe, RDA Judith Forsythe, of Riverside, has been a Registered Dental Assistant in the State of California since 1994. She currently holds the position of director of back office development for Pacific Dental Services, where she has worked since 1998. She is a member of the American Dental Assistant Association.	March 26, 2009	January 1, 2013	Governor
Houng Le, DDS Dr. Le is a member of the American Dental Association, California Dental Association and Alameda County Dental Society. Dr. Le serves as a member on Board of Directors of National Network for Oral Health Access and Secretary for Western Clinicians Network. Additionally, she is President-Elect for Alameda County Dental Society. Dr. Le presently serves as Assistant Clinical Professor at UCSF School of Dentistry, A. T. Still School of Dental and Oral Health in Arizona and Dental Director of Lutheran Medical Center-affiliated AEGD program at Asian Health Services.	January 2, 2011	January 1, 2015	Governor
Suzanne McCormick, DDS Dr. McCormick is an Oral and Maxillofacial surgeon in private practice who is an active staff member at the Department of Oral and Maxillofacial Surgery at Tri-City Medical Center in Oceanside, California. She has been affiliated with many hospitals including, but not limited to, Health North Medical Center, Loma Linda University Medical Center, Riverside Medical Center, Metropolitan Medical Center, St. Vincent's Hospital and Medical Center, and New York University Medical Center. She has served as Trustee from District I, of the Board of Directors, International College of Oral and Maxillofacial Surgeons.	March 26, 2009	January 1, 2013	Governor
Steven Morrow, DDS After sixteen years of endodontic practice, Dr. Morrow returned to the field of dental education, completed a Master of Science Degree in Microbiology and accepted a faculty appointment in the Department of Endodontics at Loma Linda University School of Dentistry. Dr. Morrow is a Life Member of the American Dental Association and the American Association of Endodontists. He is a member of the California State Association of Endodontists, Tri-County Dental Society, Southern California Academy of Endodontics, and the American Dental Education Association. He is a Diplomate of the American Board of Endodontics and a member of the Scientific Advisory Board of the Journal of Endodontics. He is currently a Professor of Endodontics and Director of Patient Care Services and Clinical Quality Assurance at Loma Linda University School of Dentistry.	August 17, 2010	January 1, 2014	Governor
Thomas Olinger, DDS Since 1979, he has owned and operated his private practice. Dr. Olinger has also served as a dental officer in the U.S. Navy Reserve since 1976. He is a member of the California Dental Association, American Dental Association and San Diego County Dental Society. This position does not require Senate confirmation and the compensation is $100 per diem.	March 26, 2009	January 1, 2013	Governor

DBC currently has active committees dealing with dental assisting, enforcement, examinations, legislation and regulations, and licensing, certification, and permits. The Enforcement Committee reviews complaint and compliance case-aging statistics, citation and fine information, and investigation case-aging statistics in order to identify trends that might require changes in policies, procedures, and/or regulations. This Committee also receives updates on dentists participating in the Diversion Program. The Examination Committee reviews clinical/practical and written examination statistics and receives reports on all examinations conducted by staff. The Legislative/Regulatory Committee actively tracks legislation relating to the field of dentistry that might impact consumers and licensees and makes recommendations to the full Board whether or not to support, oppose, or watch a particular legislation. The Legislative/Regulatory Committee also develops legislative proposals, seeks authors, and attends Legislative hearings. The Licensing, Certification, and Permits Committee reviews dental and dental assistant licensure and permit statistics, and looks for trends that would indicate efficiency and effectiveness or might identify areas in the licensing units that need modifications. Additionally, the Dental Assisting Committee, made up of DBC members, evaluates all issues relating to dental assistants, RDAs, and RDAEFs.

DBC is a special fund agency, and its funding comes from the licensing of dentists and biennial renewal fees of dentists and RDAs. Currently, the license and renewal fee for dentists is $365 and the renewal fee for RDAs is $70. DBC also receives revenue through its cite and fine program. The total revenues anticipated by DBC for fiscal year 2010/2011 is $7,758,000, for FY 20111/2012, it is $8,929,000, and for FY 2012/2013 it is $10,021,000. DBC's anticipated expenditures for FY 2010/2011 is $11,159,000, for FY 2011/2012, it is $11,386,000, and for FY 2012/2013 it is $11,641,000. DBC spends approximately 68% of its budget on its enforcement program, with the major portion of these expenditures going to salary and wages followed by Attorney General and Evidence and Witness costs. DBC anticipates it would have approximately 4.7 months in reserve for FY 2010/2011, 2.1 months in reserve for FY 2011/2012, and 1.3 months reserve for 2012-2013.

In 2009, with the implementation of SB 853 (Perata), the State Dental Assistant Fund was established where all funds for the regulation of dental assistants is deposited. According to DBC, the total revenues anticipated for the dental assistant fund for FY 2010/2011, 2011/2012 and 2012/2013 is over $1.1 million. The total expenditures for each of the fiscal years is over $1.7million. DBC anticipates a 9.4 months reserve in 2010/2011, 5.1 months reserve in 2011/2012 and .7 months reserve in 2012/2013.

Currently, DBC has 72.8 authorized positions, of which 60.8 are filled and 12 are vacant. The Enforcement Unit is comprised of 35 staff, with 10.5 vacant positions. In 2010, the DCA launched the Consumer Protection Enforcement Initiative (CPEI) to overhaul the enforcement process of healing arts boards. According to DCA, the CPEI is a systematic approach designed to address three specific areas: Legislative Changes, Staffing and Information Technology Resources, and Administrative Improvements. Once fully implemented, DCA expects the healing arts boards to reduce the average enforcement completion timeline to between 12 -18 months. As part of CPEI, DBC was authorized to hire 12.5 positions. However, because of a hiring freeze ordered by the Governor on August 31, 2010, as well as a 5% staff reduction directive from the Department of Finance on October 26, 2010, DBC has only hired 4 of the 12.5 positions allocated under CPEI.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

DBC was last reviewed by the former Joint Legislative Sunset Review Committee (JLSRC) in 2002. At that time, the JLSRC issued five recommendations. Additionally, prior to this last review, SB 26 (Figueroa), Chapter 615, Statutes of 2001 required the Director of the DCA to appoint an Enforcement Monitor (Monitor) to evaluate DBC's disciplinary system and procedures with specific focus on the quality and consistency of complaint processing and investigation, timeframes needed for complaint handling and investigation, complaint backlogs, and other related managerial, organizational, and operational problems, issues, and concerns. The Monitor submitted his initial report to the Legislature in 2002, and made 40 specific recommendations for improvements. In this initial report, the Monitor indicated that there are numerous significant inconsistencies in the way complaints are processed and investigated, it was taking much too long to resolve or investigate complaints, and as a result of staff turnover and the state's hiring freeze, backlogs have begun to accumulate. The following are actions which DBC took to address the issues raised by the Monitor and the last sunset review. For those which were not addressed and which may still be of concern to the Committee, they are addressed and more fully discussed under "Current Sunset Review Issues."

On October 1, 2010, DBC submitted its required Sunset Report to this Committee. In this report, DBC described actions it has taken since its last sunset review and to address the recommendations of the Monitor. The following are some of the changes and enhancements that DBC had undertaken:

- Augmentation of enforcement unit staff and restructuring of its Complaint Unit has allowed DBC to respond to consumer complaints in a timely manner and has reduced the processing times of complaints.

- In response to concerns raised that DBC is unable to administer an adequate amount of examinations, DBC sponsored AB 1524 (Hayashi), Chapter 446, Statutes of 2010 which repeals the previous clinical and written examination administered by DBC and replaced it with a portfolio examination of an applicant's competence to practice dentistry to be administered while the applicant is enrolled in a dental school program.

- DBC converted limited term peace officer positions to permanent full time positions.

- New licensure, examination and permit requirements were established.

- To address issues raised by the Monitor on the lack of a case tracking system, DBC will be one of the Boards that will benefit from a new, integrated, enterprise-wide enforcement and licensing system, called BreEZe that will support applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management. According to DCA, BreEZe will replace the existing CAS, ATS, and multiple "workaround" systems with an integrated system for use by all DCA organizations. The BreEZe project was approved by the Office of the State Chief Information Officer (OCIO) in November 2009, and the Request For Proposal (RFP) for a solution vendor is currently under development.

- To address the need for tracking investigative case activity, in 2003, DBC tested a version of the Investigation Activity Reporting (IAR) program used by the Medical Board of California (MBC). According to DBC, although this demonstration version of MBC's database was intended to provide a method for managers to track casework on all cases, the system was not

established in protocol and was only used sporadically. DBC's enforcement program has partnered with the MBC to utilize MBC's newest version of the IAR to track casework. This format is intended to provide information for cost recovery purposes and allow managers to better track staff performance and productivity. Transition to the new IAR was anticipated to be completed by the end of 2010.

- The Expert Reviewer rate was increased from $75 to $100. However, DBC indicates it continues to struggle to recruit experts.

- Effective August 1, 2010, a new consumer survey procedure has been adopted.

- The Disciplinary Guidelines of DBC were revised and approved by the Office of Administrative Law on December 14, 2010. The regulations became effective January 13, 2011.

- DBC's regulatory authority and responsibility was extended to all dental assisting functions. The duties and functions of unlicensed dental assistants, RDAs, RDAEFs, Dental Sedation Assistants, and Orthodontic Assistants were revised in statute.

- The Board updated its dental assisting educational requirements relating to RDA programs, infection control courses, Orthodontic Assistant Permit Courses, Dental Sedation Assistant Courses, and RDAEF programs, and is moving forward with finalizing the rulemaking process.

- The DBC updated the regulations for the minimum standards for infection control applicable to all DBC licensees and is moving forward with finalizing the rulemaking process.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to DBC, or areas of concern for the Committee to consider, along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. DBC and other interested parties, including the professions, have been provided with this Background Paper and can respond to the issues presented and the recommendations of staff.

BOARD ADMINISTRATION ISSUES

ISSUE #1: (CHANGE COMPOSITION OF DBC.) Should the composition of DBC be changed to include more public member representation?

Background: DBC's current composition of 8 professionals and 4 public members may not be in the best interest of consumer protection. DBC currently has 14 members: 8 dentists, 1 RDA, 1 RDH and 4 public members. The 8 licensed dentists, 1 RDH, 1 RDA, and 2 public members are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each get 1 public member appointment. According to DBC, public membership is 29% of DBC's composition.

Generally, a public member majority for occupational regulatory boards or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's (including DBC) primary purpose is to protect the public, increasing the public's representation on DBC assures the public that the professions' interests do not outweigh what is in the best interest of the public. Requiring closer parity between public and professional members is also consistent with both this Committee's and the DCA's recommendations regarding other boards that have undergone sunset review over the past 8 years. Additionally, almost all health related consumer boards have no more than a simple majority of professional members.

Staff Recommendation: ***To ensure the continued commitment of DBC to protect the public, the composition of DBC should be changed to include more public members. This could be accomplished by replacing one of the dentists appointed by the Governor with a public member and giving the Governor an additional public member appointment. This would bring the total of DBC to 15 members: 7 dentists, 1 RDA, 1 RDH and 6 public members.***

ISSUE #2: (STRATEGIC PLAN UPDATE NEEDED.) Should DBC's Strategic Plan include action items and realistic target dates for how its goals and objectives will be met?

Background: As part of the sunset report, DBC submitted its 2010-2012 Strategic Plan which laid out its mission, vision, values, goals and objectives. The Strategic Plan recognizes that the mission of DBC is to protect and promote the health and safety of consumers in California and lays out objectives in achieving this goal. However, the Strategic Plan lacks depth and specificity as to how the Board will achieve its specific objectives. For example, DBC specifies as goal 3: Ensure the Board's Enforcement and Diversion Programs provide timely and equitable consumer protection. For the objectives, DBC specifies that the Board will implement improved reporting and tracking of enforcement cases; implement short- and long-term IT improvements; maintain optimal staffing by continuing to fill vacant enforcement and diversion staff positions. However, there is no discussion on how the Board will achieve these objectives. The Strategic Plan is transparently lacking on the specifics of how DBC in concrete steps will achieve its objectives.

Staff Recommendation: ***DBC should develop and publish a detailed action plan with specific action items and realistic target dates for how each of the objectives will be met. Additionally, the Board should be given a written status report on the action plan at each board meeting.***

ISSUE #3: (LACK OF PERSONNEL EVALUATION.) Should DBC implement annual personnel performance evaluations or appraisals?

Background: According to the 2002 Enforcement Program Monitor's Initial Report, among other issues identified, there was no evidence of management or supervisory analysis of workload or work processes. At that time, the Monitor recommended that specific supervisory responsibilities and requirements should be defined, including conducting case reviews and annual performance appraisals. Additionally, the Monitor suggested that DBC identify all areas requiring documentation of policies and procedures, and schedule the completion of this activity over a phased period of time. The Monitor indicated that improved supervisory practices will be critical to achieving marked improvements in the aging of closed cases. However, the Monitor also recognized that previous

appraisal efforts were met with considerable employee resistance, and the appraisals were never completed.

Additionally, a 2009 Enforcement Process Assessment (Enforcement Assessment) of DBC indicated that the lack of personnel performance evaluations is evident in various areas of the enforcement program. Personnel appraisals, the Enforcement Assessment indicated are especially important in the case review and audit process to effectively track and manage investigations, and concluded that a consideration should be given to monthly reports, training participation and attendance to measure staff productivity and investigative progress, which will also help in conducting annual appraisals with staff.

Staff Recommendation: *DBC should explain to the Committee its system of work performance evaluations and ensure that these evaluations or appraisals are completed by staff on a timely basis.*

ISSUE #4: (CLARIFICATION OF THE AUTHORITY OF DBC OVER THE DENTAL HYGIENE COMMITTEE AND DENTAL ASSISTANTS.) Is there some clarification needed regarding the authority which DBC has over the Dental Hygiene Committee and the Dental Assisting Forum?

Background: In 1974, the Legislature created the Committee on Dental Auxiliaries (COMDA) to provide advice on the functions of and work settings of dental auxiliaries, including dental assistants and dental hygienists. COMDA was vested with the authority to administer dental auxiliary license examinations, issue and renew dental auxiliary licenses, evaluate auxiliary educational programs, and recommend regulatory changes regarding dental auxiliaries. SB 853 (Perata) (Chapter 31, Statutes of 2008) abolished COMDA and transferred the regulation of dental hygienists to the Dental Hygiene Committee, and the regulation of RDAs and RDAEFs to DBC. SB 853 was the result of years of negotiations between stakeholders to create within the jurisdiction of DBC the Dental Hygiene Committee of California (DHCC). It removed dental hygienists from the more restrictive COMDA and provided it with a more autonomous regulatory direction. This was an action consistent with JLSRC's conclusion that the dental hygienists had reached the point where their responsibilities warranted a regulatory body separate from DBC. While the DHCC is proving successful, there have been issues raised regarding its autonomy. It has been argued that the autonomy that was designed and expected with the independent funding and governance of this new Committee has been sometimes limited by the suggestion that their actions, outside of changing the scope of practice for dental hygiene, requires special reporting or some kind of consent from DBC. Dental hygiene advocates claim that the adoption of the regulatory packet that will create the Dental Hygiene Practice Act remains stalled, and the DHCC is still acting under the old regulations that are found only in the Dental Practice Act that is controlled by DBC. However, according to DBC staff, it is unclear as to why the DBC is responsible for the failure to enact DHCC regulations. With new appointments due to occur in January 2012, it is imperative that the DHCC's ability to adopt regulations independent of DBC be clarified. Without clarification, the DHCC members are unclear as to what they can do as a Committee.

Additionally, SB 853 also stated legislative intent that DBC create and implement an effective forum where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full and where all matters relating to dental assistants can be discussed, including matters related to licensure and renewal, duties, standards or conduct and enforcement. In response to SB 853, in 2009, DBC established two groups to deal with dental assisting issues: The Dental Assisting Committee (DAC) composed of DBC members and chaired by the RDA appointee to DBC; and the Dental

Assisting Forum (DAF), composed of RDAs and RDAEFs. According to DBC, "the purpose of the DAF is to be a forum where dental assistants can be heard, and to discuss all matters relating to dental assistants in the State, including requirements for dental assistant licensure and renewal, duties, supervision, appropriate standards of conduct and enforcement for dental assistants." This purpose is essentially similar to the legislative intent specified in SB 853. The DAC meets at every board meeting and the DAF held short meetings in January and April 2010, and met again in January 2011. Advocates for dental assistants have indicated to Committee staff that many items that DAF members have requested be included on agendas but have been removed, requests that meetings be held in conjunction with DBC so that there can be open lines of communication and establish greater efficiency have been denied, and dental assisting issues are placed on the agenda for DBC's DAC, instead of on the DAF agenda. Additionally, Committee staff is unclear as to DBC's policy for referring issues to the DAF and DAC, how recommendations are referred from the DAF and DAC to DBC and what kind of discretion DBC has over deciding dental assisting issues; how often are issues referred to DAF and DAC and how often are they taken up by DBC, and how often are DAF and DAC recommendations accepted. Essentially, the establishment of two groups to deal with dental assisting issues has resulted in very inefficient and ineffective process. It is also unclear why DBC established a bifurcated process for hearing dental assisting issues.

Recommendation: ***It would appear as if the intent of the Legislature was that the Dental Hygiene Committee was created so that it could make independent decisions on issues related to the regulation of the hygienist profession unless it involved scope of practice changes which would need to be worked out between both the dentistry and hygienist professions. Clarification may be needed to assure that the Dental Hygiene Committee maintains its independence over that of DBC. Additionally, the Committee should ask DBC to explain the purpose for establishing two groups to deal with dental assisting issues, and consider merging the DAC and DAF into one entity.***

DENTAL WORKFORCE AND DIVERSITY ISSUES

ISSUE #5: (IMPACT OF FEDERAL HEALTH CARE REFORM ON THE DENTAL WORKFORCE?) Will California meet the increased demand for dental services with the enactment of the Federal Health Care Reform, and what can DBC do to assist in the implementation of the Federal Health Care Reform?

Background: A June 2009 Health Policy Fact Sheet (Health Policy Fact Sheet) by the University of California, Los Angeles Center for Health Policy Research indicated that California has about 14% of the total number of dentists nationwide (the largest percentage of any state). The dentist-to-population ratio in California is estimated as 3.5 dentists per 5,000 or a dentist for every 1,440 persons. This ratio is higher than the national estimate of three dentists per 5,000, or a dentist for every 1,660 persons. However, the Health Policy Fact Sheet revealed that although there is a large number of practicing dentists in California, many areas in the state continue to have a shortage of dentists, and these areas are mostly located in rural areas, including Yuba, Alpine, Colusa, Mariposa, Mono and San Benito Counties. The Health Policy Fact Sheet indicated that there are 233 dental health professional shortage areas statewide. These areas generally have a dentist-to-population ratio of one per 5,000 or lower; a high population need with a ratio of at least 1.25 dentists per 5,000 (or 1 per 4,000); and a public or non-profit health center that provides dental services to shortage areas or populations. Additionally, the Health Policy Fact Sheet indicated that the percentage of dentists who may be nearing retirement

age is greater than the percentage of newly licensed dentists. In some counties, far fewer are newly licensed and many more are nearing retirement age.

These shortages could potentially impact the implementation of the recently enacted federal health care reform measure, referred to as the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010. In California, implementation of the PPACA 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 PPACA. 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 PPACA 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 5-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.

Staff Recommendation: ***The Committee should ask DBC whether it has assessed the impact of, and planned for, implementation of the PPACA; how DBC is looking at the dental workforce capacity in light of implementation of the PPACA, given that millions of additional Californians, especially children, will gain dental coverage when the PPACA is implemented. Additionally, DBC should continue in its efforts to increase the dental workforce in California, explore approaches and work collaboratively with for-profit and non-profit organizations and other stakeholders to address the increased demand for oral healthcare as a result of the PPACA. Additionally, DBC should be proactive in finding ways to increase access to dental programs especially for socio-economic disadvantaged students.***

ISSUE #6: (IS THERE A LACK OF DIVERSITY IN THE DENTAL PROFESSION?) Should DBC enhance its efforts to increase diversity in the dental profession?

Background: As indicated by the Center for the Health Professions (Center), it has long been known that certain ethnic and racial groups are underrepresented in the health professions. "The subject of racial and ethnic underrepresentation in California's health professions training programs and workforce has come to occupy a central role in the effort to develop better models of health care practice and better systems for health care delivery," as stated by the Center. The reasons for this are varied, as explained by the Center as follows:

- The practice of linguistically and culturally competent health care of a diverse health professions workforce is critical to addressing health disparities.

- Student experiences in health professions training programs are enriched by the presence of fellow students with diverse social and cultural experiences.

- Economic development in communities is another reason to promote greater diversity in the health professions. The health industry is one of the few economic sectors in California that continues to create jobs and most jobs in health care are well paid, and many of them offer opportunities for professional development.

According to a 2008 report by the Center entitled "*Diversity in California's Health Professions: Dentistry*," a 2005/2006 gender and racial/ethnic composition of dentists shows that although White/Caucasians represent 44.5% of California's labor force, they make up 56.7% of active dentists, Asians account for 32.4% of active dentists while representing a 13.2% of the total labor force, and Latino dentists represent an estimated 7% of the state's active dentists, but roughly 34% of California's general labor workforce. African-American dentists represent an estimated 2.5% of California's dentists, which is roughly half the size of the state's African American general labor force. Native Americans, Native Hawaiians & Pacific Islanders, and multiracial dentists represent just 1.3% of active dentists in the state but almost 3% of California's general labor force. Available data indicates that active dentists are overwhelmingly male, but the gender composition may be expected to shift over time as more women graduates of DDS programs enter the labor force. Trended education data describing first-year enrollments indicate that women are more highly represented in California's five DDS programs by comparison with currently active dentists. In contrast, education data indicate that the racial/ethnic composition of students in California's DDS programs is similar to the active dental labor force. This suggests that the profession will remain largely White/Caucasian and Asian at least in the near term.

Furthermore, the report indicated that there are several factors that contribute to the successful recruitment of minority dental students, including the availability of dental programs that are committed to integrating community-based practice experience that highlight the role of cultural differences in treatment planning as part of the clinical education; the presence of minority clinical faculty; well-designed mentorship programs that foster relationships between students and practicing professionals in the community; increasing recruitment efforts for minorities (establishing dental pipeline programs); financial support and other career development programs.

Staff Recommendation: ***DBC should enhance its efforts on diversity issues, and increase its collaboration efforts with dental schools, dental associations, other state and local agencies, and for-profit and non-profit organizations.***

DENTAL PRACTICE ISSUES

ISSUE #7: (DIFFICULT TO DETERMINE SPECIALTY AREAS OF DENTAL PRACTICE.) Should DBC be responsible for determining and reviewing areas of specialty education and accreditation requirements for those specialized areas of Dentistry?

Background: In 2001, AB 1026 (Oropeza), Chapter 313, Statutes of 2001, enacted Section 651 (h)(5)(A) of the B&P Code which prohibits a dentist from holding himself or herself out as a specialist, or advertise in a specialty recognition by an accredited organization, unless the practitioner completed specialty education programs approved by the American Dental Association (ADA), as specified. Additionally, this section prohibits a dentist from representing or advertising himself or herself as accredited in a specialty area of practice unless the dentist is a member of, or credentialed by, an accredited organization recognized by DBC as a bona fide organization for an area of dental practice. This section also specified requirements to be considered a bona fide organization for purposes of credentialing. AB 1026 was sponsored by the California Dental Association (CDA) and was enacted in response to a DBC advertising regulations that were found to violate the First Amendment and were ruled unconstitutional by a federal court. In 2003, DBC was sued by Dr. Potts, a dentist, and a credentialing organization challenging the constitutionality of Section 651(h)(5)(A). See *Potts v. Hamilton*, 334 F.Supp.2d 1206. At issue was the statute's requirement that in order to advertise a post-dental school credential, a dentist must first complete a formal, full-time advanced education program that is affiliated with or sponsored by a university based dental school. A federal court ultimately ruled in favor of the dentist and held that the statute (Section 651(h)(5)(A)) was an unconstitutional restriction on commercial speech. Although DBC appealed this decision, it began negotiations with various stakeholder groups associated with or interested in the *Potts* litigation and worked out a dental advertising legislative proposal, but ultimately the proposed legislation did not push through and the appeal proceeded to the Ninth Circuit Court. In 2005, AB 1268 (Oropeza) was sponsored by CDA in an effort to amend Section 651(h)(5)(A) and provide that a disclaimer must be included on all advertising by any non-ADA recognized credential. However, AB 1268 did not move forward. In 2007, the Ninth Circuit Court remanded the case back to the Federal District Court and in 2010, the court reaffirmed its decision that the provision was unconstitutional. According to DBC, to prevent future litigation in this area and to mitigate costs associated with the *Potts* litigation (over $1.1 million), it is recommending that Section 651(h)(5)(A)(i) through 651(h)(5)(A)(iii) of the B&P Code be deleted from statute. They do not believe this is an area in which DBC needs to be involved.

Staff Recommendation: ***Adopt the recommendation of DBC to delete B & P Code Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).***

EXAMINATION ISSUES

ISSUE #8: (LENGTHY PROCESSING TIME FOR EXAMINATION APPLICATIONS.) Currently DBC is averaging up to five months to process examination applications.

Background: The Dental Practice Act provides that each applicant for dentistry licensure must successfully complete Part I and Part II written examinations of the National Board Dental Examination of the Joint Commission on National Dental Examinations, an examination in California Law and Ethics developed and administered by DBC, and one of the following: A portfolio examination conducted while the applicant is enrolled in a dental school program; or a clinical and written examination administered by the Western Regional Examining Board (WREB).

According to DBC's Sunset Report, the timeframe for processing examination application averages is from 45 to 150 days. In a follow-up discussion, DBC staff reported that statistics for the past 5 months show that dentist applications with no deficiencies are completed within an average of 32 days.

Applications that are deficient may be delayed depending upon how quickly the requirements are submitted by the applicant.

Staff Recommendation: *DBC should explain further the reasons for the delays in processing examination application averages and whether these delays are attributable to DBC.*

ISSUE #9: (RANDOMIZATION OF DENTAL AND RDA LAW AND ETHICS EXAMINATIONS NEEDED.) Are there sufficient safeguards to avoid, if not limit, examination compromises and ensure that testing reflect current laws and regulations? Should the California Law and Ethics examination questions for dentists and RDAs be randomized and reflect current laws and regulations?

Background: As indicated above, as part of the licensure process, an applicant must also pass a California Law and Ethics examination that is developed and administered by DBC. DBC contracts with the DCA's Office of Professional Examination Services (OPES) for its examination development services. According to DBC, in FY 2006/2007 and 2007/2008, the pass rate for the Dental Law and Ethics examination was 96%, and for fiscal years 2008/2009 and 2009/2010, the pass rate increased to 98%. This pass rate is extremely high.

Aside from dentists, RDAs are also required to pass an RDA Law and Ethics Examination. On May 3, 2010, DBC was notified by OPES that information contained within the RDA Law and Ethics examination was posted on an Internet blog. Staff reviewed the information posted and stopped the examination from being administered beginning June 1, 2010. A special examination workshop was held on June 5 and 6, 2010, and the RDA Law and Ethics examination was modified and updated, and DBC resumed testing August 1, 2010. As part of the examination sign-in procedure, applicants are now required to certify that they will not release content information. Additionally, DBC did not grant licensure to the applicant who posted examination information on the blog.

Staff Recommendation: ***To avoid examination compromises and ensure that the examination questions reflect current law and regulations, DBC should require that OPES randomize (scramble) California law and ethics examinations for dentists and RDAs. Additionally, dentists should be required to certify that examination content will not be released.***

ISSUE #10: (RDA WRITTEN EXAMINATION PASS RATE IS LOW.) Should DBC explore pathways to improve the pass rates of RDAs taking the written examinations if the low pass rate trend continues?

Background: The pass rate in 2009/2010 (the first fiscal year that the RDA is under DBC) for the RDA written examination is 53%. There was no explanation given by DBC on why the pass rate was low.

Staff Recommendation: *If in fiscal year 2010/2011, the RDA examination pass rate remains low, DBC should explore approaches to improve the passage rate of RDAs.*

CONTINUING COMPETENCY ISSUES

ISSUE #11: (LACK OF CONTINUING EDUCATION AUDITS.) DBC suspended audits of continuing education prior to 2009, and does not audit RDAs.

Background: The Dental Practice Act requires that each dentist and RDA fulfill continuing education (CE) requirements to renew their dental license. Currently, a dentist must fulfill 50 hours of continuing education for each renewal period, whereas RDAs are required to fulfill 25 hours of CE credits for each renewal period. Courses in basic life support, 2 hours of California Infection Control and 2 hours of California Dental Practice Act are required courses for both practitioners. DBC also approves continuing education courses and approves the CE provider. Effective January 1, 2010, all unlicensed dental assistants in California must complete an approved 8-hour infection control course, an approved 2-hour course in the California Dental Practice Act, and a course in basic life support.

There were no random CE audits since the last Sunset Review in 2002. According to DBC, random audits did not begin until the summer of 2009 when staff was redirected to perform the audits. DBC indicates that an average of 98% of dentists who were audited were found to be in compliance with continuing education requirements. Furthermore, DBC points out that when it inherited the dental assisting program and staff, there was no funding or staff to perform CE audits.

Staff Recommendation: ***DBC should explain to the Committee its current policy on continuing education audits for dentists and the reasons for suspension of the audits prior to 2009. DBC should also explain why it does not audit CE for RDAs and describe plans, if any, to implement audit for RDA CE.***

ENFORCEMENT ISSUES

ISSUE #12: (DISCIPLINARY CASE MANAGEMENT TIMEFRAME STILL TAKING ON AVERAGE 2 ½ YEARS OR MORE.) Will DBC be able to meet its goal of reducing the average disciplinary case timeframe from 2 ½ years or more, to 12 to 18 months?

Background: DBC is responsible for regulating the practice of approximately 35,000 dentists and 34,000 RDAs. DBC indicates that it receives between 3,000 and 3,800 complaints per year (See table below), and processes and closes about 3,900 complaints a year. Complaints are categorized into 4 distinct groups: complaints received from the public, other governmental agencies, licensee/professional groups and complaints labeled as "other." Complaints classified as "other" include mandatory reports from specific entities; including settlements and malpractice judgments pursuant to Business & Professions Code Section 801 et. seq., and Section 805 reports from peer review bodies, including health care service plans, dental societies, and committees that review quality of care cases if certain actions are taken by or imposed on dentists. The table below summarizes the sources and number of complaints received by DBC from 2006-2010. DBC states that the number of complaints referred to investigation has increased from 14% in 2000 to 25% in 2009. However, the percentage of complaints which ultimately result in the filing of accusations and disciplinary action averages about 3% which has remained stable over time, according to the Board.

Source of Complaint	2006-2007	2007-2008	2008-2009	2009-2010

Public	1858	2175	2528	2370
Governmental Agencies	454	286	87	67
Licensee/Professional Groups	633	1154	833	639
Other	137	94	79	96
TOTAL	3,082	3,709	3,527	3,712

According to DBC, the average number of days to process a claim from receipt of complaint to final disposition of a case ranged from 836 days in 2008/2009 to 857 days in 2009/2010. More recent statistics provided to the Committee shows that the average cycle time from the date the case was received as a complaint to when the Disciplinary Order was issued for 2010 is 951.7 days. This means that on average it is taking DBC 2 ½ years to pursue a disciplinary action against a problem dentist. It should be noted that DBC is not alone in its problems related to its lengthy disciplinary process; all other health boards under DCA are also affected. The table below shows the average case aging, and often the biggest bottleneck occurs at the investigation and prosecution stages of the process.

AVERAGE DAYS TO PROCESS COMPLAINTS, INVESTIGATE AND PROSECURE CASES				
	2006/2007	2007/2008	2008/2009	2009/2010
Complaint Processing	238	280	278	180
Investigations	247	211	302	351
Pre-Accusation*	208	283	182	187
Post-Accusation**	341	363	361	335
TOTAL AVERAGE DAYS ***	668	773	836	857

*From Completed investigation to formal charges being filed
** From formal charges filed to conclusion of disciplinary case
***From date complaint received to date of final disciplinary of disciplinary case

The cycle time is affected by several factors including the length of time it takes to process complaints, conduct investigations, file accusations by the AG's Office and schedule and hold hearings with the Administrative Law Judges. Lastly, the case goes back to DBC for a final decision. As the table above indicates, there has been a vast improvement in the case processing timeframe (from 278 days in 2008/2009 to 180 days in 2009/2010). According to DBC, the recent hiring of additional dental consultants has contributed to improved complaint processing. However, the 6 months average time to process complaints remains lengthy. It should be noted that since the release of the Sunset Report, the DBC has continued to reduce this timeframe, which is now 92 days.

A complaint that has merit is referred to investigation and assigned an investigator. DBC uses its own in-house investigators to conduct investigations. Assignment for investigation is based on a number of criteria including case complexity, investigator experience, companion cases on the same licensee, and caseload. An investigator then evaluates the case and sets priorities based on their own caseload. DBC indicates that over the past four years the average length of time required to complete investigation has risen from 247 in 2006/2007 to 351 days in 2009/2010. DBC points out that factors affecting the investigation timeframe include investigator vacancies, length of time to train new staff, increase in the number of complaints referred to investigation, and mandatory furloughs of last year.

At the conclusion of an investigation, if it is determined that there has been a violation of the Dental Practice Act, the case is referred by the investigator to the Office of Attorney General (AG's Office) for preparation and review of the administrative accusation. According to DBC, in 2009/2010, the average days from the date a case is received to the date a case is assigned to a Deputy Attorney General (DAG) is 44 days (96 days in 2007/2008 and 52 days in 2008/2009). As the table on the prior

page provides, it is taking the AG's Office over 6 months (187 days) in 2009/2010 from the time an investigation is completed to file an accusation. Additionally, the average number of days from when an accusation is served to a settlement is completed is 356 days for 2009/2010 (346 days in 2008/2009 and 379 days in 2007/2008). As such, it is taking the AG's office over 19 months to close cases that are not referred to the Administrative Law Judge for an administrative hearing. As noted above, these statistics were provided to Committee staff by DBC which is generated from DBC's database. The AG's office tracks its own cases with a different database, and was requested to provide the same information but was not made available for purposes of this Paper. Staff anticipates that the AG will provide their own statistics during the hearing. DBC indicates in the Sunset Report that the AG's Office is aware of these timeframes and recognizes that their staffing constraints have contributed to case aging.

On August 17, 2009, this Committee held an informational hearing entitled "*Creating a Seamless Enforcement Program for Consumer Boards.*" This hearing revealed that Deputy AGs within the AG's Licensing Section handle both licensing and health care cases in a similar fashion without any expertise devoted to the prosecution of those cases involving serious health care quality issues. Moreover, the AG's staff often allows respondents to file a notice of defense long after the 15-day time limit has ended, which lengthens the time a case is processed by the AG's Office. The practice of the AG's Office of not requesting a hearing date when notice of defense is received is also contributing to the delays. The AG's Office often waits for settlement negotiations to break down before requesting a hearing date with Office of Administrative Hearings (OAH). It can then take one to two years to prosecute the case and for a disciplinary decision to be reached. Finally, OAH provides services to over 950 different governmental agencies. The DCA's cases are not given a higher priority and are calendared according to available hearing dates and Administrative Law Judges (ALJs) assigned. Cases on average can take up to 12 months or more months to be heard. Also, the DCA's boards and bureaus have over 40 different laws and regulations with which ALJs must be familiar. This lack of specialization and training for the cases referred by the other health care boards creates a situation in which judges are issuing inconsistent decisions. A board is then placed in a position of non-adopting the decision of the ALJ and providing for a hearing of its own to make a different determination regarding the disciplinary action which should be taken against the dentist.

As noted above, cases begin to age tremendously during the investigative phase. DBC points out that there are 10.5 positions currently vacant in the Enforcement Unit. Of these vacancies, 8.5 are CPEI positions. It should be noted that CPEI positions were created to expedite and maximize the efficiency of handling all pending disciplinary actions and are dedicated to tracking of AG cases. However, it is unclear if these positions will be filled and may be in jeopardy because of the recent hiring freeze ordered by the Governor.

The enforcement caseload is expected to rise as DBC implements new fingerprinting requirements for its licensees around April 2011. The new regulations would require a licensee to furnish a full set of fingerprints to the Department of Justice as a condition of renewal with DBC if the licensee was initially licensed prior to 1999 or if an electronic record of the fingerprint submission no longer exists. According to DBC, about 18,000 dentists, 23,500 RDA and RDAEFs will need to be fingerprinted and an additional 5,000 who were manually fingerprinted may need to update their prints. Additionally, licensees must disclose on the renewal form whether the licensee has been convicted of a crime, as defined, or had any disciplinary actions taken against any other license he or she holds.

Staff Recommendation: *In order to improve case processing and case aging, and to meet its goal of reducing the timeframe for the handling of its disciplinary cases, the following recommendations from the Monitor and Assessment Report should be considered by DBC:*

1) *Continue to reduce the amount of time to process and close complaints.*
2) *A Guideline for case assignments must be established, taking into consideration the skills or experience level of staff and other factors.*
3) *Making Case Processing and Aging a major focus of DBC's improvement planning.*
4) *Prioritize the review of aged cases.*
5) *Establish reasonable elapsed time objectives for each step of the case processing.*
6) *Monitor Performance by establishing regular oversight of case progress and staff productivity.*
7) *A policy or procedures for supervisory staff in performing case reviews should be established.*

Additionally, the Committee should give consideration to auditing both the Investigation Unit of DBC and the Licensing Section of the AG's Office to determine whether improvements could be made to the investigation and prosecution of disciplinary cases.

ISSUE #13: (DISCIPLINARY CASE TRACKING SYSTEM INADEQUATE.) Should DBC continue to monitor the quality of enforcement data and ensure that investigative activities are tracked? Additionally, should DBC adopt guidelines for the completion of specific investigative functions to establish objective expectations?

Background: One of the issues raised by the Monitor was the lack of reliable statistical data system to track disciplinary cases and investigative case activity. DBC currently uses the Consumer Affairs System (CAS) as its complaint, investigation, and discipline tracking database. However, because of constraints associated with the CAS, the DCA recently entered into the Request for Proposal process to identify a vendor and develop an updated applicant and licensing database to better meet the needs of all DCA users. This project is called "BreEZe." Boards and bureaus within DCA will transition into the BreEZe system, and for DBC, the target date is June 2013.

Furthermore, to track investigative activity, DBC transitioned into the Investigator Activity Report (IAR) program utilized by the Medical Board of California (MBC) in 2010. According to DBC, the Dot Net Sequel Server database provided a method for managers to track casework on all cases, provided information for cost recovery purposes and allowed them to better monitor staff performance and productivity. Although DBC had transitioned into the new IAR program used by the MBC, there has always been a resistance to complete the IAR and inconsistency in the use of this tracking tool. The Assessment Report highlighted the importance of the IAR indicating, "If a case is referred to the AG's Office for discipline, the IAR is the source document to recover investigative costs in any eventual settlement, probation terms, or penalty decision. In many cases, if staff had not completed the IAR and received a request for cost recovery, the information that was produced after the fact was based on rough estimates."

Staff Recommendation: *Although all the boards and bureaus within the DCA will transition into the BreEZe system, this process is several years out. In the meantime, DBC should continue to monitor the quality of enforcement data and tracking of investigative services. Moreover, although DBC had transitioned to the IAR utilized by the MBC, DBC should ensure that the IARs are*

consistent and completed. Additionally, as the Enforcement Assessment recommended, guidelines should be established for the completion of specific investigative functions to establish objective expectations. Lastly, DBC should continue in its role to work collaboratively with the DCA's Office of Information Services project staff, as well as with any vendor, to assist in creating an efficient and user-friendly integrated computer system.

ISSUE #14: (PROTRACTED PROCESS TO SUSPEND LICENSE OF A DENTIST.) DBC must go through a cumbersome process to suspend the license of a licensee who may pose an immediate threat to patients or who have committed a serious crime and may even be incarcerated.

Background: Currently in California, even if a health care provider is thought to be a serious risk to the public, the boards must go through a cumbersome legal process to get permission to stop the provider from practicing, even temporarily. DBC had only obtained immediate suspension of dentists just seven times within five years. Under existing law, the Interim Suspension Order (ISO) process (Section 494 of the B&P Code) provides boards with an avenue for expedited suspension of a license when action must be taken swiftly to protect public health, safety, or welfare. However, the ISO process currently takes weeks to months to achieve, allowing licensees who pose a serious risk to the public to continue to practice for an unacceptable amount of time. Also the timeframes in which a future action against the licensee must be taken, where there is only 15 days to investigate and file an accusation, are unreasonable and prevents most boards from utilizing the ISO process to immediately suspend the license of a health care practitioner. Also, there are no uniform requirements for health care boards to automatically suspend the license of a practitioner who has been incarcerated after the conviction of a felony. Existing law allows for physicians and podiatrists to be suspended while incarcerated but not for other health care professionals, including dentists. Additionally, although existing law allows the DBC to revoke the license of an individual who is required to register as a sex offender, there is no similar requirement for when a licensee is convicted of acts of sexual exploitation of a patient.

Staff Recommendation: *Extend the time constraints placed on the AG to file an accusation thus allowing the AG to utilize the ISO process without having to have their accusation prepared within a very limited time frame (15 days). Pursuant to Section 494 of the B&P Code, DBC does not have to always rely on an ALJ to conduct the ISO hearing, DBC also has authority to conduct the hearing and could do so more expeditiously where serious circumstances exist regarding the suspension of a dentist's license. Provide for automatic suspension of a dental license if the dentist is incarcerated and mandatory revocation of a license if a dentist is convicted of acts of sexual exploitation of a patient.*

ISSUE #15: (DIFFICULTY COLLECTING CITATIONS AND FINES FOR CERTAIN TYPES OF VIOLATIONS AND COST RECOVERY.) Should DBC contract with a collection agency to improve its cost recovery and cite and fine functions?

Background: Section 125.3 of the Business & Professions Code specifies that in any order issued in resolution of a disciplinary proceeding before any board with the DCA, the ALJ may direct the licensee, found to have committed a violation of the licensing act, to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General. DBC must make a cost recovery request to the ALJ who

presides over the hearing. The ALJ may award full or partial cost recovery to DBC or may reject the request for cost recovery. In cases where cost recovery has been ordered, licensees may be granted a payment schedule. As the table below indicates for FY 2008/2009, DBC collected approximately 60% of the costs ordered but for 2009/2010, it collected 45% of the costs ordered.

COST RECOVERY DATA	2006/2007	2007/2008	2008/2009	2009/2010
Total Enforcement Expenditures	$4,832,720	$5,310,717	$5,373,274	$5,351,113
# Potential Cases for Recovery*	86	100	75	132
# Cases Recovery Ordered	46	46	56	97
Amount of Cost Recovery Ordered	$125,216	$116,796	$229,195	$469,040
Amount Collected	**$90,376**	**$160,970**	**$148,905**	**$211,654**
* The "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on a violation, or violations, of the Dental Practice Act.				

Moreover, Section 125.9 of the B & P Code authorizes DBC to issue citations and fines for certain types of violations. The majority of citations are issued for violations of unsafe and unsanitary conditions. Additionally, dentists who fail to produce requested patient records within the mandated 15 day time period are also subject to administrative citations. As is the case with cost recovery, the table below shows that DBC continues to struggle to collect citations and fines.

CITATIONS & FINES	FY 2006/2007	FY 2007/2008	FY 2008/2009	FY 2009/2010
Total Citations	25	16	11	48
Total Citations with Fines	21	16	10	42
Amount Assessed	$24,497	$14,300	$11,500	$75,100
Reduced, Withdrawn, Dismissed	3	3	2	6
Amount Collected	**$9,140**	**$5,000**	**$3,500**	**$6,700**

Staff Recommendation: ***In order to improve cost recovery and fine collection efforts, DBC should be allowed to procure a contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts. According to the DCA, most of the boards within DCA are struggling to collect cost recovery amounts, outstanding fees, citations or fines. If this is the case, the DCA may wish to procure a contract with one collection agency for all its boards.***

ISSUE #16: (PROBLEMS WITH PROBATION MONITORING.) Should DBC adopt written guidelines on how to make probation assignments and ensure that probationary and evaluation reports are conducted consistently and regularly as recommended by the Enforcement Assessment?

Background: The Dental Practice Act authorizes DBC to discipline a licentiate by placing him or her on probation under various terms and conditions. The terms and conditions could include obtaining additional training or passing an examination upon completion of training; restricting or limiting the extent, scope or type of practice; requiring restitution of fees to patients; or community services. Additionally, dentists on probation are required to pay the monetary costs associated with monitoring the dentists' probation. Generally, DBC recommends five years of probation unless a longer or shorter term is warranted.

According to DBC, probation cases are assigned to inspectors or investigators after taking into consideration the variety of circumstances necessitating probation, combined with the known behavior

of certain licensees. RDAs are generally assigned to inspectors, and difficult or questionable probation subjects are assigned to sworn investigative staff. According to the Enforcement Assessment, there are no written guidelines on how to make probation assignments, and that probationary reports and evaluation reports have not been conducted with regularity. This observation was echoed by the Enforcement Monitor who indicated that probation monitoring practices differ between DBC's Tustin and Sacramento offices.

Staff Recommendation: *As recommended in the Enforcement Assessment, DBC should adopt written guidelines on how to make probation assignments, and ensure that probationary and evaluation reports are conducted consistently and regularly.*

ISSUE #17: (NEED FOR ANNUAL REPORTING REQUIREMENTS.) Should DBC annually report specific licensing and enforcement information to its licensees and the Legislature?

Background: One of the issues raised by the Monitor was the need to improve DBC's statistical reporting capabilities. The Monitor indicated that DBC needs major enhancements to its complaint tracking system, including regular monthly, quarterly, and annual reporting of Enforcement Program workload and performance. The Monitor suggested that reports of this type also should be provided to DBC's governing Board and the Legislature on a periodic basis. Additionally, the Monitor indicated that DBC staff needs to comply with existing Section 806 reporting requirements (number and type of peer review reports received), which has been in effect since 1975.

According to DBC staff, during its quarterly board meetings, board members are given updated licensing and enforcement reports. However, these reports are not submitted to the Legislature. On the other hand, the Medical Board of California (MBC) is statutorily required to submit annual reports to the Legislature on specific information. The annual report is also included in MBC's newsletters that are distributed to physicians and surgeons and is also available on MBC's Website.

Staff Recommendation: ***The Dental Practice Act should be amended to require DBC to report annually to the Legislature information required under Business and Professions Code Section 2313 that applies to dentists, including malpractice settlements and judgments, Section 805 reports, the total number of temporary restraining orders or interim suspension orders sought by DBC, and other licensing and enforcement information as specified. Staff recommends that annual reports should also be published in DBC's newsletter and made available on its Website.***

ISSUE #18: (IMPLEMENT 2009 DBC ENFORCEMENT ASSESSMENT CORRECTIVE ACTION PLAN.) Should DBC implement the recommendations of a 2009 Enforcement Assessment of DBC's Enforcement Program?

Background: In the fall of 2009, DBC requested an outside assessment of its internal enforcement processes, to measure progress and determine if there were any new barriers to efficiency and productivity. The areas reviewed included: Complaint Intake & Assignment, Non-Sworn Enforcement Processes, Sworn Investigative Services, Enforcement Tools and Investigative Resources, Administrative Discipline Processes, Enforcement Program Data for Management Oversight, Personnel Resources, Peace Officer Training Requirements, Policies and Procedures, and Customer Satisfaction Surveys. Several of the recommendations contained in the Assessment are included in this background paper. However, there are other issues that need to be addressed, including evidence and

storage, tracking of criminal prosecutions, the need for procedures or policy directing supervisory staff to perform case reviews, and continued training of investigative staff.

Staff Recommendation: *DBC should submit to this Committee a corrective action plan detailing how DBC intends to address and implement the recommendations contained in the 2009 Enforcement Assessment.*

ISSUE #19: (CONTINUED USE OF THE DENTAL LOAN REPAYMENT PROGRAM.) The California Dental Corps Loan Repayment Program still has funds available to provide to dental students.

Background: The California Dental Corps Loan Repayment Program, administered by DBC, was created in 2002 (AB 982, Chapter 1131, Statutes of 2002) to increase the number of dentists who practice in historically underserved areas by providing grants to help pay for the high cost of attending dental school. DBC selects participants to practice in underserved areas, in practice settings with a majority of underserved patients, and gives priority consideration to applicants who are best suited to the cultural and linguistic needs of those populations and meet other related criteria. After each consecutive year of service completed, participants will receive money for loan repayment ($25,000 for the 1st year, $35,000 for the 2nd year, and $45,000 for the 3rd year) for up to three years. The law states each participant may receive no more than $105,000 over three years. The program was extended until July 1, 2012 and authorized DBC to distribute funds remaining in the account. However, due to limited participation, DBC points out that the program should be extended until DBC distributes all the remaining money in the fund.

Staff Recommendation: *The California Dental Corps Loan Repayment Program should be extended until DBC distributes all the funds in the account. DBC should indicate to the Committee its efforts to inform students about the availability of the loan repayment program.*

SUBSTANCE ABUSE AND DIVERSION PROGRAM ISSUES

ISSUE #20: (EFFECTIVENESS OF DIVERSION PROGRAM AND IMPLEMENTATION OF SB 1441 STANDARDS.) It is unknown how successful DBC's Diversion Program is in preventing recidivism of dentists who may abuse drugs or alcohol, and if the Diversion Program is effectively monitoring and testing those who participate in the program. Additionally, it is unclear when "Uniform Standards" for their Diversion Programs will be implemented.

Background: DBC administers a Diversion Program intended to identify and rehabilitate dentists whose competence may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety. According to DBC's website, the diversion program offers a means of recovery without the loss of license by providing access to appropriate intervention programs and treatment services. DBC has established DECs for northern and southern California to assist it in evaluating licensees who may be impaired due to the abuse of alcohol or drugs. DECs are composed of three dentists, one dental auxiliary, one physician or psychologist, and one public member who all have experience or knowledge in the field of chemical dependency. Entry into the diversion program may be through self-referral but most participants enter the diversion program because they are under

investigation by DBC and were referred by a program manager. Since 1983, the clinical management of the diversion program has been done by MAXIMUS, Inc. After an initial evaluation, individuals accept a participation agreement (diversion program recovery terms and conditions contract) and are regularly monitored in various ways, including random drug testing, to ensure compliance. According to the DBC, a Clinical Assessment (initial evaluation) is conducted in accordance with acceptable practice standards for chemical dependency and mental health assessments. It includes a complete psychosocial and drug history. The intent of the evaluation is to determine whether the licensee has a substance abuse problem, is a threat to himself/herself or others, and will provide recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice. Each chemically impaired professional entering the program is responsible for meeting the requirements of the Diversion program. A Diversion Program Recovery Terms and Conditions Agreement serves to clearly define the monitoring requirements and reports of the Program and obtain the participant's written statement of acceptance. MAXIMUS provides the following services: medical advisors, compliance monitors, case managers, urine testing system, reporting, and record maintenance. The table below summarizes the number of participants and the costs of administering the program.

DIVERSION PROGRAM STATISTICS	2006/2007	2007/2008	2008/2009	2009/2010
Total Program Costs	$141,060	$113,026	$137,452	$133,471
Total Participants	58	52	61	59
Successful Completions	9	5	4	4
Unsuccessful Completions	2	7	4	1

In 2007 and 2008, this Committee held informational hearings on the Physician Diversion Program (PDP) after an audit of MBC's diversion program revealed that the MBC's program was not sufficiently protecting the public. Although the MBC voted unanimously to end the PDP on June 30, 2008, this Committee recognized the need to strengthen the diversion programs of boards that continue to administer them. As such, in 2008, SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) became law and required the DCA to establish a Substance Abuse Coordination Committee (SACC) 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. The intent of SB 1441 was to establish common and uniform standards to govern the different health care licensing boards' diversion programs so as to maintain public confidence that these programs are truly monitoring and rehabilitating substance abusing licensees. These sixteen standards, at a minimum, include: requirements for clinical diagnostic evaluation of licensees; requirements for the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; all aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license.

On March 3, 2009, the SACC conducted its first public hearing and the discussion included an overview of diversion programs, the importance of addressing substance abuse issues for health care professionals and the impact of allowing health care professionals who are impaired to continue to practice. During this meeting, the SACC members agreed to draft uniform guidelines for each of the standards. During subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. In December 2009, the DCA adopted the uniform guidelines for each of the standards required by SB 1441. Last year, SB 1172 (Negrete McLeod) Chapter 517,

Statutes of 2010, was passed to give boards the statutory authority to implement certain standards that needed statutory authority. Moreover, the DCA had instructed health care boards to begin the process of implementing the SB 1441 standards, including amending disciplinary guidelines through the regulatory process to be consistent with SB 1441.

In 2010, MAXIMUS was audited by the DCA and it was indicated that they were complying with all of the requirements of their contract; however, Committee staff had serious concerns about the completeness of this audit and the serious deficiencies which may still exist with this program. This came to light when it was found that MAXIMUS was recently testing those participants in the health boards' Diversion Programs and using inexact standards (i.e., participants were tested at a higher standard and tested negative when they should have been tested at a lower standard and may have potentially tested positive). The DCA took immediate steps to rectify this problem, but it still raises questions about the effectiveness and efficiency of MAXIMUS and those diversion programs which rely on this contractor.

Staff Recommendation: ***The Committee should consider requiring an audit of DBC's Diversion Program in 2012, along with the other health boards which have Diversion Programs to assure that these programs are appropriately monitoring and treating participants and to determine whether these programs are effective in preventing further substance abuse. Additionally, the audit should also determine the value of utilizing DECS in a diversion program. DBC should also indicate to the Committee how the Uniform Standards are being implemented and if all Uniform Standards are being followed, and if not, why not; give a definite timeframe when disciplinary guidelines will be amended to include SB 1441 standards, whether formal training for DECS is necessary to ensure that standards are applied consistently, and the necessity of revising the Maximus diversion program recovery contract signed by a dentist who enters the diversion program to incorporate certain aspects of SB 1441 including the requirement that a dentist must undergo a clinical diagnostic evaluation to participate in the program; the practice restrictions that apply while undergoing a diagnostic evaluation; the requirement to provide the names and contacts of employers or supervisors for participants who continue to work; the frequency of drug testing; that collection of specimens shall be observed; that certain requirements exist for facilitators; what constitutes major or minor violations; and the consequences for major or minor violations.***

ISSUE #21: (DBC CANNOT ACCESS RECORDS OF THE DIVERSION PROGRAM WHEN A DENTIST IS TERMINATED FOR NON-COMPLIANCE.) Should DBC be authorized to access diversion records for dentists who are terminated from the diversion program for non-compliance, which usually involves relapse?

Background: Section 1698 of the B&P Code specifies that except where the licentiate presents a threat to the public's health and safety, all DBC and DEC records and records of proceedings pertaining to the treatment of a licentiate in a diversion program is kept confidential and are not subject to discovery or subpoena. In 2009, AB 456 (Emmerson) was sponsored by DBC to make changes to the current confidentiality of diversion records, and would have allowed for the sharing of diversion information with DBC's enforcement program when a licensee participating in the diversion program is terminated for non-compliance while on probation by DBC. DBC further indicated at that time that the exception when a licensee presents a threat to the public's health and safety, does not allow DBC's diversion program to notify its own enforcement program when a licensee participating in diversion is not in substantial compliance. The diversion program can only provide the name of the terminated licensee and not any specifics as to why the individual was terminated from the program. This

notification, DBC argues, is necessary as the information obtained in the diversion program could be used for subsequent disciplinary action by DBC. At that time, Committee staff, among other issues and recommendations, suggested that AB 456 should be amended to indicate that rules and regulations required by AB 456 shall, at a minimum, be consistent with the uniform standards adopted pursuant to SB 1441. The Author and Sponsor eventually decided not to pursue the bill. However, the confidentiality of diversion records remain a priority for DBC and staff recognizes the need for the enforcement unit to have all available records if a licensee is terminated from the program for non-compliance and disciplinary action ensues.

Staff Recommendation: *Amend the Dental Practice Act to authorize DBC to access any diversion records of a licensee who participates in a diversion program and is terminated for non-compliance, for purposes of investigation and imposition of a disciplinary action.*

CONSUMER NOTICE ISSUE

ISSUE #22: (NOTICE TO CONSUMERS THAT DENTISTS ARE REGULATED BY DBC.) Should DBC promulgate regulations pursuant to a statute enacted in 1999 to require dentists to inform patients that they are licensed by DBC?

Background: Section 138 of the Business & Professions Code requires that DCA board and bureaus, including healing arts boards such as DBC, initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, to provide notice to their clients or customers that the practitioner is licensed by this state. A board is exempt from the requirement to adopt regulations if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The purpose of this statute is to inform consumers the appropriate regulatory body that regulates a particular licensee or practitioner.

Recently, the MBC promulgated regulations pursuant to Section 138 to require physicians and surgeons to inform their patients that they are licensed by the MBC, and includes the board's contact information. In the same manner, DBC should implement Section 138 and adopt regulations to require dentists to inform their patients that they are licensed by the Board.

Staff Recommendation: *Pursuant to Section 138 of the B & P Code, DBC should adopt regulations to require dentists to inform their patients that they are licensed by the DBC.*

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

ISSUE #23: (NEED FOR CONTINUED ENHANCEMENT OF DBC's INTERNET SERVICES.) Should DBC continue to explore ways to enhance its Internet Services and Website to licensees and members of the public?

Background: DBC points out that one of the major changes since its last sunset review has been its increased utilization of the Internet and computer technology to provide services and information to the public and its licensees on its Website. These include:

- A DBC Website, www.dbc.ca.gov, which receives an average of 966 visitors per day.

- Full texts of final enforcement decisions, including accusations are now available on the Website. A consumer may look up a licensee by name and/or license number, and is provided with all information relevant to the final decision.

- An online complaint form is available for filing a complaint, a "Frequently Asked Questions" section, a pamphlet on "Problems with Your Dentist," and general information about DBC's complaint process.

- Licensees may review continuing education requirements, disciplinary guidelines, and access various forms.

- E-News subscription service sign-up is available online to be notified of DBC's activities.

The Board indicated that it has begun modifying its Website to allow for the posting of meeting materials, and allow consumers, stakeholders, and interested parties to download these documents at no charge. Furthermore, DBC plans on publishing an online newsletter beginning 2011, and is exploring the feasibility of providing live webcasts of its board meetings. Additionally, all reports submitted to the Legislature should be posted on DBC Website

Staff Recommendation: ***DBC should continue to explore ways to enhance its Internet Services to licensees and members of the public, including posting meeting materials, board policies, and legislative reports on the Internet and webcasting Board meetings.***

BUDGETARY ISSUES

ISSUE #24: (ARE RECENT LICENSING FEES SUFFICENT TO COVER DBC COSTS?) Is DBC adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Background: DBC is a self-supporting, special fund agency that obtains its revenues from licensing fees of dentists and RDAs. The collection of fees supports DBC's ability to operate its Enforcement, Licensure, Examination, Renewal/Continuing Competency, Permit Programs and Dental Assisting Programs. DBC's primary source of revenue is the biennial renewal for dentists and RDAs. DBC currently charges dentists a $365 renewal fee. The statutory maximum is $450. There have been no fee increases from dental license or renewal since 1998. As DBC explains, it anticipates a significant increase in enforcement costs starting FY 2010/2011 due to the implementation of CPEI. Increased productivity and a higher rate of case closures, in addition to reduction in processing timeframes, is expected to justify the costs. Additionally, the Board will be implementing its new portfolio examination to replace the current dental licensure examination. In FY 2002/2003 and 2003/2004 loans were made from the State Dentistry Fund to the State General Fund in the amount of $5 million for each fiscal year. Of the $10 million total loan, $0.6 million was repaid in FY 2004/2005, $2.5million was repaid in FY 2005/2006, and another $2.5 million was repaid in FY 2006/2007. There is an outstanding loan balance of $4.4 million. In the 2011/2012 Budget Act, the Governor proposed a reimbursement of $2.5 million but the Legislature recently reduced this to $1.2 million. The table

below illustrates the fund condition of the Dental Fund if CPEI positions are filled and the remaining $3.2 million loan to the General Fund is reimbursed by FY 2012/2013. DBC points out that assuming all the loans to the General Fund are reimbursed, it may be looking at fee increases for dentists as soon as FY 2012/2013, because the fund reserve at that time would be at 1.3 months. According to DBC, its objective is to maintain a three-month reserve of funds for economic uncertainties and to operate with a prudent reserve. However, if the CPEI positions are not filled, all the loans to DBC are repaid and the Governor's hiring freeze directive continues, then the fund reserve will be much higher and fee increases may be delayed to a later time.

Dental Board Updated Fund Condition Table

ANALYSIS OF FUND CONDITION	FY 2007/08	FY 2008/09	FY 2009/10	FY 2010/2011 (Projected)	FY 2011/2012 (Projected)	FY 2012/2013 (Projected)
Total Reserves, July 1	$7,053,000	$7,394,000	$7,320,000	$7,865,000	$4,464,000	$2,007,000
Total Rev. & Transfers	$8,037,000	$7,985,000	$7,920,000	$7,758,000	$8,929,000	$10,921,000*
Total Resources	$15,345,000	$15,548,000	$15,424,000	$15,623,000	$13,393,000	$12,928,000
Total Expenditures	$7,948,000	$8,230,000	$7,559,000	$11,159,000	$11,386,000	$11,641,000
Unreimbursed Loans to General Fund	$4,400,000	$4,400,000	$4,400,000	$4,400,000	$3,200,000	$0
Accrued Interest	$0	$0	$0	$0	$0	$0
Loans to General Fund	$0	$0	$0	$0	$0	$0
Reserve, June 30	**$7,394,000**	**$7,318,000**	**$7,865,000**	**$4,464,000**	**$2,007,000**	**$1,287,000**
MONTHS IN RESERVE	**10.8**	**11.6**	**8.5**	**4.7**	**2.1**	**1.3**
NOTES:*This table assumes the repayment of the $1.9 million balance of GF loan, in FY 12/13. GF loan must be fully reimbursed before a fee increase can be implemented. (Item 1250-011-0741, BAs 2002/2003 and 2003/2004)						

For RDAs, DBC currently charges $70 for license renewal, with an $80 statutory maximum. The table below shows that the Dental Assisting Fund will be in a deficit spending situation in FY 2012/2013. DBC points out that it will need to increase, via Board Resolution pursuant to Section 1725 of the B & P Code, the renewal fees for RDA's to the $80 statutory maximum.

Dental Assisting Fund Condition Table

ANALYSIS OF FUND CONDITION	2007/08	2008/09	2009/10	2010/11 (Projected)	2011/12 (Projected)	2012/13 (Projected)
Total Reserves, July 1	N/A	N/A	$0	$1,925,000	$1,354,000	$760,000
Total Rev. & Transfers			$3,183,000	$1,146,000	$1,141,000	$1,134,000
Total Resources			$3,183,000	$3,071,000	$2,495,000	$1,894,000
Total Expenditures			$1,258,000	$1,715,000	$1,735,000	$1,787,000
Unreimbursed Loans to General Fund			$0	$0	$0	$0

Accrued Interest			$0	$0	$0	$0
Loans to General Fund			$0	$0	$0	$0
Reserve, June 30			$1,925,000	$1,354,000	$760,000	$107,000
Months in Reserve			**13.5**	**9.4**	**5.1**	**0.7**

Staff Recommendation: DBC should assure the Committee that it will have sufficient resources to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas if appropriate staffing and funding is provided. Additionally, the Committee may consider amending Section 1725 of the B & P Code to instead require that any changes in licensing and permitting fees of dental assistants be established by regulations, instead of Board Resolutions as currently required.

ISSUE #25: (LACK OF STAFF CONTINUES TO HAMPER DBC'S ENFORCEMENT PROCESS.) DBC should explain to the Committee the negative impact of enforcement program vacancies to its overall functions.

Background: There are currently 72.8 authorized positions for DBC, wherein 60.8 positions are filled and 12 positions are vacant. The CPEI authorized 12.5 positions for DBC, of which 4 positions are filled and 8.5 remain vacant. The Enforcement Unit is comprised of 35 staff, including peace officers, inspectors and staff managers. The Enforcement Unit currently has 10.5 vacant positions. DBC points out that the enforcement program is allocated 16 peace officer positions to perform criminal and complex quality of care investigations. However, due in part to vacancies within enforcement, up to five positions have been vacant for 6 months or more since July 2006.

Contributing to these lengthy vacancies are required background processes which can take six to nine months, training academies (four months), and the establishment of a new hiring list. More recently, mandatory furloughs have reduced the number of hours staff can legally work by three days per month. As a consequence, case age has increased as less staff hours were available to perform the necessary work.

DBC indicates that during previous reviews, a number of efforts (case reviews, approved overtime) were initiated to focus on closing the oldest cases and reducing the overall number of cases pending investigation. Case reviews have been ongoing with field investigative staff and continue to focus on case progress and closing older cases. Despite these challenges, DBC indicates, the additional positions from the CPEI offer the potential for the enforcement program to show marked improvements in its case statistics. DBC points out that it is still under order to continue with a former Governor's Directive for a hiring freeze that began on August 31, 2010, as well as to continue with a 5% staff reduction. The hiring freeze allows state departments to transfer existing employees within the department, and for DBC, it was able to hire employees away from other DCA boards or bureaus. DBC states that it needs to fill its vacant positions, including the sworn and non-sworn investigative staff it was authorized to hire under CPEI in order to critically improve its enforcement process.

Staff Recommendation: *DBC should express to the Committee its frustration in being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program,*

and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases.

ISSUE #26: (IMPACT ON DBC OF THE UNPAID LOANS MADE TO THE GENERAL FUND.) Will the unpaid loan to the General Fund have an impact on the ability of DBC to deal with its case aging and case processing?

Background: In FY 2002/2003 and 2003/2004 loans were made from the State Dentistry Fund to the State General Fund in the amount of $5 million for each fiscal year. Of the $10 million total loan, $0.6 million was repaid in FY 2004/2005, $2.5million was repaid in FY 2005/2006, and another $2.5 million was repaid in FY 2006/2007. There is an outstanding loan balance of $4.4 million. In the 2011/2012 Budget Act, the Governor proposed a reimbursement of $2.5 million but the Legislature recently reduced this to $1.2 million, and with this reduction the loan balance is $3.2 million. It is unclear when DBC should anticipate these payments. If the loan balance remains unpaid in FY 2012/2013, DBC will be in deficit spending.

This has been a constant problem for the Committee and the Legislature in regards to the boards and bureaus under the DCA. This Committee along with the Assembly Business and Professions Committee has over the years reviewed all boards (through the process of sunset review) and any anticipated problems in the appropriate funding of their programs has been considered and efforts have been made to either reduce their budget or program requirements, or increase their level of funding through license fee increases. The boards over the years have been placed in a position of not being able to spend the revenue which has been made available to them for purposes of properly running their enforcement programs. They have either been denied spending authority for their increased revenue by denial of BCPs or by other directives, which has had the effect of increasing their reserve funds, and then find that rather than having any chance of using these funds in the future to deal with increased enforcement costs, the money reverts back to the General Fund by way of a "loan." Unless there is a strong mandate that licensing fees should only be used for purposes of properly operating the boards this vicious cycle will continue. One of the outcomes of budget changes and cutbacks to boards has been the slow-down of cases or actual holding off on pursuing cases by the AG's Office because the board(s) ran out of money at some point later in the fiscal year.

Staff Recommendation: *No more loans from the reserve funds of the DBC to the General Fund. DBC should explain to the Committee what the impact will be to its overall Budget and its enforcement process if the outstanding loan is not repaid as soon as possible. This of course is if DBC is granted an exemption from the hiring freeze, otherwise new expenditures will not be necessary.*

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT MEMBERS OF THE DENTAL BOARD OF CALIFORNIA

ISSUE #27: (CONSUMER SATISFACTION WITH DBC IS LOW.) A 2010/2011 Consumer Satisfaction Survey of DBC shows only about 30% of complainants are satisfied with the service provided by the Board. Additionally, DBC failed to disseminate a consumer satisfaction survey prior to 2010.

Background: In 2002, the Monitor recommended that DBC implement a survey tool to establish measurements of customer satisfaction with the Enforcement Program. Although a document was developed, according to the 2009 Enforcement Assessment, the survey was not used. In its sunset report, DBC indicated that in August 1, 2010, it joined in DCA's effort to develop ongoing performance measures. DBC indicates that consumers are provided with a web address at the bottom of complaint and case closure letters and encouraged to visit the site and provide feedback on their satisfaction with the Board's complaint process. The questions used in the survey and the identifying five-rankings for evaluating the consumers' responses are consistent with the Joint Legislative Sunset Review Committee's recommendations back in 1996 for all DCA boards to conduct a consumer satisfaction survey. DBC indicates that on a monthly basis consumer responses will be compiled and analysis will be provided. Committee staff requested a sample of consumer surveys, and at its early stages, it appears that only about 30% of complainants were satisfied with the way in which DBC handled their complaints. This is a shortcoming of many of the boards under the DCA; most have low satisfaction rates around 50%. The most prominent reason for dissatisfaction with boards is that consumers do not feel as if they are being kept updated about the status of their complaint and case, and the outcome takes so long that they see the board as not really having any real interest in their case as it moves slowly through the process. And the only satisfaction the complainant gets is usually to either see the licensee placed on probation (with conditions) or to have their license revoked. Waiting 2 ½ years or more for some resolution to their case is extremely frustrating for consumers and is probably something they don't clearly understand, and while the final result may be taking the practitioners license or placing them on probation, one wonders whether there could be a better result for the original complainant. The Contractor's Board seems to enjoy a better satisfaction rate in resolving a complaint because it tries under certain circumstances to try and mediate disputes first to hopefully bring quicker resolution to the matter and possibly provide some form of restitution to the consumer who has been harmed by the licensee. If there is an issue of competency or violation of law(s) then the Contractor's Board will still proceed with licensing action against the contractor even though the complainants issue has been settled. This Committee should begin to explore the use of mediation or what is called alternative dispute resolution (ADR) for health boards and whether they could utilize those trained in ADR or current ADR programs to resolve complaints. Consideration could be made of possibly expanding on the current "Complaint Mediation Program" (CMP) of DCA to also include consumers who have problems with health professionals. The CMP under DCA now only deals with difficulties by consumers in purchasing products or services, but there are certainly instances where ADR could be utilized when disputes arise (in the form of a complaint to the board) regarding services provided by health professionals.

Staff Recommendation: ***DBC should explain to the Committee why a Consumer Satisfaction Survey was not implemented as recommended by the Monitor, and explain why it believes consumer satisfaction regarding its service is so low, and what other efforts DBC could take to improve its general service to the consumer. Does DBC believe that mediation could be used in certain circumstances to help resolve complaints from the general public regarding health care practitioners?***

ISSUE #28. (CONTINUED REGULATION OF DENTISTS BY DBC.) **Should the licensing and regulation of the dental profession be continued, and be regulated by the current board membership?**

Background: The health and safety of consumers are protected by a well-regulated dental profession. DBC should be continued with a four-year extension of its sunset date so that the Committee may review it once again if the issues and recommendations in this Paper and others of the Committee have been addressed.

Staff Recommendation: *Recommend that the dental profession should continue to be regulated by the current DBC members in order to protect the interests of consumers and be reviewed once again in four years.*

ATTACHMENT B

March 24, 2011 Letter to Bill Gage regarding the inclusion of statutory language in sunset review legislation that would expand the enforcement units authority to address violations of the Dental Practice Act

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
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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

ATTACHMENT C

The Board's response to the Senate Business, Professions and Economic Development Committee's Issues and Recommendations

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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April 13, 2011

The Honorable Curren D. Price, Jr.
California State Senate
State Capitol Building – Room 2053
10 & L Streets
Sacramento, CA 95814

RE: Response to Senate Business, Professions and Economic Development (BP&ED) Staff's Issues and Recommendations raised in the Committee's Background Report for Sunset Review

Dear Senator Price:

Enclosed is the Dental Board of California's response to the issues and recommendations raised in the Senate BP&ED Committee's Background Paper for the Oversight Hearing which was held March 14, 2011.

We appreciate the opportunity to respond.

If you have any questions, please feel free to contact me by telephone at (916) 263-2188 or email: Richard.DeCuir@dca.ca.gov.

Sincerely,

Richard E. DeCuir
Executive Officer

cc: Dental Board Members

RESPONSE TO SENATE BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT COMMITTEE'S BACKTROUND PAPER FOR THE DENTAL BOARD OF CALIFORNIA
Submitted April 14, 2011

The Dental Board of California is submitting its response to the Senate Business, Professions and Economic Development Committee's Background Paper which was prepared for the Oversight Hearing which took place March 14, 2011.

BOARD ADMINISTRATION ISSUES

ISSUE #1: (CHANGE COMPOSITION OF DBC.) Should the composition of DBC be changed to include more public member representation?

Staff Recommendation: ***To ensure the continued commitment of DBC to protect the public, the composition of DBC should be changed to include more public members. This could be accomplished by replacing one of the dentists appointed by the Governor with a public member and giving the Governor an additional public member appointment. This would bring the total of DBC to 15 members: 7 dentists, 1 RDA, 1 RDH and 6 public members.***

DBC Response: As Senator Price mentioned in the oversight hearing, having the public participate as members of Healing Arts Boards is a relatively new concept in open meetings. The DBC has three very active public members and there is one public member vacancy. The balance assists greatly in assuring that the public perspective is always before the Board. While DBC staff agrees that it is important to have public member perspective on issues relating to dentistry, increasing the number does not ensure that the public will be better served.

ISSUE #2: (STRATEGIC PLAN UPDATE NEEDED.) Should DBC's Strategic Plan include action items and realistic target dates for how its goals and objectives will be met?

Staff Recommendation: ***DBC should develop and publish a detailed action plan with specific action items and realistic target dates for how each of the objectives will be met. Additionally, the Board should be given a written status report on the action plan at each board meeting.***

DBC Response: When the Board updated its Strategic Plan (Plan) in May 2010, it was developed as a two year plan without action items or target dates specified because we were anticipating a change in the administration. The Board recognizes that the Plan is dynamic with action items and target dates constantly changing due to unexpected and unforeseen circumstances such as staff shortages, furloughs, and statutory and regulatory mandates. The plan has always been that the Board will review and update the Strategic Plan sometime during 2012, with specific action items and target dates for how each of the objectives can be met. Board members currently receive an update of the objectives in the Plan at each Board meeting, either through the Executive Office Report of Committee Reports.

ISSUE #3: (LACK OF PERSONNEL EVALUATION.) Should DBC implement annual personnel performance evaluations or appraisals?

Staff Recommendation: *DBC should explain to the Committee its system of work performance evaluations and ensure that these evaluations or appraisals are completed by staff on a timely basis.*

DBC Response: We will begin requiring managers to complete evaluations on all staff annually during calendar year 2011.

ISSUE #4: (CLARIFICATION OF THE AUTHORITY OF DBC OVER THE DENTAL HYGIENE COMMITTEE AND DENTAL ASSISTANTS.) Is there some clarification needed regarding the authority which DBC has over the Dental Hygiene Committee and the Dental Assisting Forum?

Recommendation: *It would appear as if the intent of the Legislature was that the Dental Hygiene Committee was created so that it could make independent decisions on issues related to the regulation of the hygienist profession unless it involved scope of practice changes which would need to be worked out between both the dentistry and hygienist professions. Clarification may be needed to assure that the Dental Hygiene Committee maintains its independence over that of DBC. Additionally, the Committee should ask DBC to explain the purpose for establishing two groups to deal with dental assisting issues, and consider merging the DAC and DAF into one entity.*

DBC Response:

Dental Hygiene
The Dental Hygiene Committee of California (DHCC) falls within the jurisdiction of the Board ONLY on issues dealing with scope of practice. All other aspects of the DHCC are independent of the Board, including the DHCC's development of its own practice act and promulgation of regulations relating to dental hygiene. The Board does not believe independence of the DHCC is an issue.

Dental Assisting
In an effort to maximize communication between the dental assisting community and the Board, two forums were established: the Dental Assisting Committee of the Board (Committee) and the Dental Assisting Forum (DAF).

The Dental Assisting Committee is made up of Board members including the Registered Dental Assistant board member who serves as chairperson. The Committee meets at the same time as other board committees, considers issues related to dental assisting, and presents recommendations to the full Board.

The DAF is made up of licensees from the dental assisting community. It operates as a working committee under the Board. The purpose of the DAF is to be a forum where dental assistants can discuss matters related to the dental assisting community and can bring its recommendations for change to the Dental Assisting Committee of the Board for further discussion. Because the Dental Assisting Committee is comprised of Board members and the DAF is not, the staff recommendation to merge the two is not feasible. The Board will be discussing how to better implement an effective forum

where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full during the 2011 calendar year.

DENTAL WORKFORCE AND DIVERSITY ISSUES

ISSUE #5: (IMPACT OF FEDERAL HEALTH CARE REFORM ON THE DENTAL WORKFORCE?) Will California meet the increased demand for dental services with the enactment of the Federal Health Care Reform, and what can DBC do to assist in the implementation of the Federal Health Care Reform?

Staff Recommendation: ***The Committee should ask DBC whether it has assessed the impact of, and planned for, implementation of the PPACA; how DBC is looking at the dental workforce capacity in light of implementation of the PPACA, given that millions of additional Californians, especially children, will gain dental coverage when the PPACA is implemented. Additionally, DBC should continue in its efforts to increase the dental workforce in California, explore approaches and work collaboratively with for-profit and non-profit organizations and other stakeholders to address the increased demand for oral healthcare as a result of the PPACA. Additionally, DBC should be proactive in finding ways to increase access to dental programs especially for socio-economic disadvantaged students.***

DBC Response: The board has had some preliminary discussions relative to increasing workforce capacity in the light of Federal Healthcare Reform. Those discussions always include the need to increase capacity in underserved and rural areas because those are the places where there is consistently a need. Last year we revised the Board's Strategic Plan and did two things: (1) highlighted access to quality care in our vision statement and (2) included diversity in our values.

We want our vision and values to be reflective of the consumers and professionals in the state and as such they are always a work in progress. We left our strategic plan open-ended so that we could revisit and expand on it. That work will be accomplished in future meetings.

Additionally, Health Care reform provides opportunities to increase capacity and through our strategic goals of being proactive about legislative solutions and conducting outreach programs where public policy issues on health care are discussed we see an opportunity.

To that end, the Board has worked with interested parties on workforce issues such as the Healthcare Manpower Pilot Project; and has developed new pathways to licensure such as licensure by residency and licensure by credential. Most recently the Board sponsored legislation that will allow students attending a California dental school an alternate pathway to licensure, referred to as the portfolio pathway. The board recently implemented new regulations that allow for greater utilization of dental assistants. The Board would like to work closely with the Select Committee on Health Workforce and the various legislative caucuses as well as other interested parties, for-profit, non-profit and stakeholder organizations to find solutions and reach the goal of a workforce that reflects our state.

ISSUE #6: (IS THERE A LACK OF DIVERSITY IN THE DENTAL PROFESSION?) Should DBC enhance its efforts to increase diversity in the dental profession?

Staff Recommendation: *DBC should enhance its efforts on diversity issues, and increase its collaboration efforts with dental schools, dental associations, other state and local agencies, and for-profit and non-profit organizations.*

DBC Response: The DBC believes it can enhance its efforts on diversity issues in part through the collaboration it will seek to assist in the implementation of the Federal Health Care Reform. We believe that the collaboration with the Select Committee on Health Workforce and the various legislative caucuses as well as other interested parties, for-profit, non-profit and stakeholder organizations can bring increased diversity in the dental profession.

DENTAL PRACTICE ISSUES

ISSUE #7: (DIFFICULT TO DETERMINE SPECIALTY AREAS OF DENTAL PRACTICE.) Should DBC be responsible for determining and reviewing areas of specialty education and accreditation requirements for those specialized areas of Dentistry?

Staff Recommendation: *Adopt the recommendation of DBC to delete B & P Code Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).*

DBC Response: The Board has historically taken the view that it is a licensing body, and does not have the authority, or staff to determine and review areas of specialty education and accreditation requirements for those specialized areas of Dentistry. The Board supports legislation that deletes Business & Professions Code, Section 651(h)(5)(A)(i) through Section 651(h)(5)(A)(iii).

EXAMINATION ISSUES

ISSUE #8: (LENGTHY PROCESSING TIME FOR EXAMINATION APPLICATIONS.) Currently DBC is averaging up to five months to process examination applications.

Staff Recommendation: *DBC should explain further the reasons for the delays in processing examination application averages and whether these delays are attributable to DBC.*

DBC Response: Since the Board's initial Sunset Review Report was submitted October 1, 2010, staff has re-evaluated the Licensing & Examination unit application processing times. Statistics over the past 5 months show that dentist applications with no deficiencies are being processed in under 30 days. Applications that are deficient may be delayed depending upon how quickly the requirements are submitted by the applicant.

ISSUE #9: (RANDOMIZATION OF DENTAL AND RDA LAW AND ETHICS EXAMINATIONS NEEDED.) Are there sufficient safeguards to avoid, if not limit, examination compromises and ensure that testing reflect current laws and regulations? Should the California Law and Ethics examination questions for dentists and RDAs be randomized and reflect current laws and regulations?

Staff Recommendation: ***To avoid examination compromises and ensure that the examination questions reflect current law and regulations, DBC should require that OPES randomize (scramble) California law and ethics examinations for dentists and RDAs. Additionally, dentists should be required to certify that examination content will not be released.***

DBC Response: Both of the examinations (dentists and RDAs) are randomized and have been since implementation. The board is also working with OPES to enhance the number and type of questions to be used on the exam. Effective May 2, 2011, the Law and Ethics Examination for dentists will be computer based and administered by PSI. All applicants will be required to certify that the contents of the examination will not be released.

ISSUE #10: (RDA WRITTEN EXAMINATION PASS RATE IS LOW.) Should DBC explore pathways to improve the pass rates of RDAs taking the written examinations if the low pass rate trend continues?

Staff Recommendation: ***If in fiscal year 2010/2011, the RDA examination pass rate remains low, DBC should explore approaches to improve the passage rate of RDAs.***

DBC Response: When the Board assumed responsibility for the Dental Assisting Program on July 1, 2009, the examination pass rate was 53%. Since implementation of the new RDA examination on January 1, 2010, the pass rate is fluctuating between 62% and 70% depending on the candidate pool. The candidates graduating from board-approved dental assisting programs appear to be passing the examination at a higher rate. The Board is currently working with a vendor to review the current examination and enhance the test item bank used for the examination.

CONTINUING COMPETENCY ISSUES

ISSUE #11: (LACK OF CONTINUING EDUCATION AUDITS.) DBC suspended audits of continuing education prior to 2009, and does not audit RDAs.

Staff Recommendation: ***DBC should explain to the Committee its current policy on continuing education audits for dentists and the reasons for suspension of the audits prior to 2009. DBC should also explain why it does not audit CE for RDAs and describe plans, if any, to implement audit for RDA CE.***

DBC Response: Radom Continuing Education audits for dentists were temporarily suspended in July 2009 due to workload in other areas of the Board and the need to redirect staff. The random audit program resumed with the February 2011 renewals. Audits for Registered Dental Assistants cannot take place until additional staff is hired to assume those duties.

ENFORCEMENT ISSUES

ISSUE #12: (DISCIPLINARY CASE MANAGEMENT TIMEFRAME STILL TAKING ON AVERAGE 2 ½ YEARS OR MORE.) Will DBC be able to meet its goal of reducing the average disciplinary case timeframe from 2 ½ years or more, to 12 to 18 months?

Staff Recommendation: *In order to improve case processing and case aging, and to meet its goal of reducing the timeframe for the handling of its disciplinary cases, the following recommendations from the Monitor and Assessment Report should be considered by DBC:*

1) *Continue to reduce the amount of time to process and close complaints.*
2) *A Guideline for case assignments must be established, taking into consideration the skills or experience level of staff and other factors.*
3) *Making Case Processing and Aging a major focus of DBC's improvement planning.*
4) *Prioritize the review of aged cases.*
5) *Establish reasonable elapsed time objectives for each step of the case processing.*
6) *Monitor Performance by establishing regular oversight of case progress and staff productivity.*
7) *A policy or procedures for supervisory staff in performing case reviews should be established.*

Additionally, the Committee should give consideration to auditing both the Investigation Unit of DBC and the Licensing Section of the AG's Office to determine whether improvements could be made to the investigation and prosecution of disciplinary cases.

DBC Response: The Board's Enforcement program is committed to process improvement and has established several policies and procedures in response to the Enforcement Assessment 2009 and the committee's recommendations. With the additional staffing provided by the Consumer Protection Enforcement Initiative (CPEI), the Board has already begun to make improvements to processing times. Since April 2008, the Complaint Unit has reduced the average number of days to close a complaint from 435 days to 100 days (a 77% decrease). The implementation of quarterly case reviews has focused on case closures and closing the oldest investigations. These efforts have reduced the number of cases over two years old from 19% to 14% in the last five months.

With the implementation of the Investigator Activity Report (IAR) system, the Board is gathering data associated with specific investigative functions to be able to establish time objectives for various case types. This data combined with the case reviews is being used by managers to monitor case progress and staff productivity.

Case review procedures along with case assignment guidelines have been developed and are included in the recently updated Enforcement Program manual.

ISSUE #13: (DISCIPLINARY CASE TRACKING SYSTEM INADEQUATE.) Should DBC continue to monitor the quality of enforcement data and ensure that investigative activities are tracked? Additionally, should DBC adopt guidelines for the completion of specific investigative functions to establish objective expectations?

Staff Recommendation: *Although all the boards and bureaus within the DCA will transition into the BreEZe system, this process is several years out. In the meantime, DBC should continue to*

monitor the quality of enforcement data and tracking of investigative services. Moreover, although DBC had transitioned to the IAR utilized by the MBC, DBC should ensure that the IARs are consistent and completed. Additionally, as the Enforcement Assessment recommended, guidelines should be established for the completion of specific investigative functions to establish objective expectations. Lastly, DBC should continue in its role to work collaboratively with the DCA's Office of Information Services project staff, as well as with any vendor, to assist in creating an efficient and user-friendly integrated computer system.

DBC Response: The Board agrees with the staff recommendations. Beginning in November 2010, the enforcement program began gathering and reporting investigative and disciplinary statistics and benchmarks to more closely monitor our progress towards department goals. The ongoing utilization of IAR is an additional component for tracking staff productivity and establishing investigative case measures.

The Board also recognizes that DCA's current case management system is not suited to track the case once it has been forwarded to the Attorney General's office. Quarterly reports from the AG's Office are also insufficient to follow case progress on a regular basis. Cases are taking an average of 180 days (6 months) from the time the AG's office receives a case until the accusation is served. The Board is currently partnering with the CSLB to adapt their Disciplinary tracking system to provide the enforcement program with the ability to more closely monitor accusations and case progression.

ISSUE #14: (PROTRACTED PROCESS TO SUSPEND LICENSE OF A DENTIST.)
DBC must go through a cumbersome process to suspend the license of a licensee who may pose an immediate threat to patients or who have committed a serious crime and may even be incarcerated.

Staff Recommendation: ***Extend the time constraints placed on the AG to file an accusation thus allowing the AG to utilize the ISO process without having to have their accusation prepared within a very limited time frame (15 days). Pursuant to Section 494 of the B&P Code, DBC does not have to always rely on an ALJ to conduct the ISO hearing, DBC also has authority to conduct the hearing and could do so more expeditiously where serious circumstances exist regarding the suspension of a dentist's license. Provide for automatic suspension of a dental license if the dentist is incarcerated and mandatory revocation of a license if a dentist is convicted of acts of sexual exploitation of a patient.***

DBC Response: The board is utilizing a number of tools to suspend a practitioner's license when necessary, including Penal Code Section 23 motions to temporarily suspend practice on criminal allegations which have the potential for public harm, and Business and Professions Code Section 1687 on convicted sexual offenders. In addition, effective January 1, 2011, the Board was authorized to order a licensee to cease practice per Section 315.2 of the Business and Professions Code if a licensee tests positive for any substance that is prohibited under the terms of the licensee's probation. The Board has requested the inclusion of additional statutory language to enhance its enforcement program. These additional provisions are: Letter of Admonishment, Modified Citation and Fine, and Notice of Correction.

ISSUE #15: (DIFFICULTY COLLECTING CITATIONS AND FINES FOR CERTAIN TYPES OF VIOLATIONS AND COST RECOVERY.) Should DBC contract with a collection agency to improve its cost recovery and cite and fine functions?

Staff Recommendation: *In order to improve cost recovery and fine collection efforts, DBC should be allowed to procure a contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts. According to the DCA, most of the boards within DCA are struggling to collect cost recovery amounts, outstanding fees, citations or fines. If this is the case, the DCA may wish to procure a contract with one collection agency for all its boards.*

DBC Response: The Board believes that the Senator Price has already introduced legislation related to this issue.

ISSUE #16: (PROBLEMS WITH PROBATION MONITORING.) Should DBC adopt written guidelines on how to make probation assignments and ensure that probationary and evaluation reports are conducted consistently and regularly as recommended by the Enforcement Assessment?

Staff Recommendation: *As recommended in the Enforcement Assessment, DBC should adopt written guidelines on how to make probation assignments, and ensure that probationary and evaluation reports are conducted consistently and regularly.*

DBC Response: The Board's Enforcement Program is currently in the process of revising its written guidelines for probation monitoring, using a model in use by the Medical Board. In addition, modifications to the Investigator Activity Report System are being made to track and account for time spent on probation monitoring functions in addition to investigative tasks. It is anticipated that this information will assist us in identifying and capturing realistic recovery costs.

ISSUE #17: (NEED FOR ANNUAL REPORTING REQUIREMENTS.) Should DBC annually report specific licensing and enforcement information to its licensees and the Legislature?

Staff Recommendation: *The Dental Practice Act should be amended to require DBC to report annually to the Legislature information required under Business and Professions Code Section 2313 that applies to dentists, including malpractice settlements and judgments, Section 805 reports, the total number of temporary restraining orders or interim suspension orders sought by DBC, and other licensing and enforcement information as specified. Staff recommends that annual reports should also be published in DBC's newsletter and made available on its Website.*

DBC Response: The Board annually reports malpractice settlements and judgment information collected pursuant to Business and Professions Code Section 806. In addition, the Board currently reports annually to the Department in a number of categories consistent with the intent of Business and Professions Code Section 2313; including complaint totals and timeframes, arrest and conviction filings, cite and fine results, and disciplinary totals and benchmarks. This information is posted on the Department's website for public review. Additional statutory language is unnecessary.

ISSUE #18: (IMPLEMENT 2009 DBC ENFORCEMENT ASSESSMENT CORRECTIVE ACTION PLAN.) Should DBC implement the recommendations of a 2009 Enforcement Assessment of DBC's Enforcement Program?

Staff Recommendation: ***DBC should submit to this Committee a corrective action plan detailing how DBC intends to address and implement the recommendations contained in the 2009 Enforcement Assessment.***

DBC Response: The Enforcement Program has established several policies and procedures in response to the Enforcement Assessment of 2009 and the committee's recommendations. Case assignment guidelines have been developed and are included in the recently updated Enforcement Program manual.

With the implementation of the Investigator Activity Report (IAR), the DBC is gathering data associated with specific Investigative Functions to be able to establish time objectives for various case types. It is estimated that the DBC will need at least 12 months to gather sufficient data to establish these timeframes.

Written Guidelines for Probation Monitoring, similar to those in use by the Medical Board, are included in the DBC's Probation Manual.

We have also been asked to submit a Corrective Action Plan in response to the 2009 Enforcement Assessment. Although many of the recommendations have already been implemented, an action plan with benchmarks of completion dates will be produced by the end of 2011.

ISSUE #19: (CONTINUED USE OF THE DENTAL LOAN REPAYMENT PROGRAM.) The California Dental Corps Loan Repayment Program still has funds available to provide to dental students.

Staff Recommendation: ***The California Dental Corps Loan Repayment Program should be extended until DBC distributes all the funds in the account. DBC should indicate to the Committee its efforts to inform students about the availability of the loan repayment program.***

DBC Response: The Board agrees that the California Dental Corps Loan Repayment Program should be extended until all the funds in the account have been distributed. The Program will expire June 30, 2012. The Board will continue to inform dental students about the availability of the loan repayment program through the website and will work with stakeholders and professional associations to put a notice in their publications.

SUBSTANCE ABUSE AND DIVERSION PROGRAM ISSUES

ISSUE #20: (EFFECTIVENESS OF DIVERSION PROGRAM AND IMPLEMENTATION OF SB 1441 STANDARDS.) It is unknown how successful DBC's Diversion Program is in preventing recidivism of dentists who may abuse drugs or alcohol, and if the Diversion Program

is effectively monitoring and testing those who participate in the program. Additionally, it is unclear when "Uniform Standards" for their Diversion Programs will be implemented.

Staff Recommendation: *The Committee should consider requiring an audit of DBC's Diversion Program in 2012, along with the other health boards which have Diversion Programs to assure that these programs are appropriately monitoring and treating participants and to determine whether these programs are effective in preventing further substance abuse. Additionally, the audit should also determine the value of utilizing DECS in a diversion program. DBC should also indicate to the Committee how the Uniform Standards are being implemented and if all Uniform Standards are being followed, and if not, why not; give a definite timeframe when disciplinary guidelines will be amended to include SB 1441 standards, whether formal training for DECS is necessary to ensure that standards are applied consistently, and the necessity of revising the Maximus diversion program recovery contract signed by a dentist who enters the diversion program to incorporate certain aspects of SB 1441 including the requirement that a dentist must undergo a clinical diagnostic evaluation to participate in the program; the practice restrictions that apply while undergoing a diagnostic evaluation; the requirement to provide the names and contacts of employers or supervisors for participants who continue to work; the frequency of drug testing; that collection of specimens shall be observed; that certain requirements exist for facilitators; what constitutes major or minor violations; and the consequences for major or minor violations.*

DBC Response: Audits of the DBC Diversion Program have been performed by DCA in 2009 & 2010 with no findings of public risk or harm, yet the committee staff is proposing another round of audits bu the Bureau of State Audits for 2012. We believe an additional audit is not necessary. The Background Report doesn't take issue with the Board's Diversion Evaluation Committees yet the Committee's report contains a recommendation to assess the continued need for these Diversion Evaluation Committees and the need to train Diversion Evaluation Committee members. With respect to the SB 1441 requirements, the Board filed regulations with the Office of Administrative Law on Friday, March 11th to amend the Board's Disciplinary Guidelines to use the uniform standards developed by the SACC and to specify that it is the Diversion Evaluation Committee's duty and responsibility to consider the uniform standards contained within the Disciplinary Guidelines in creating treatment rehabilitation plans for licensees entering the Diversion Program. The amended Disciplinary Guidelines use the uniform standards that should be used in all cases in which a license is placed on probation due to a substance abuse problem. The uniform standards would include (1) Clinical Diagnostic Evaluation; (2) Clinical Diagnostic Evaluation Report; (3) Facilitated Group Support Meetings; (4) Supervised Practice (Work Site Monitor Requirements); (5) Major and Minor Violations; and (6) Drug Testing Standards. Once the proposed language has gone through the regulatory process and is approved by the Office of Administrative Law, the Board will have the regulatory authority to implement the drug testing standards. The Board should be authorized to implement the drug testing standards within the next 12 to 18 months. Those SB 1441 mandates that can be included without regulation will be accomplished through a contract amendment.

ISSUE #21: (DBC CANNOT ACCESS RECORDS OF THE DIVERSION PROGRAM WHEN A DENTIST IS TERMINATED FOR NON-COMPLIANCE.) Should DBC be authorized to access diversion records for dentists who are terminated from the diversion program for non-compliance, which usually involves relapse?

Staff Recommendation: *Amend the Dental Practice Act to authorize DBC to access any diversion records of a licensee who participates in a diversion program and is terminated for non-compliance, for purposes of investigation and imposition of a disciplinary action.*

DBC Response: The Board is in agreement with the staff recommendation to amend the Dental Practice Act to include the original language in AB456 (Emerson) from the 2010 legislative session which authorizes the board's enforcement program access to diversion records for, "licensees who are terminated for noncompliance." The bill's language also authorized the board's enforcement program to use "licensees' records for purposes of discipline." It is essential to the success of the diversion program, that access to these records only be granted in these exceptions.

CONSUMER NOTICE ISSUE

ISSUE #22: (NOTICE TO CONSUMERS THAT DENTISTS ARE REGULATED BY DBC.) Should DBC promulgate regulations pursuant to a statute enacted in 1999 to require dentists to inform patients that they are licensed by DBC?

Staff Recommendation: *Pursuant to Section 138 of the B & P Code, DBC should adopt regulations to require dentists to inform their patients that they are licensed by the DBC.*

DBC Response: This recommendation is unnecessary. Existing law already requires the board's licensees to provide written notice of their license status per BPC sections 680 and 680.5.

BOARD, CONSUMER AND LICENSEE USE OF THE INTERNET ISSUES

ISSUE #23: (NEED FOR CONTINUED ENHANCEMENT OF DBC's INTERNET SERVICES.) Should DBC continue to explore ways to enhance its Internet Services and Website to licensees and members of the public?

Staff Recommendation: *DBC should continue to explore ways to enhance its Internet Services to licensees and members of the public, including posting meeting materials, board policies, and legislative reports on the Internet and webcasting Board meetings.*

DBC Response: Improving the web site is a board priority. The Board will continue to post meeting notices and materials, board policies, legislative and regulatory information, newsletters, and other information; and will continue to webcast our Board meetings when possible.

BUDGETARY ISSUES

ISSUE #24: (ARE RECENT LICENSING FEES SUFFICENT TO COVER DBC COSTS?) Is DBC adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Staff Recommendation: DBC should assure the Committee that it will have sufficient resources to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas if appropriate staffing and funding is provided. Additionally, the Committee may consider amending Section 1725 of the B & P Code to instead require that any changes in licensing and permitting fees of dental assistants be established by regulations, instead of Board Resolutions as currently required.

DBC Response: Staff will be seeking a $10 increase in licensing fees for Registered Dental Assistants during the 2011 calendar year. Additionally, licensing fees for dentists will be adjusted through the regulatory process during either FY 12/13 or FY 13/14.

ISSUE #25: (LACK OF STAFF CONTINUES TO HAMPER DBC'S ENFORCEMENT PROCESS.) DBC should explain to the Committee the negative impact of enforcement program vacancies to its overall functions.

Staff Recommendation: *DBC should express to the Committee its frustration in being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program, and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases.*

DBC Response: Of the 12.5 approved CPEI positions, the DBC has been able to hire 4 fulltime employees to investigate quality of care cases. Since that time, the DBC's Enforcement Program has been able to achieve the following:

- Decreased the amount of unassigned cases from 428 in October 2010 to 249 as of March 2011 (41% decrease).
- Increased case closures from 49 in November 2010 to 108 in March 2011 (an increase of 120%)

Sworn peace officers currently work the most complex and egregious investigations. The Board is currently asking for a freeze exemption to fill our remaining four (4) sworn positions. Without being able to fill these mission critical positions, as well as the remaining non-sworn CPEI positions, less serious quality of care cases will wait for assignment and will age – resulting in the potential for further consumer harm from practitioners whose practice issues have not been addressed. In addition, retroactive fingerprinting legislation is anticipated to increase the number of new cases which will contribute to the existing workload. Using historical data, it is estimated that of the 41,500 licensees who have not been fingerprinted, 3% (1,395) to 23% (10,695) new cases could be generated.

It is imperative that the Board be able to fill positions in order to address the backlog in a timely manner, meet its goal to complete investigations within 12 to 18 months, maintain the quality of these investigations, and continue to protect the public.

ISSUE #26: (IMPACT ON DBC OF THE UNPAID LOANS MADE TO THE GENERAL FUND.) Will the unpaid loan to the General Fund have an impact on the ability of DBC to deal with its case aging and case processing?

Staff Recommendation: *No more loans from the reserve funds of the DBC to the General Fund. DBC should explain to the Committee what the impact will be to its overall Budget and its enforcement process if the outstanding loan is not repaid as soon as possible. This of course is if DBC is granted an exemption from the hiring freeze, otherwise new expenditures will not be necessary.*

DBC Response: The Board agrees that there should be no more loans from the reserve funds of the Dental Board to the General Fund. There is still an outstanding General Fund Loan balance of $4.4 million which must be paid back to the board before a fee increase can become implemented.

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT MEMBERS OF THE DENTAL BOARD OF CALIFORNIA

ISSUE #27: (CONSUMER SATISFACTION WITH DBC IS LOW.) A 2010/2011 Consumer Satisfaction Survey of DBC shows only about 30% of complainants are satisfied with the service provided by the Board. Additionally, DBC failed to disseminate a consumer satisfaction survey prior to 2010.

Staff Recommendation: *DBC should explain to the Committee why a Consumer Satisfaction Survey was not implemented as recommended by the Monitor, and explain why it believes consumer satisfaction regarding its service is so low, and what other efforts DBC could take to improve its general service to the consumer. Does DBC believe that mediation could be used in certain circumstances to help resolve complaints from the general public regarding health care practitioners?*

DBC Response: There was a survey sent out in August 2010, which connected to a Survey Monkey sent to the 1900 consumers who filed complaints which were subsequently resolved by the Board. The Board received 35 responses. Though 35 responses is hardly a trend, we see two areas where consumer satisfaction can be improved: 1. Case aging and, 2. Exploring ways to assist consumers with pursuing financial restitution where additional costs are incurred for corrective work. An area of dissatisfaction was with case outcome relative to discipline, something we cannot address because these cases took proper administrative course. Managers are looking at a different survey instruments and will explore the use of a separate document to see if it provides better results.

ISSUE #28. (CONTINUED REGULATION OF DENTISTS BY DBC.) Should the licensing and regulation of the dental profession be continued, and be regulated by the current board membership?

Staff Recommendation: *Recommend that the dental profession should continue to be regulated by the current DBC members in order to protect the interests of consumers and be reviewed once again in four years.*

DBC Response: The Board agrees.

ATTACHMENT D

- Senate BP&ED Committee Analysis of SB 540(Price)

- Senate Bill 540

Hearing Date: May 2, 2011 Bill No: SB 540

SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT
Senator Curren D. Price, Jr., Chair

Bill No: SB 540 Author: Price
As Amended: April 25, 2011 Fiscal: Yes

SUBJECT: Dentistry.

SUMMARY: Extends the sunset date of the Dental Board of California to January 1, 2018, and makes other programmatic changes.

Existing law:

1) Establishes the Dental Board of California (DBC) to license and regulate the practice of dentistry.

2) Specifies that the DBC shall consist of eight practicing dentists, one registered dental hygienist, one registered dental assistant, and four public members. States that this provision shall remain in effect only until January 1, 2012, and after that date, is repealed unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date. (Business & Professions Code (BPC) § 1601.1)

3) Provides that every board within the Department of Consumer Affairs, as specified, shall initiate the process of adopting regulations on or before January 1, 1999, to require its licentiates, as defined, to provide notice to their clients or customers that the practitioner is licensed by this state. (BPC § 138)

4) States that for purposes of advertising, a dentist may not hold himself or herself out as a specialist, as specified, unless the dentist satisfies specific specialization requirements. (BPC § 651(h)(5)(A)(i) et seq)

5) Allows DBC to issue a probationary license to an applicant for licensure as a dentist or dental auxiliary. Allows the DBC to require a licensee, as a term or condition of issuing a probationary license, to comply with certain requirements, as specified. (BPC § 1628.7)

6) Requires licensees of the DBC to fulfill continuing education requirements.

7) Specifies the intent of the Legislature to seek ways and means to identify and rehabilitate licenciates whose competency may be impaired due to abuse of dangerous drugs or alcohol, so that licentiate so afflicted may be treated and returned to the practice of dentistry in a manner which will not endanger the public health and safety. (BPC § 1695)

8) Requires the DBC to establish criteria for the acceptance denial or termination of licentiates in a diversion program. States that licentiates shall sign an agreement of understanding that withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization of the DBC of diversion treatment records in disciplinary or criminal proceedings. (BPC § 1695.5)

9) States that the amount of fees that relate to the licensing and permitting of dental assistants shall be established by DBC resolution. (BPC § 1725)

10) Finds and declares that dental assistants provide a dental care services that is vital to good health. It is the intent of the Legislature that the DBC create and implement an effective forum where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full and where all matters relating to dental assistants in this state can be discussed, as specified.

11) Establishes the Dental Corps Loan Repayment Program of 2002 to provide loan repayment assistance to dentists who commit to a minimum of three years of services in a dentally underserved area, as defined. (BPC § 1970 et.seq.)

This bill:

1) Deletes existing law requirements relating to advertising by a dentist of specialization or accreditation in a specialty area of practice unless certain requirements are met.

2) Extends the sunset date of the DBC comprised of eight practicing dentists, one registered dental hygienist, one registered dental assistant and five public members to January 1, 2016.

3) Establishes, on and after January 1, 2016, a DBC which shall consist of eight practicing dentists and seven public members. States that this provision shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date. States that this repeal renders the DBC subject to review by the appropriate policy committees of the Legislature. States that members of the DBC shall be appointed for a term of four years, and that the Governor appoints the 8 dentists and five of the public members, and the Senate Rules Committee and the Speaker of the Assembly each appoint a public member.

4) States that on and after January 1, 2016, all members of the DBC, except the public members, shall have been actively and legally engaged in the practice of dentistry, as specified. Provides that the public members shall not be licentiates of the DBC or any other board, as specified.

5) Requires the DBC, by January 1, 2013, to comply with existing statute that requires boards within DCA, including the DBC, to adopt regulations to require licensees to provide notice to clients or customers that the licensee is licensed by the state. Requires the notice to include a provision indicating that the DBC is the entity that regulates dentists and provide the telephone number and Internet address of the DBC. States that the DBC should require the notice to be posted in a conspicuous location accessible to public view.

6) Extends the sunset date of the appointment of the executive officer to January 1, 2018.

7) Requires the DBC to adopt written guidelines on how to make probation assignments, and to ensure that probationary and evaluation reports are conducted consistently and regularly.

8) Requires the DBC to ensure that the law and ethics examination reflect current law and regulations, and to ensure that the examinations are randomized.

9) Provides that if requested by the Legislature through the Joint Legislative Audit Committee in 2012, the Bureau of State Audits shall conduct a thorough performance audit of the DBC'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. Requires this audit to be paid for with moneys from the State Dentistry Fund.

10) Deletes existing law provision requiring a licentiate to sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when a diversion evaluation committee determines the licentiate presents a threat to the public's health and safety shall result in the utilization by the DBC of diversion treatment records in disciplinary or criminal proceedings.

11) Requires that if a licentiate withdraws or is terminated from the diversion program for failure to comply or is determined to be a threat to the public or their own health and safety, all diversion records for that licentiate shall be provided to the DBC's enforcement program and may be used in any disciplinary proceeding. States that if a licentiate in a diversion program tests positive for any banned substance, the board's diversion program manager shall immediately notify the DBC's enforcement program and provide the documentation evidencing the positive test result to the enforcement program. Provides that this documentation may be used in a disciplinary proceeding.

12) Deletes the requirement that dental assisting fees that relate to licensing and permitting be established by DBC resolution and instead requires these fees to be established by regulation.

13) Deletes existing intent language for the DBC to create and implement an effective forum for dental assisting matters, as specified.

14) Creates a Dental Assisting Council (Council) of the DBC, which shall consider all matters relating to dental assistants in this state, including matters that relate to standards for approval of dental assisting educational programs and courses, and make appropriate recommendations to the DBC, as specified.

15) Requires that members of the Council to be appointed by the DBC president, and shall consist of two members of DBC, and five members who are either registered dental assistants or registered dental assistants in extended functions. Requires the Council to meet in conjunction with other DBC Committees, and at other times as deemed necessary.

16) Provides that the Council members shall serve a term of four years, except that, of the initial appointments of the nonboard members, one of the members shall serve a term of one year, two members shall serve a term of two years, and two members shall serve a term of three years.

17) Requires the Council to be the sole entity of the DBC that will provide recommendations on dental assisting matters.

18) Extends the California Dental Corps Loan Repayment Program of 2002 until all the moneys in the account are expended.

19) Makes other technical, non-substantive, and conforming changes.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. **Purpose.** The Author is the Sponsor of this measure. According to the Author, in 2011, this Committee conducted oversight hearings to review 7 boards: the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the Dental Board of California, the Board of Accountancy, the Contractors State License Board, the Board for Professional Engineers, Land Surveyors and Geologists, the California Architects Board (and the Landscape Architects Committee). The Committee also reviewed the Athletic Commission and the Professional Fiduciaries Bureau and conducted oversight hearings of the Department of Real Estate and the Office of Real Estate Appraisers. The Committee began its review of these licensing agencies in March and conducted three days of hearings. This bill, and the accompanying sunset bills, is intended to implement legislative changes as recommended in the Committee's Background/Issue Papers for all of the agencies reviewed by the Committee this year.

   This bill is one of the seven "sunset bills" authored by the Chair of this Committee. According to the Author, this bill is necessary to extend the sunset date of the DBC and continue the regulation of dentists and other dental practitioners in California and continue with the DBC's mission to protect the public. Additionally, the Author points out that there is a need to increase the public membership within the DBC to assure the public that the professions' interests do not outweigh what is in the best interest of the public. Additionally, there is a need to ensure the programs administered by the DBC, including its Diversion Program, continue to protect the public while rehabilitating licensees.

2. **Background.** The DBC was created by the California Legislature in 1885, and was originally established to regulate dentists. Today, the DBC is responsible for regulating the practice of approximately 71,000 licensed dental health professionals in California, including 35,500 dentists, 34,300 registered dental assistants (RDAs), and 1,300 registered dental assistants in extended functions (RDAEFs). In addition, DBC is responsible for setting the duties and functions of approximately 50,000 unlicensed dental assistants. The Dental Practice Act provides that the "[p]rotection of the public shall be the highest priority of the Dental Board of California in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." DBC implements regulatory programs and

performs a variety of functions to protect consumers. These programs and activities include setting licensure requirements for dentists, and dental assistants, including examination requirements, issue and renew licenses, issue special permits, monitor probationer dentists and RDAs and manage a Diversion Program for dentists and RDAs whose practice may be impaired due to chemical dependency or mental illness. DBC is composed of 14 members; 8 practicing dentists, 2 dental auxiliaries (RDH and RDA), and 4 public members. The 8 licensed dentists, the registered dental hygienist, the RDA, and 2 public members are appointed by the Governor. The Speaker of the Assembly and the Senate Rules Committee each get a public member appointment. According to DBC, public membership is 29% of the Board's composition.

Existing law allows the Legislature to conduct policy review of regulatory boards within DCA. This review includes an evaluation of a board's regulatory programs, including staffing, enforcement, budgetary, examination, and practice issues to ensure that consumer protection remains the priority of these boards. This year, the DBC was reviewed by this Committee and an oversight hearing was held on March 14, 2011. As part of this hearing, Committee staff prepared an extensive background paper detailing various issues and recommendations for the DBC.

3. **Former Sunset Review of the DBC.** DBC was last reviewed by the former Joint Legislative Sunset Review Committee (JLSRC) in 2002. At that time, the JLSRC issued five recommendations. Additionally, prior to this last review, SB 26 (Figueroa), Chapter 615, Statutes of 2001 required the Director of the DCA to appoint an Enforcement Monitor (Monitor) to evaluate DBC's disciplinary system and procedures with specific focus on the quality and consistency of complaint processing and investigation, timeframes needed for complaint handling and investigation, complaint backlogs, and other related managerial, organizational, and operational problems, issues, and concerns. The Monitor submitted his initial report to the Legislature in 2002, and made 40 specific recommendations for improvements. In this initial report, the Monitor indicated that there are numerous significant inconsistencies in the way complaints are processed and investigated, it was taking much too long to resolve or investigate complaints, and as a result of staff turnover and the state's hiring freeze, backlogs have begun to accumulate. On October 1, 2010, DBC submitted its required Sunset Report to this Committee. In this report, DBC described actions it has taken since its last sunset review and to address the recommendations of the Monitor. The following are some of the changes and enhancements that DBC had undertaken:

   - Augmentation of enforcement unit staff and restructuring of its Complaint Unit has allowed DBC to respond to consumer complaints in a timely manner and has reduced the processing times of complaints.

   - In response to concerns raised that DBC is unable to administer an adequate amount of examinations, DBC sponsored AB 1524 (Hayashi), Chapter 446, Statutes of 2010 which repeals the previous clinical and written examination administered by DBC and replaced it with a portfolio examination of an applicant's competence to practice dentistry to be administered while the applicant is enrolled in a dental school program.

   - DBC converted limited term peace officer positions to permanent full time positions.

   - New licensure, examination and permit requirements were established.

- To address issues raised by the Monitor on the lack of a case tracking system, DBC will be one of the Boards that will benefit from a new, integrated, enterprise-wide enforcement and licensing system, called BreEZe that will support applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management. According to DCA, BreEZe will replace the existing CAS, ATS, and multiple "workaround" systems with an integrated system for use by all DCA organizations. The BreEZe project was approved by the Office of the State Chief Information Officer (OCIO) in November 2009, and the Request For Proposal (RFP) for a solution vendor is currently under development.

- To address the need for tracking investigative case activity, in 2003, DBC tested a version of the Investigation Activity Reporting (IAR) program used by the Medical Board of California (MBC). According to DBC, although this demonstration version of MBC's database was intended to provide a method for managers to track casework on all cases, the system was not established in protocol and was only used sporadically. DBC's enforcement program has partnered with the MBC to utilize MBC's newest version of the IAR to track casework. This format is intended to provide information for cost recovery purposes and allow managers to better track staff performance and productivity. Transition to the new IAR was anticipated to be completed by the end of 2010.

- The Expert Reviewer rate was increased from $75 to $100. However, DBC indicates it continues to struggle to recruit experts.

- Effective August 1, 2010, a new consumer survey procedure has been adopted.

- The Disciplinary Guidelines of DBC were revised and approved by the Office of Administrative Law on December 14, 2010. The regulations became effective January 13, 2011.

- DBC's regulatory authority and responsibility was extended to all dental assisting functions. The duties and functions of unlicensed dental assistants, RDAs, RDAEFs, Dental Sedation Assistants, and Orthodontic Assistants were revised in statute.

- The Board updated its dental assisting educational requirements relating to RDA programs, infection control courses, Orthodontic Assistant Permit Courses, Dental Sedation Assistant Courses, and RDAEF programs, and is moving forward with finalizing the rulemaking process.

- The DBC updated the regulations for the minimum standards for infection control applicable to all DBC licensees and is moving forward with finalizing the rulemaking process.

4. This Measure Includes the Following Statutory Changes as Identified by This Committee During Its Oversight Hearings of March, 2011:

a) **Increases Public Membership of the DBC.** DBC's current composition of 8 professionals and 4 public members may not be in the best interest of consumer protection. DBC currently has 14 members: 8 dentists, 1 RDA, 1 RDH and 4 public members. The 8 licensed dentists, 1 RDH, 1 RDA, and 2 public members are appointed by the Governor. The Senate Rules Committee and the Speaker of the Assembly each

get 1 public member appointment. According to DBC, public membership is 29% of DBC's composition. Generally, a public member majority for occupational regulatory boards or greater representation of the public where current board membership is heavily weighted in favor of the profession is preferred for consumer protection. Since any regulatory program's (including DBC) primary purpose is to protect the public, increasing the public's representation on DBC assures the public that the professions' interests do not outweigh what is in the best interest of the public. Requiring closer parity between public and professional members is also consistent with both this Committee's and the DCA's recommendations regarding other boards that have undergone sunset review over the past 8 years. Additionally, all other health related consumer boards have no more than a simple majority of professional members or a public majority. This bill, effective January 1, 2012, would increase the membership of the DBC to 15 by adding one public member. Effective January 1, 2016, the registered dental hygienist and registered dental assistant would be replaced by public members, changing the composition of the DBC to 8 dentists and 7 public members.

b) **Deletes Existing Law Requirements on Advertising of Specialty Education and Accreditation Requirements for Specialized Areas of Dentistry.** Existing law prohibits a dentist from holding himself or herself out as a specialist, or advertising in a specialty recognition by an accredited organization, unless the practitioner completed specialty education programs approved by the American Dental Association, as specified. Additionally, existing law prohibits a dentist from representing or advertising himself or herself as accredited in a specialty area of practice unless the dentist is a member of, or credentialed by, an accredited organization recognized by DBC as a bona fide organization for an area of dental practice. This law was recently the subject of litigation in the case of *Potts v. Hamilton, 334 F.Supp.2d 1206*, and was ruled by a federal court as an unconstitutional restriction on commercial speech. According to the DBC, to prevent future litigation in this area and to mitigate costs associated with the Potts litigation (over $1.1 million), DBC is recommending that Section 651(h)(5)(A)(i) through 651(h)(5)(A)(iii) of the B&P Code be deleted from statute. DBC does not believe this is an area in which DBC needs to be involved.

c) **Requires Dentist to Post a Notice Accessible to Patients to Indicate that Dentists are Regulated by DBC.** Section 138 of the Business & Professions Code requires that DCA board and bureaus, including healing arts boards such as DBC, initiate the process of adopting regulations on or before June 30, 1999, to require its licentiates, to provide notice to their clients or customers that the practitioner is licensed by this state. A board is exempt from the requirement to adopt regulations if the board has in place, in statute or regulation, a requirement that provides for consumer notice of a practitioner's status as a licensee of this state. The purpose of this statute is to inform consumers the appropriate regulatory body that regulates a particular licensee or practitioner. Recently, the MBC promulgated regulations pursuant to Section 138 to require physicians and surgeons to inform their patients that they are licensed by the MBC, and includes the board's contact information. In the same manner, DBC should implement Section 138 and adopt regulations to require dentists to inform their patients that they are licensed by the Board.

d) **Requires Written Guidelines for Probation Assignments**. Probation cases within DBC are assigned to inspectors or investigators after taking into consideration the variety of circumstances necessitating probation, combined with the known behavior of certain

licensees. RDAs are generally assigned to inspectors, and difficult or questionable probation subjects are assigned to sworn investigative staff. According to a recent Enforcement Assessment of the DBC, there are no written guidelines on how to make probation assignments, and that probationary reports and evaluation reports have not been conducted with regularity.

e) **Ensures that the Law and Ethics Examination for Dentists Reflects Current Law and Regulation**. As part of the licensure process, a dentist must pass a California Law and Ethics examination that is developed and administered by DBC. DBC contracts with the DCA's Office of Professional Examination Services (OPES) for its examination development services. According to DBC, in FY 2006/2007 and 2007/2008, the pass rate for the Dental Law and Ethics examination was 96%, and for fiscal years 2008/2009 and 2009/2010, the pass rate increased to 98%. This pass rate is extremely high. To ensure that examination questions reflect current law and regulations, DBC should require that OPES randomize (scramble) California law and ethics examinations for dentists.

f) **Requires an Audit of DBC's Diversion Program**. DBC administers a Diversion Program intended to identify and rehabilitate dentists whose competence may be impaired due to abuse of dangerous drugs or alcohol, so that licentiates may be treated and returned to the practice of dentistry in a manner that will not endanger the public health and safety. Entry into the diversion program may be through self-referral but most participants enter the diversion program because they are under investigation by DBC and were referred by a program manager. Since 1983, the clinical management of the diversion program has been done by MAXIMUS, Inc. MAXIMUS provides the following services: medical advisors, compliance monitors, case managers, urine testing system, reporting, and record maintenance. In 2007 and 2008, this Committee held informational hearings on the Physician Diversion Program (PDP) after an audit of MBC's diversion program revealed that the MBC's program was not sufficiently protecting the public. Although the MBC voted unanimously to end the PDP on June 30, 2008, this Committee recognized the need to strengthen the diversion programs of boards that continue to administer them. As such, in 2008, SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008) became law and required the DCA to establish a Substance Abuse Coordination Committee (SACC) 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. The intent of SB 1441 was to establish common and uniform standards to govern the different health care licensing boards' diversion programs so as to maintain public confidence that these programs are truly monitoring and rehabilitating substance abusing licensees. In 2010, MAXIMUS was audited by the DCA and it was indicated that they were complying with all of the requirements of their contract; however, Committee staff had serious concerns about the completeness of this audit and the serious deficiencies which may still exist with this program. This came to light when it was found that MAXIMUS was recently testing those participants in the health boards' Diversion Programs and using inexact standards (i.e., participants were tested at a higher standard and tested negative when they should have been tested at a lower standard and may have potentially tested positive). The DCA took immediate steps to rectify this problem, but it still raises questions about the effectiveness and efficiency of MAXIMUS and those diversion programs which rely on this contractor. The DBC's Diversion Program has never been audited in its entirety since its inception. The intent of this audit is to assure that the Diversion Program is appropriately monitoring and treating participants, and determine whether it is effective in preventing

further substance abuse, and ensure that the uniform standards that were adopted pursuant to SB 1441 are being implemented.

g) **Requires all Diversion Records to be Provided to the DBC's Enforcement Program if a Licentiate Withdraws, is Terminated from the Diversion Program for Failure to Comply, or is Determined to be a Threat.** Section 1698 of the Dental Practice Act specifies that except where the licentiate presents a threat to the public's health and safety, all DBC and diversion evaluation committee records and records of proceedings pertaining to the treatment of a licentiate in a diversion program is kept confidential and are not subject to discovery or subpoena. According to DBC, current law does not allow DBC's diversion program to notify its own enforcement program when a licensee participating in diversion is not in substantial compliance. The diversion program can only provide the name of the terminated licensee and not any specifics as to why the individual was terminated from the program. This notification, DBC argues, is necessary as the information obtained in the diversion program could be used for subsequent disciplinary action by DBC.

h) **Requires Licensing and Permitting Fees of Dental Assistants to be Established by Regulation**. Current law allows the DBC to increase the fees for RDAs by board resolution. However, most licensing fees, including those of dentists, are generally increased through regulation, if the increase is within the statutory maximum.

i) **Establishes a Dental Assisting Council Provide Recommendations on Dental Assisting Matters**. Current law states legislative intent for the DBC to create and implement an effective forum where dental assistant services and regulatory oversight of dental assistants can be heard and discussed in full and where all matters relating to dental assistants can be discussed, including matters related to licensure and renewal, duties, standards or conduct and enforcement. In 2009, DBC established two groups to deal with dental assisting issues: The Dental Assisting Committee (DAC) composed of DBC members and chaired by the RDA appointee to DBC; and the Dental Assisting Forum (DAF), composed of RDAs and RDAEFs. The DAC meets at every board meeting and the DAF held short meetings in January and April 2010, and met again in January 2011. Advocates for dental assistants have indicated to Committee staff that many items that DAF members have requested be included on agendas but have been removed, requests that meetings be held in conjunction with DBC so that there can be open lines of communication and establish greater efficiency have been denied, and dental assisting issues are placed on the agenda for DBC's DAC, instead of on the DAF agenda. Additionally, it is unclear what is the DBC's policy for referring issues to the DAF and DAC, how recommendations are referred from the DAF and DAC to DBC and what kind of discretion DBC has over deciding dental assisting issues; how often are issues referred to DAF and DAC and how often are they taken up by DBC, and how often are DAF and DAC recommendations accepted. Essentially, the establishment of two groups to deal with dental assisting issues has resulted in very inefficient and ineffective process. It is also unclear why DBC established a bifurcated process for hearing dental assisting issues.

j) **Extend the Dental Corps Loan Repayment Program**. The California Dental Corps Loan Repayment Program, administered by DBC, was created in 2002 (AB 982, Chapter 1131, Statutes of 2002) to increase the number of dentists who practice in historically underserved areas by providing grants to help pay for the high cost of attending dental

school. DBC selects participants to practice in underserved areas, in practice settings with a majority of underserved patients, and gives priority consideration to applicants who are best suited to the cultural and linguistic needs of those populations and meet other related criteria. After each consecutive year of service completed, participants will receive money for loan repayment ($25,000 for the 1st year, $35,000 for the 2nd year, and $45,000 for the 3rd year) for up to three years. The law states each participant may receive no more than $105,000 over three years. The program was extended until July 1, 2012 and authorized DBC to distribute funds remaining in the account. However, due to limited participation, DBC points out that the program should be extended until DBC distributes all the remaining money in the fund.

k) **Extends the Sunset Date of the DBC**. The health and safety of consumers are protected by a well-regulated dental profession. DBC should be continued with a six-year extension of its sunset date so that this Committee may review it once again.

5. **Related Legislation.** Other sunset review bills to be presented before the Senate Business and Professions Committee include:

   a) SB 538 which deals with the Board of Registered Nursing

   b) SB 539 which deals with the Board of Vocational Nurses and Psychiatric Technicians.

   c) SB 541 which deal with the DCA and the contracting for expert consultants by the boards.

   d) SB 542 which deals with California Board of Accountancy and the Professional Fiduciaries Bureau.

   e) SB 543 which deals with the California Architects Board , Contractors State License Board, Landscape Architects Technical Committee, Board for Professional Engineers, Land Surveyors, and Geologists, State Board of Guide Dogs for the Blind, State Athletic Commission.

   f) SB 706 which deals with the Department of Real Estate and the Office of Real Estate Appraisers.

6. **Arguments in Support.** The Dental Assisting Alliance (Alliance) states that it supports replacing the Dental Assisting Forum with a Dental Assisting Council that meets in conjunction with other Board committees, and establishes the Council as the sole entity making dental assisting recommendations to the DBC. As a result, the Alliance points out, dental assisting matters will be much more efficiently and effectively integrated into the DBC's deliberations. The Alliance states that it also supports requiring dental assisting fees to be set by regulation rather than DBC resolution, so that the fee levels will be fully scrutinized during a regulatory process.

SUPPORT AND OPPOSITION:

Support: Dental Assisting Alliance

Opposition: None on file as of April 27, 2011

Consultant: Rosielyn Pulmano

AMENDED IN SENATE MAY 9, 2011

AMENDED IN SENATE APRIL 25, 2011

SENATE BILL No. 540

Introduced by Senator Price

February 17, 2011

An act to amend Sections 651, *1602, 1603,* 1628.7, 1632, 1695, 1695.5, 1725, 1752.3, 1753.4, and 1973 of, ~~to amend, repeal, and add Sections 1602 and 1603 of,~~ to add Section 1611.3 to, to repeal and amend ~~Section 1616.5~~ *Sections 1601.1 and 1616.5* of, ~~to repeal, amend, and add Section 1601.1 of,~~ and to repeal and add Section 1742 of, the Business and Professions Code, relating to dentistry.

LEGISLATIVE COUNSEL'S DIGEST

SB 540, as amended, Price. Dentistry.

Existing law, until January 1, 2012, provides for the Dental Board of California within the Department of Consumer Affairs. Existing law requires the membership of the board to consist of 8 practicing dentists, a registered dental hygienist, a registered dental assistant, and 4 public members. Existing law requires the Governor to appoint all of the members of the board, except that the Senate Committee on Rules and the Speaker of the Assembly each appoint a public member. Existing law, until January 1, 2012, allows the board, with the approval of the Director of Consumer Affairs, to appoint a person exempt from civil service as the executive officer of the board. Under existing law, boards scheduled for repeal are required to be evaluated by the Joint Sunset Review Committee.

This bill would extend the operation of those provisions until January 1, ~~2018~~ *2016*, and instead specify that the board would be subject to review by the appropriate policy committees of the Legislature. The

bill would change the membership of the board to ~~include a new public member to be appointed by the Governor, and, on and after January 1, 2016, would~~ delete the dental hygienist member and the dental assistant member and add ~~2~~ *3* additional public members to the board, to be appointed by the Governor. The bill would make technical, conforming changes to related provisions. The bill would also create a Dental Assisting Council of the board to consider matters relating to dental assistants and make recommendations to the board, as specified.

Existing law makes it unlawful for a healing arts practitioner to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. Existing law prohibits a dentist from making certain advertisements or holding himself or herself out as a specialist unless he or she meets specified criteria.

This bill would delete the advertising prohibitions described above that apply only to dentists.

Existing law requires every board in the Department of Consumer Affairs to initiate the process of adopting regulations on or before June 30, 1999, to require its licensees to provide notice to their clients or customers that the practitioner is licensed in this state, except as specified.

This bill would require the board to comply with that provision by January 1, 2013, and would set forth requirements for the notice to be adopted by the board.

Existing law authorizes the board to, upon an applicant's successful completion of the board examination, issue a probationary license to an applicant for licensure as a dentist or dental auxiliary. Existing law authorizes the board to require the applicant to comply with specified terms or conditions of a probationary license.

This bill would require the board to adopt written guidelines on how to make probation assignments and to ensure that probationary and evaluation reports are conducted consistently and regularly.

Existing law requires an applicant for licensure as a dentist to successfully complete an examination in California law and ethics developed and administered by the board.

This bill would require the board to ensure that the law and ethics examination reflects current law and regulations and that the examinations are randomized.

Existing law requires the board to establish criteria for the acceptance, denial, or termination of licentiates in a diversion program for the rehabilitation of licensees.

This bill would require the Bureau of State Audits to audit the diversion program of the board, upon a specified request by the Legislature, to be funded by moneys from the State Dentistry Fund. The bill would also make changes to the provisions that apply to a licensee who withdraws or terminates from the diversion program. The bill would provide that all diversion records for that licensee shall be provided to the board's enforcement program and may be used in any disciplinary proceeding, including if the licensee tests positive for banned substances, as specified.

Existing law provides that the amount of the fees under the Dental Practice Act that relate to the licensing and permitting of dental assistants shall be established by resolution.

This bill would instead require those fees to be established by regulation.

Existing law requires the board to extend the California Dental Corps Loan Repayment Program of 2002 and distribute the money remaining in the account only until a specified date.

This bill would instead require the moneys to be distributed until all of the moneys are expended.

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 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed.

A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

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

(1) Contains a misrepresentation of fact.

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

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

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

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

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

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

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

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

(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

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

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

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

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

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

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

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

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

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

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

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

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

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

certified" in reference to that certification is in accordance with subparagraph (A). A physician and surgeon licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement.

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

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

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

(D) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or

association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" unless the full name of the certifying board is also used and given comparable prominence with the term "board certified" in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term "board certified" in reference to that certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

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

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

SEC. 2. Section 1601.1 of the Business and Professions Code, as added by Section 3 of Chapter 31 of the Statutes of 2008, is repealed.

SEC. 3. Section 1601.1 of the Business and Professions Code, as added by Section 1 of Chapter 35 of the Statutes of 2008, is amended to read:

1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board shall consist of eight practicing dentists~~, one registered dental hygienist, one registered dental assistant, and five~~ *and seven* public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college, and one shall be a dentist practicing in

a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.

(d) This section shall remain in effect only until January 1, 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. *Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.*

~~SEC. 4. Section 1601.1 is added to the Business and Professions Code, to read:~~

~~1601.1. (a) There shall be in the Department of Consumer Affairs the Dental Board of California in which the administration of this chapter is vested. The board shall consist of eight practicing dentists and seven public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college and one shall be a dentist practicing in a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.~~

~~(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.~~

~~(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.~~

~~(d) This section shall become operative on January 1, 2016.~~

~~(e) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

~~(f) Notwithstanding any other provision of law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.~~

~~SEC. 5.~~

SEC. 4. Section 1602 of the Business and Professions Code is amended to read:

1602. (a) All of the members of the board, except the public members, shall have been actively and legally engaged in the practice of dentistry in the State of California, for at least five years next preceding the date of their appointment. ~~The dental hygienist member shall have been a registered dental hygienist, and the dental assistant member shall have been a registered dental assistant, in the State of California for at least five years next preceding the date of their appointment.~~ The public members shall not be licentiates of the board or of any other board under this division or of any board referred to in Sections 1000 and 3600. No more than one member of the board shall be a member of the faculty of any dental college or dental department of any medical college in the State of California. None of the members, including the public members, shall have any financial interest in any such college.

(b) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

~~SEC. 6. Section 1602 is added to the Business and Professions Code, to read:~~

~~1602. (a) All of the members of the board, except the public members, shall have been actively and legally engaged in the practice of dentistry in the State of California for at least five years next preceding the date of their appointment. The public members shall not be licentiates of the board or of any other board under this division or of any board referred to in Sections 1000 and 3600. No more than one member of the board shall be a member of the faculty of any dental college or dental department of any medical college in the State of California. None of the members, including the public members, shall have any financial interest in any such college.~~

~~(b) This section shall become operative on January 1, 2016.~~

~~SEC. 7.~~

SEC. 5. Section 1603 of the Business and Professions Code is amended to read:

1603. Except for the initial appointments, members of the board shall be appointed for a term of four years, and each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

A vacancy occurring during a term shall be filled by appointment for the unexpired term, within 30 days after it occurs.

No person shall serve as a member of the board for more than two terms.

The Governor shall appoint ~~three~~ *five* of the public members; ~~the dental hygienist member, the dental assistant member,~~ and the eight licensed dentist members of the board. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

Of the initial appointments, one of the dentist members and one of the public members appointed by the Governor shall serve for a term of one year. Two of the dentist members *and two of the public members* appointed by the Governor shall each serve for a term of two years. ~~One~~ *Two* of the public members and two of the dentist members appointed by the Governor shall each serve a term of three years. The ~~dental hygienist member, the dental assistant member, and the remaining three dentists~~ *remaining three dentist* members appointed by the Governor shall each serve for a term of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

~~SEC. 8. Section 1603 is added to the Business and Professions Code, to read:~~

~~1603. (a) Members of the board shall be appointed for a term of four years, and each member shall hold office until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.~~

~~(b) A vacancy occurring during a term shall be filled by appointment for the unexpired term, within 30 days after it occurs.~~

~~(c) No person shall serve as a member of the board for more than two terms.~~

~~(d) The Governor shall appoint five of the public members and the eight licensed dentist members of the board. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.~~

~~(e) This section shall become operative on January 1, 2016.~~

~~(f) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~

~~SEC. 9.~~

SEC. 6. Section 1611.3 is added to the Business and Professions Code, to read:

1611.3. The board shall comply with the requirements of Section 138 by January 1, 2013. The board shall require that the notice under that section include a provision that the board is the entity that regulates dentists and provide the telephone number and Internet address of the board. The board shall require the notice to be posted in a conspicuous location accessible to public view.

~~SEC. 10.~~

SEC. 7. Section 1616.5 of the Business and Professions Code, as added by Section 5 of Chapter 31 of the Statutes of 2008, is repealed.

~~SEC. 11.~~

SEC. 8. Section 1616.5 of the Business and Professions Code, as amended by Section 3 of Chapter 33 of the Statutes of 2008, is repealed.

~~SEC. 12.~~

SEC. 9. Section 1616.5 of the Business and Professions Code, as added by Section 2 of Chapter 35 of the Statutes of 2008, is amended to read:

1616.5. (a) The board, by and with the approval of the director, may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall remain in effect only until January 1, ~~2018~~ *2016*, and as of that date is repealed, unless a later enacted statute,

that is enacted before January 1, ~~2018~~ *2016*, deletes or extends that date.

~~SEC. 13.~~

SEC. 10. Section 1628.7 of the Business and Professions Code is amended to read:

1628.7. (a) The board may, upon an applicant's successful completion of the board examination, in its sole discretion, issue a probationary license to an applicant for licensure as a dentist or dental auxiliary. The board may require, as a term or condition of issuing the probationary license, the applicant to do any of the following, including, but not limited to:

(1) Successfully complete a professional competency examination.

(2) Submit to a medical or psychological evaluation.

(3) Submit to continuing medical or psychological treatment.

(4) Abstain from the use of alcohol or drugs.

(5) Submit to random fluid testing for alcohol or controlled substance abuse.

(6) Submit to continuing participation in a board approved rehabilitation program.

(7) Restrict the type or circumstances of practice.

(8) Submit to continuing education and coursework.

(9) Comply with requirements regarding notification to employer and changes of employment.

(10) Comply with probation monitoring.

(11) Comply with all laws and regulations governing the practice of dentistry.

(12) Limit practice to a supervised structured environment in which the licensee's activities shall be supervised by another dentist.

(13) Submit to total or partial restrictions on drug prescribing privileges.

(b) The probation shall be for three years and the licensee may petition the board for early termination, or modification of a condition of, the probation in accordance with subdivision (b) of Section 1686.

(c) The proceeding under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

(d) The board shall adopt written guidelines on how to make probation assignments and shall ensure that probationary and evaluation reports are conducted consistently and regularly.

~~SEC. 14.~~

SEC. 11. Section 1632 of the Business and Professions Code is amended to read:

1632. (a) The board shall require each applicant to successfully complete the Part I and Part II written examinations of the National Board Dental Examination of the Joint Commission on National Dental Examinations.

(b) The board shall require each applicant to successfully complete an examination in California law and ethics developed and administered by the board. The board shall provide a separate application for this examination. The board shall ensure that the law and ethics examination reflects current law and regulations. and ensure that the examinations are randomized. Applicants shall submit this application and required fee to the board in order to take this examination. In addition to the aforementioned application, the only other requirement for taking this examination shall be certification from the dean of the qualifying dental school attended by the applicant that the applicant has graduated, or will graduate, or is expected to graduate. Applicants who submit completed applications and certification from the dean at least 15 days prior to a scheduled examination shall be scheduled to take the examination. Successful results of the examination shall, as established by board regulation, remain valid for two years from the date that the applicant is notified of having passed the examination.

(c) Except as otherwise provided in Section 1632.5, the board shall require each applicant to have taken and received a passing score on one of the following:

(1) A portfolio examination of the applicant's competence to enter the practice of dentistry. This examination shall be conducted while the applicant is enrolled in a dental school program at a board-approved school located in California. This examination shall utilize uniform standards of clinical experiences and competencies, as approved by the board pursuant to Section 1632.1. The applicant shall pass a final assessment of the submitted portfolio at the end of his or her dental school program. Before any portfolio assessment may be submitted to the board, the

applicant shall remit to the board a three hundred fifty dollar ($350) fee, to be deposited into the State Dentistry Fund, and a letter of good standing signed by the dean of his or her dental school or his or her delegate stating that the applicant has graduated or will graduate with no pending ethical issues.

(A) The portfolio examination shall not be conducted until the board adopts regulations to carry out this paragraph. The board shall post notice on its Internet Web site when these regulations have been adopted.

(B) The board shall also provide written notice to the Legislature and the Legislative Counsel when these regulations have been adopted.

(2) A clinical and written examination administered by the Western Regional Examining Board, which board shall determine the passing score for that examination.

(d) Notwithstanding subdivision (b) of Section 1628, the board is authorized to do either of the following:

(1) Approve an application for examination from, and to examine an applicant who is enrolled in, but has not yet graduated from, a reputable dental school approved by the board.

(2) Accept the results of an examination described in paragraph (2) of subdivision (c) submitted by an applicant who was enrolled in, but had not graduated from, a reputable dental school approved by the board at the time the examination was administered.

In either case, the board shall require the dean of that school or his or her delegate to furnish satisfactory proof that the applicant will graduate within one year of the date the examination was administered or as provided in paragraph (1) of subdivision (c).

~~SEC. 15.~~

SEC. 12. 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 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 of California shall implement this legislation in part

by establishing a diversion program as a voluntary alternative approach to traditional disciplinary actions.

(b) If requested by the Legislature through the Joint Legislative Audit Committee in 2012, 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, 2013. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(c) The audit performed in subdivision (b) shall be paid for with moneys from the State Dentistry Fund.

~~SEC. 16.~~

SEC. 13. Section 1695.5 of the Business and Professions Code is amended to read:

1695.5. (a) The board shall establish criteria for the acceptance, denial, or termination of licentiates in a diversion program. Unless ordered by the board as a condition of licentiate disciplinary probation, only those licentiates who have voluntarily requested diversion treatment and supervision by a committee shall participate in a diversion program.

(b) A licentiate who is not the subject of a current investigation may self-refer to the diversion program on a confidential basis, except as provided in subdivision (f).

(c) A licentiate under current investigation by the board may also request entry into the diversion program by contacting the board's Diversion Program Manager. The Diversion Program Manager may refer the licentiate requesting participation in the program to a diversion evaluation committee for evaluation of eligibility. Prior to authorizing a licentiate to enter into the diversion program, the Diversion Program Manager may require

the licentiate, while under current investigation for any violations of the Dental Practice Act or other violations, to execute a statement of understanding that states that the licentiate understands that his or her violations of the Dental Practice Act or other statutes that would otherwise be the basis for discipline, may still be investigated and the subject of disciplinary action.

(d) If the reasons for a current investigation of a licentiate are based primarily on the self-administration of any controlled substance or dangerous drugs or alcohol under Section 1681 of the Business and Professions Code, or the illegal possession, prescription, or nonviolent procurement of any controlled substance or dangerous drugs for self-administration that does not involve actual, direct harm to the public, the board shall close the investigation without further action if the licentiate is accepted into the board's diversion program and successfully completes the requirements of the program. If the licentiate withdraws or is terminated from the program by a diversion evaluation committee, and the termination is approved by the program manager, the investigation shall be reopened and disciplinary action imposed, if warranted, as determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any licentiate for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) If a licentiate withdraws or is terminated from the diversion program for failure to comply or is determined to be a threat to the public or his or her own health and safety, all diversion records for that licentiate shall be provided to the board's enforcement program and may be used in any disciplinary proceeding. If a licentiate in a diversion program tests positive for any banned substance, the board's diversion program manager shall immediately notify the board's enforcement program and provide the documentation evidencing the positive test result to the enforcement program. This documentation may be used in a disciplinary proceeding.

(g) Any licentiate terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during,

and after participation in the diversion program. A licentiate who has been under investigation by the board and has been terminated from the diversion program by a diversion evaluation committee shall be reported by the diversion evaluation committee to the board.

~~SEC. 17.~~

SEC. 14. Section 1725 of the Business and Professions Code is amended to read:

1725. The amount of the fees prescribed by this chapter that relate to the licensing and permitting of dental assistants shall be established by regulation and subject to the following limitations:

(a) The application fee for an original license shall not exceed twenty dollars ($20). On and after January 1, 2010, the application fee for an original license shall not exceed fifty dollars ($50).

(b) The fee for examination for licensure as a registered dental assistant shall not exceed fifty dollars ($50) for the written examination and shall not exceed sixty dollars ($60) for the practical examination.

(c) The fee for application and for the issuance of an orthodontic assistant permit or a dental sedation assistant permit shall not exceed fifty dollars ($50).

(d) The fee for the written examination for an orthodontic assistant permit or a dental sedation assistant permit shall not exceed the actual cost of the examination.

(e) The fee for the written examination in law and ethics for a registered dental assistant shall not exceed the actual cost of the examination.

(f) The fee for examination for licensure as a registered dental assistant in extended functions shall not exceed the actual cost of the examination.

(g) The fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(h) For third- and fourth-year dental students, the fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(i) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed the actual cost of the examination.

(j) The board shall establish the fee at an amount not to exceed the actual cost for licensure as a registered dental hygienist in alternative practice.

(k) The biennial renewal fee for a registered dental assistant whose license expires on or after January 1, 1991, shall not exceed sixty dollars ($60). On or after January 1, 1992, the board may set the renewal fee for a registered dental assistant license, registered dental assistant in extended functions license, dental sedation assistant permit, or orthodontic assistant permit in an amount not to exceed eighty dollars ($80).

(*l*) The delinquency fee shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater. Any delinquent license or permit may be restored only upon payment of all fees, including the delinquency fee.

(m) The fee for issuance of a duplicate registration, license, permit, or certificate to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars ($25).

(n) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants that are not accredited by a board-approved agency, or the Chancellor's office of the California Community Colleges shall not exceed one thousand four hundred dollars ($1,400).

(o) The fee for review of each approval application for a course that is not accredited by a board-approved agency, or the Chancellor's office of the California Community Colleges shall not exceed three hundred dollars ($300).

(p) No fees or charges other than those listed in subdivisions (a) to (o), inclusive, above shall be levied by the board in connection with the licensure or permitting of dental assistants, registered dental assistant educational program site evaluations and course evaluations pursuant to this chapter.

(q) Fees fixed by the board pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(r) Fees collected pursuant to this section shall be deposited in the State Dental Assistant Fund.

~~SEC. 18.~~

SEC. 15. Section 1742 of the Business and Professions Code is repealed.

~~SEC. 19.~~

SEC. 16. Section 1742 is added to the Business and Professions Code, to read:

1742. (a) There is hereby created a Dental Assisting Council of the Dental Board of California, which shall consider all matters relating to dental assistants in this state and make appropriate recommendations to the board, including, but not limited to, the following areas:

(1) Requirements for dental assistant examination, licensure, and renewal.

(2) Standards for approval of dental assisting educational programs and courses.

(3) Allowable dental assistant duties, settings, and supervision levels.

(4) Appropriate standards of conduct and enforcement for dental assistants.

(b) The members of the council shall be appointed by the board president, and shall consist of two members of the board and five members who are either registered dental assistants or registered dental assistants in extended functions. Each member shall meet the qualifications specified in Section 1602.

(c) The council shall meet in conjunction with other board committees, and at other times as deemed necessary.

(d) Each member shall serve for a term of four years, except that, of the initial appointments of the nonboard members, one of the members shall serve a term of one year, two members shall serve a term of two years, and two members serve a term of three years.

(e) The council shall be the sole entity of the board that will provide recommendations to the board on dental assisting matters.

~~SEC. 20.~~

SEC. 17. Section 1752.3 of the Business and Professions Code is amended to read:

1752.3. (a) On and after January 1, 2010, the written examination for registered dental assistant licensure required by Section 1752.1 shall comply with Section 139.

(b) On and after January 1, 2010, the practical examination for registered dental assistant licensure required by Section 1752.1 shall consist of three of the procedures described in paragraphs (1) to (4), inclusive. The specific procedures shall be assigned by

the board, after considering recommendations of its Dental Assisting Council, and shall be graded by examiners appointed by the board. The procedures shall be performed on a fully articulated maxillary and mandibular typodont secured with a bench clamp. Each applicant shall furnish the required materials necessary to complete the examination.

(1) Place a base or liner.

(2) Place, adjust, and finish a direct provisional restoration.

(3) Fabricate and adjust an indirect provisional restoration.

(4) Cement an indirect provisional restoration.

~~SEC. 21.~~

SEC. 18. Section 1753.4 of the Business and Professions Code is amended to read:

1753.4. On and after January 1, 2010, each applicant for licensure as a registered dental assistant in extended functions shall successfully complete an examination consisting of the procedures described in subdivisions (a) and (b). On and after January 1, 2010, each person who holds a current and active registered dental assistant in extended functions license issued prior to January 1, 2010, who wishes to perform the duties specified in paragraphs (1), (2), (5), and (7) to (11), inclusive, of subdivision (b) of Section 1753.5, shall successfully complete an examination consisting of the procedures described in subdivision (b). The specific procedures shall be assigned by the board, after considering recommendations of its Dental Assisting Council, and shall be graded by examiners appointed by the board. Each applicant shall furnish the required materials necessary to complete the examination.

(a) Successful completion of the following two procedures on a patient provided by the applicant. The prepared tooth, prior to preparation, shall have had mesial and distal contact. The preparation performed shall have margins at or below the free gingival crest and shall be one of the following: ⅞ crown, ¾ crown, or full crown, including porcelain fused to metal. Alginate impression materials alone shall not be acceptable:

(1) Cord retraction of gingiva for impression procedures.

(2) Take a final impression for a permanent indirect restoration.

(b) Successful completion of two of the following procedures on a simulated patient head mounted in appropriate position and accommodating an articulated typodont in an enclosed intraoral environment, or mounted on a dental chair in a dental operatory:

(1) Place, condense, and carve an amalgam restoration.
(2) Place and contour a nonmetallic direct restoration.
(3) Polish and contour an existing amalgam restoration.
~~SEC. 22.~~
SEC. 19. Section 1973 of the Business and Professions Code is amended to read:
1973. (a) The Dentally Underserved Account is hereby created in the State Dentistry Fund.
(b) The sum of three million dollars ($3,000,000) is hereby authorized to be expended from the State Dentistry Fund on this program. These moneys are appropriated as follows:
(1) One million dollars ($1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2003. Of this amount, sixty-five thousand dollars ($65,000) shall be used by the Dental Board of California in the 2003–04 fiscal year for operating expenses necessary to manage this program.
(2) One million dollars ($1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2004. Of this amount, sixty-five thousand dollars ($65,000) shall be used by the Dental Board of California in the 2004–05 fiscal year for operating expenses necessary to manage this program.
(3) One million dollars ($1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2005. Of this amount, sixty-five thousand dollars ($65,000) shall be used by the Dental Board of California in the 2005–06 fiscal year for operating expenses necessary to manage this program.
(c) Funds placed into the Dentally Underserved Account shall be used by the board to repay the loans per agreements made with dentists.
(1) Funds paid out for loan repayment may have a funding match from foundation or other private sources.
(2) Loan repayments may not exceed one hundred five thousand dollars ($105,000) per individual licensed dentist.
(3) Loan repayments may not exceed the amount of the educational loans incurred by the dentist applicant.
(d) Notwithstanding Section 11005 of the Government Code, the board may seek and receive matching funds from foundations

and private sources to be placed into the Dentally Underserved Account. The board also may contract with an exempt foundation for the receipt of matching funds to be transferred to the Dentally Underserved Account for use by this program.

(e) Funds in the Dentally Underserved Account appropriated in subdivision (b) or received pursuant to subdivision (d) are continuously appropriated for the repayment of loans per agreements made between the board and the dentists.

(f) On or after July 1, 2010, the board shall extend the California Dental Corps Loan Repayment Program of 2002 and distribute the money remaining in the account until all the moneys in the account are expended. Regulations that were adopted by the board for the purposes of the program shall apply.

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ATTACHMENT E

April 28, 2011 Letter to Senator Price regarding SB 540

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
Dental Board of California
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The Honorable Curren D. Price, Jr.
Chair, Business, Professions and Economic Development Committee
California State Senate
State Capitol, Room 2053
Sacramento, CA 95814

Subject: Senate Bill 540 (Price), Amended April 25, 2011

Dear Senator Price:

Thank you for the opportunity to respond to amendments proposed April 25, 2011 to Senate Bill 540 relating to Dentistry. The Dental Board understands that this bill was introduced and amended to provide clarity to issues affecting the Board identified through the Sunset Review process. During that process, the Board had asked the Senate Business, Professions &Economic Development (BP&ED) Committee staff to consider deleting section 651(h) (5)(A)(i-iii) of the Business and Professions Code relating to specialty advertising. The Board has been involved in lengthy litigation over an issue relating to this section and the deletion of it will hopefully prevent future litigation. Thank you for considering our request and including this language in SB 540.

The Board will be meeting May 19-20, 2011 in San Francisco and will be discussing SB 540 in full. In the meantime, a subcommittee consisting of the Board's Vice President and Legislative/Regulatory Committee Chair, along with staff, have reviewed the bill in its current form and have identified areas that may require further clarification.

1. SEC 13. Section 1628.7(d) requires the Board to adopt written guidelines on how to make probation assignments and ensure that probationary evaluation reports are conducted consistently and regularly. To whom does this section apply – applicants, licensees, or both?

2. SEC 15. Section 1695(b), line 9 and 10 refer to protecting the public from licensees who are impaired due to alcohol or drug abuse or mental and physical illness. Currently, Business & Professions code section 1695 states that the legislative intent of the Board's diversion program is to seek ways and means to identify and rehabilitate licensees whose competency may be impaired due to abuse of dangerous drugs or alcohol and does not reference mental and physical illness. We suggest that the reference to mental and physical illness be removed from the language.

3. SEC 17. Section 1725, line 13 refers to establishing licensing and permitting fees of dental assistants by regulations rather than resolution. Is it your intent to take away the Board's authority to collect current fees until the regulations become effective? We respectfully request that you include language to ensure that the Board will be able to continue to collect fees on or after January 1, 2012; but that any <u>increase</u> in fees on or after January 1, 2012 would need to be adopted by regulation rather than resolution.

We applaud your effort to clarify issues relating to dental assisting and the establishment of an effective committee to address all issues relating to the dental assisting community. The Dental Assisting Council concept and its membership is a new issue on which the Board has not taken a position. We would appreciate further clarification of the following issues:

4. SEC 19. Section 1742(e), refers to the council as the "sole entity" of the board that will provide recommendations to the board on dental assisting matters. While we recognize that this proposed language was introduced to clarify the confusion about the relationship between the Dental Assisting Forum and the Dental Assisting Committee of the Board as noted in the background paper for the Oversight hearing, is it your intent to limit the Board's ability to hear dental assisting issues in its other committees such as Enforcement, Examinations, Licensing/Certification/Permits, and Legislation/Regulatory? Does this language prohibit the Board from seeking input from other entities outside the council on issues relating to dental assisting?

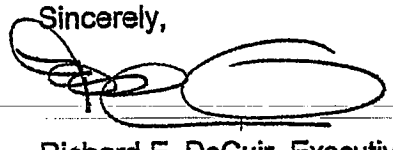
5. SEC 19. Section 1742(a)(4), line 29 refers to the council's consideration of all matters relating to appropriate standards of conduct and enforcement for dental assistants. Is it the intent of this section that the council assume disciplinary functions?

6. SEC 19. Section 1742(b), lines 34-35 refer to the qualifications of the council members. We strongly encourage the addition of conflict of interest language for council appointees.

Lastly, we have requested consideration of statutory amendments that would allow for additional enforcement methods that would assist staff in closing minor to moderate violation cases more quickly. These additional methods included specific time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. We believe that these amendments will make the Board's enforcement program more efficient and effective in addressing consumer needs. While SB 540 does not currently include this language, it is my understanding that Committee staff is aware that these enforcement alternatives have been left out of the bill, and is continuing to evaluate our request. Board staff is willing to assist in answering any questions you may have regarding the language.

Thank you for the opportunity to comment on SB 540. If you have any questions, please feel free to contact me.

Sincerely,



Richard E. DeCuir, Executive Officer

cc: Members of the Senate Business, Professions, and Economic Development Committee
Bill Gage, Chief Consultant, Senate Business, Professions, and Economic Development Committee
Members of the Dental Board of California
Brian Stiger, Senior Chief Deputy Director and Acting Director, Department of Consumer Affairs
Richard Woonacott, Deputy Director, Division of Legislative and Policy Review, Department of Consumer Affairs

AGENDA ITEM 12

SB 544: Prof. & Voc.

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	May 11, 2011
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 12:** Discussion and Possible Action Regarding SB 544 (Price), Professions and Vocations: Regulatory Boards Relating to the Consumer Health Protection Enforcement Act

Background:

As a result of concerns expressed regarding the length of time it takes healing arts boards to take disciplinary action on complaints of egregious misconduct, the Department of Consumer Affairs (Department) held an informational hearing to further investigate the allegations. The Department developed a report (*Department of Consumer Affairs "Consumer Protection Enforcement Initiative BCP Independent Verification & Validation Report, March 2010"*) regarding the existing enforcement problems and made recommendations for improving the enforcement programs of the healing arts boards. The Department also sponsored legislation, Senate Bill 1111 (Negrete McLeod), during the 2009-2010 Legislative Session to codify many of the recommendations contained within the report. However, the bill failed to pass out of Committee.

When the bill died, the Department encouraged the healing arts boards to pursue regulatory action to assist them with investigating and prosecuting complaints in a more timely manner, and to provide the boards with tools to improve the enforcement process and strengthen patient safety. As a result the Dental Board of California (Board) began promulgating regulations 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.

Staff from the Senate Business, Professions, and Economic Development Committee (Committee) contacted the Executive Officers of all the healing arts boards to set up meetings to discuss their respective proposed regulations. Richard DeCuir and Karen Fischer attended the first meeting between Committee staff and the healing arts boards on March 24, 2011 along with Department Legal Counsel. During the meeting, Committee staff provided a document containing an outline of thirty-one (31) proposed enforcement changes applicable to all healing arts boards **(Attachment A)**. Mr. DeCuir

and Ms. Fischer were advised that these proposed changes would be included in Senate Bill 544.

Senate Bill 544 (Price) Professions and vocations: regulatory boards was amended on April 14, 2011 and contains enforcement changes similar to that of Senate Bill 1111 (Negrete McLeod, 2009-2010 Legislative Session). Some of the provisions in the bill are applicable to all healing arts boards and some of the provisions are pertinent to specified healing arts boards **(Attachment B)**. Committee staff completed an analysis of the April 14, 2011 amended version of the bill **(Attachment C)**.

With the assistance of the Board's subcommittee, Dr. Bruce Whitcher and Ms. Fran Burton, Richard DeCuir, Executive Officer, prepared a letter addressed to the author, Senator Price **(Attachment D)**. The letter (1) requested additional clarification, (2) identified duplication within the proposed statutes, (3) identified fiscal impact, (4) identified previous positions taken by the Board on provisions contained within the bill, and (5) respectfully requested the ability to respond to issues regarding mandatory revocation for a sex offense and prohibition of gag orders in settlements in civil litigation at a later date. The letter was delivered to the Committee Office, as well as all of the members of the Committee on April 29, 2011.

The bill was heard in the Committee hearing on May 2, 2011 at the State Capitol. At the hearing, the Board was represented by Dr. Bruce Whitcher, Ms. Fran Burton, Richard DeCuir, and Kim Trefry. During the hearing, the bill was identified as a two-year bill and will be carried over to next year.

Attachment A:

Enforcement Changes For Healing Arts Boards

Provided by Senate Business, Professions, and Economic Development Committee Staff

Enforcement Changes for Healing Arts Boards

1. **Title and Intent – Consumer Health Protection Enforcement Act**

2. **Bureau of State Audits Review of Diversion Programs of Healing Arts Boards in 2012.**

   Justification. To ensure full implementation of SB 1441 standards and address problems encountered with the Maximus audit and drug testing requirements, this audit ensures that diversion programs are protecting the public and rehabilitating licensees.

3. **(GC) Information Provided on the Internet.** Requires healing arts boards to disclose the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the healing arts board or by the board of another state or jurisdiction. Prohibits the disclosure of personal information, including home telephone number, date of birth, or social security number.

   Justification. 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 raised by the *LA Times* 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. There were instances in which the *LA Times* looked up on the Internet or on the BRN's Website and never saw prior disciplinary or criminal convictions of nurses. This provision ensures the uniformity of information about the status of licensees that are posted on the Internet.

4. **(GC) Director's Authority to Audit Enforcement Programs of Health Boards.** Existing law authorizes the Director of DCA 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 (MBC) and the California Board of Podiatric Medicine. This bill allows the Director to audit and review the aforementioned activities for any of the healing arts boards. The Director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

   Justification. 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.

5. **(GC) Determination of Reasonable Costs by an ALJ and Payment of Costs.** Existing law allows an administrative law judge to direct a licensee who has committed a violation to pay healing arts boards a sum not to exceed the reasonable costs of the

investigation and enforcement of the case. This provision requires that in determining reasonable costs, an ALJ consider only the public resources expended pursuant to the investigation, prosecution and enforcement of the case. Requires an ALJ to provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs were not ordered. Allows a licensee and board to agree to a payment plan.

Justification. All boards are subject to cost recovery provisions. Healing arts boards have indicated to committee staff that there has been inconsistency in the manner ALJ's calculate cost recovery. These provisions will give direction to the ALJs in their determination of costs.

6. (GC) **Allow Boards to Contract with Collection Agency**. Allows a board to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts. Specifies requirements to ensure privacy of information.

   Justification. All of DCA's boards are authorized to issue administrative citations which may include an administrative fine to licensees for violations of law, and to non-licensees for unlicensed activity. However, most boards come far from ever collecting all administrative fines due to them. In order to improve effectiveness in boards' fine collection efforts, the DCA will procure a contract with a collection agency that can serve all boards. Legislation is needed to allow the DCA the ability to provide the collection agency with social security numbers.

7. (GC) **Allow Health Boards to Contract for Investigative Services provided by the Department of Justice.** Allows a healing arts board to contract with the Department of Justice to provide investigative services as determined necessary by the Executive Officer.

   Justification. 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.

8. (GC) **Create Within the Division of Investigation (DOI) a Health Quality Enforcement Unit.** Creates within DOI a special unit titled the "Health Quality Enforcement Unit" to focus on health care quality cases and to work closely with the AG's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

   Justification. 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.

9. (PA) **Allow Executive Officers (EO) to Adopt Default Decisions and Stipulated Settlements.** Allows a healing arts board to delegate to the executive officer the authority to adopt a proposed default decision in an administrative action to revoke a license if a licensee fails to file a notice of defense, appear at the hearing, or has agreed to surrender his or her license. Require the EO to report to the board the number of default decisions and stipulated settlements adopted. Requires that a stipulated settlement give notice to licensees, to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. Allows a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

Justification. 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, has 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 decision is "not rocket science" and should only take a matter of hours.

10. (PA) **Automatic Suspension of License While Incarcerated.** Provides that the license of a healing arts licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed, and requires the board to notify the licensee of the suspension and of his or her right to a specified (due process) hearing.

Justification. 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. According to the *LA Times*, "in some cases, nurses with felony records continue to have spotless licenses even while serving time behind bars." The *LA Times* gave examples of at least five nurses who had felony convictions and yet continued to have a license in good standing.

11. (PA) **Mandatory Revocation for Acts of Sexual Exploitation and Registration as Sex Offender.** States that a decision issued by an administrative law judge that contains a finding that a healing arts practitioner engaged in any act of sexual exploitation, as defined, or has committed an act or been convicted of a sex offense, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. Also, adds a new section that would require the board to deny a license to an applicant or revoke the license of a licensee who has been required to register as a sex offender.

Justification. 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. Additionally, there is a mandatory revocation for any physician and surgeon, dentist, physical therapist, or psychologist who registers as a sex offender. There is no reason why these provisions should not apply to other healing arts licensees.

12. (PA) **Prohibition of Gag Clauses in Civil Dispute Settlement Agreements.** Prohibits a healing arts licensee from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with or filing a complaint with a board based on any action arising from his or her practice.

Justification. 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 a healing arts professional.

13. (PA) **Access to Medical Records/Documents Pursuant to Board Investigations.** Authorizes the AG and his or her investigative agents and healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. Provides that any document relevant to an investigation may be inspected, and copies may be obtained where patient written authorization is given. Imposes civil and criminal penalties for licensees or health facilities for failure to comply with a patient's medical record request or with a court order mandating release of record.

Justification. Provisions authorizing the AG and its investigative agents and boards to

inquire into any alleged violations of the laws under the board's jurisdiction and to inspect documents subject to specified procedures currently exists for physicians and surgeons. Furthermore, existing law requires physicians and surgeons, dentists, and psychologists to produce medical records accompanied by a patient's written authorization and pursuant to a court order (subpoena), and prescribes penalties for failure to produce the records. When a board or the AG is trying to obtain important documents and medical records pursuant to a disciplinary action of a licensee, requirements for obtaining these documents and records should be consistent with those of other health care practitioners. Language has been included which protects those licensees who may not be responsible for medical records or have no access or control over these records. Also, medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to a board; and, (2) the board or the AG has sought a court order and the court has issued a subpoena mandating the release of records. Under both circumstances penalties would apply if the records are not supplied by those who have both possession and control over the records. There is no reason why the requirement for obtaining important medical records and documents pursuant to an investigation by a board should not uniformly apply to all healing arts boards.

14. (PA) **Access to Records/Documents from Governmental Agencies.** Requires a state agency, upon receiving a request from a board, to provide all records in the custody of the agency including but not limited to confidential reports, medical records and records related to closed or open investigations. Requires a healing arts board to maintain the confidentiality of any personal identifying information.

    Justification. When a regulatory program conducts an investigation on one of its licensees, there can be significant delays caused by the amount of time it takes to secure records from various state agencies. This proposal would solve this problem by requiring these agencies to release information relevant to investigations, upon the request of a board.

15. (PA) **Payment to Agencies for Record/Documents Received.** Requires all local and state law enforcement agencies, state and local governments, state agencies and licensed health care facilities, and employers of any licensee of a board to provide records requested prior to receiving payment from the board.

    Justification. Only a small number of external governmental agencies charges boards for producing records (i.e., Federal courts, several Los Angeles county agencies). However, under current practices, procedures involved in receiving approval for and completing the payment can delay delivery of the requested records.

16. (PA) **Employer of Health Care Practitioner Reporting Requirements.** Requires any employer of a healing arts licensee to report to the respective board the suspension or termination for cause, as defined (serious violations of professional practice), or resignation in lieu of suspension or termination, of any healing arts licensee in its employ. Requires the information reported to be confidential and not subject to discovery in civil cases, and to include the facts and circumstances of the suspension, termination or resignation. Requires a healing arts board to investigate the

circumstances underlying the report within 30 days to determine if an interim suspension order or temporary restraining order should be issued.

Justification. Currently employers of vocational nurses, psychiatric technicians and respiratory care therapists are required to report to the respective boards the suspension or termination for cause of these health care practitioners. The MBC, the Board of Podiatric Medicine, Board of Behavioral Sciences, Board of Psychology and the Dental Board also have more extensive reporting requirements for peer review bodies and hospitals which are specified in Section 805 of the B&P Code. There is no reason why the remaining healing arts boards should not have similar reporting requirements for those licensees who have been suspended or terminated from employment for serious disciplinary reasons.

17. (GC) **Annual Enforcement Reports by Boards to the Department and Legislature.** Requires healing arts boards to report annually, by October 1, to the DCA and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation for alcohol or drug abuse.

Justification. 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.

18. (GC) **Enforcement Timeframes for the Attorney General's Office.** Requires the AG's Office to serve an accusation within 60-calendar days after receipt of a request for accusation from a board; serve a default decision within 5 days following the time period allowed for the filing of a Notice of Defense and to set a hearing date within three days of receiving a Notice of Defense, unless instructed otherwise by the board.

Justification. 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.

19. (GC) **Limited License for Mental Illness/Chemical Dependency.** Grants healing arts boards the authority to provide a limited license, certificate or permit to an applicant who may be unable to practice his or her profession safely because of mental or

physical illness. Specifies requirements for the provision of limited license.

Justification. Boards lack the authority to deny a license application or compel an applicant to submit to a psychological or physical examination when the applicant's fitness to practice is compromised based on suspected mental illness or chemical dependency. Boards have the authority to deny an applicant a license for criminal convictions, dishonesty, fraud or deceit, or any act if committed by a licensee would be grounds for disciplinary action. This proposed language would solidify the Board's authority to protect the public, given the potential harm/damage to public safety of a substance abusing licensee or one with mental illness or other physical illness.

20. (PA) **Report Licensing Actions and Checking Information Maintained by the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).** Requires healing arts boards to check the NPDB and the HIPDB prior to renewing the license, certificate or permit. Allows a healing arts board to charge a fee to cover the actual costs to conduct the search. Codifies federal requirements of healing arts boards to report specific enforcement actions taken against health care practitioners.

Justification. 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.

For background purposes, the NPDB and HIPDB, managed by the Health Resources and Services Administration of the U.S. Department of Health and Human Services, serves as an electronic repository of information on adverse licensure actions, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists, and other practitioners. The legislation that led to the creation of the NPDB was enacted because the U.S. Congress believed that the increasing occurrence of medical malpractice litigation and the need to improve the quality of medical care had become nationwide problems that warranted greater efforts than any individual State could undertake. The intent is to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. The information reported to these databanks is not public information.

One of the articles published by the *LA Times* pointed out that these databanks were missing critical cases, including those who have harmed patients in California. The *LA Times* asserted that there has been sporadic reporting to these databanks, and state boards, hospitals and other entities could be missing information necessary to ensure the protection of the public.

21. (PA) **Conviction of Sexual Misconduct – Substantially Related Crime.** Provides that a conviction of sexual misconduct or a felony requiring registration as a registered sex offender shall be considered a crime substantially related to the qualifications, functions, or duties of a board license.

Justification. Existing law provides that for physicians and surgeons, dentists and other health professionals, a conviction of sexual misconduct or a felony requiring registration as a registered sex offender 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, or have been required to register as a sex offender pursuant to a felony conviction, 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.

22. (PA) **Unprofessional Conduct for Drug Related Offense.** Specifies 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.

Justification. 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.

23. (PA) **Unprofessional Conduct for Failure to Cooperate With Investigation of Board.** Specifies that failure to furnish information in a timely manner to the board or cooperate in any disciplinary investigation constitutes unprofessional conduct.

Justification. 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.

24. (GC) **Reporting by Licensee of Conviction or Disciplinary Action.** Requires a healing arts licensee to submit a written report for the following reasons: (1) the bringing of an indictment or information charging a felony against the licensee; (2) conviction of the licensee of any felony or misdemeanor; and, (3) any disciplinary action taken by another healing arts board of this state or of another state or an agency of the

federal government.

Justification. 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 been convicted of a felony or misdemeanor. There is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

25. (GC) **Report of Crime or Personal Injury Judgment by Clerk of Court.** Requires that the clerk of the court provide notice to a healing arts boards for which the licensee is licensed, if there is a 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 their negligence, error or omission in practice, or his or her rendering unauthorized professional services.

Justification. 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.

26. (GC) **Report of Felony Charges by DA, City Attorney, or Clerk of Court.** Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Justification. 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.

27. (GC) **Report of Preliminary Hearing Transcript of Felony by Clerk of Court.** Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Justification. There is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

28. (GC) **Notification of Future Arrests or Convictions from DOJ.** Requires the Department of Justice to provide reports within 30 days of subsequent arrests, convictions or other updates of licensees.

Justification. 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.

29. (GC) **Unlicensed Practice – Public Crime.** Specifies that it is a public offense, punishable by a fine not to exceed $100,000 or imprisonment, to engage in any practice, including healing arts practice, without a current and valid license.

Justification. 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.

30. (Gov't Code) **Allow Healing Arts Boards to Utilize the Vertical Enforcement and Prosecution Model.** Expands the use of the vertical enforcement and prosecution model for cases handled by all other health boards.

Justification. Allowing healing arts boards to utilize the vertical enforcement and prosecution model that currently applies to physicians and surgeons could be beneficial especially for complex types of actions.

31. **Intent Language for a New Information Technology System.** Provides that it is the intent of the Legislature that the DCA 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.

Justification. DCA's current licensing and enforcement database systems are antiquated and impede the boards' abilities to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. Implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. The Governor's 2011-2012 Budget appropriated funds for the implementation of this system.

Attachment B:

Senate Bill 544 (Price)
Professions and Vocations:
Regulatory Boards

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 add Section 1623 to the Business and Professions Code, relating to dentistry.~~ *An act to amend Sections 116, 155, 159.5, 726, 802.1, 803, 803.5, 803.6, 822, 2246, 2960.1, 4982.26, and 4992.33 of, and to add Sections 40, 42, 44, 505, 734, 735, 736, 737, 803.7, 803.8, 857, 1688, 1688.1, 1688.2, 1688.3, 1688.4, 1688.5, 1688.6, 1947.1, 1947.2, 1947.3, 1947.4, 1947.5, 1947.6, 1947.7, 1947.8, 2533.5, 2533.6, 2533.7, 2533.8, 2533.9, 2533.10, 2533.11, 2533.12, 2533.13, 2533.14, 2570.38, 2570.39, 2570.40, 2570.41, 2570.42, 2570.43, 2570.44, 2570.45, 2570.46, 2570.47, 2661.8, 2661.9, 2661.10, 2661.11, 2661.12, 2661.13, 2661.14, 2661.15, 2661.16, 2661.17, 2766, 2766.1, 2766.2, 2766.3, 2766.4, 2766.5, 2766.6, 2766.7, 2766.8, 2879.1, 2879.2, 2879.3, 2879.4, 2879.5, 2879.6, 2879.7, 2879.8, 2879.10, 2969.1, 2969.2, 2969.3, 2969.4, 3112, 3112.1, 3112.2, 3112.3, 3112.4, 3112.5, 3112.6, 3112.7, 3112.8, 3112.9, 3405, 3405.1, 3405.2, 3405.3, 3405.4, 3405.5, 3405.6, 3405.7, 3405.8, 3405.9, 3531.1, 3531.2, 3531.3, 3531.4, 3531.5, 3531.6, 3531.7, 3531.8, 3531.9, 3531.10, 3665, 3665.1, 3665.2, 3665.3, 3665.4, 3665.5, 3665.6, 3665.7, 3665.8, 3665.9, 3769.4, 3769.5, 3769.6, 3769.7, 3769.8, 3769.9, 3769.10, 4316, 4316.1, 4316.2, 4316.3, 4316.4, 4316.5, 4316.6, 4375, 4526, 4526.1, 4526.2, 4526.3, 4526.4, 4526.5, 4526.6, 4526.8, 4526.9, 4888, 4888.1, 4888.2, 4888.3, 4888.4, 4888.5, 4888.6, 4888.7, 4964.1, 4964.2, 4964.3, 4964.4, 4964.55, 4964.6, 4964.7, 4964.8, 4964.9, 4964.10, 4990.44, 4990.45, 4990.46, 4990.47, 4990.48, 4990.49, 4990.50, 4990.51, 4990.52, and 4990.53 to, to add Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Sections 2608.5 and 2660.5 of, the Business and*

Professions Code, and to add section 12529.8 to the Government Code, relating to professions and vocations.

LEGISLATIVE COUNSEL'S DIGEST

SB 544, as amended, Price. ~~Dental Board of California: collection of fees, fines, and cost recovery.~~ *Professions and vocations: regulatory boards.*

(1) Existing law provides for the licensure and regulation of profession and vocation licensees by various boards within the Department of Consumer Affairs. Within the department, there are healing arts boards and nonhealing arts boards. The department is under the control of the Director of Consumer Affairs.

This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program.

The bill would prohibit a licensee regulated by a board within the department from including certain provisions in an agreement to settle a civil litigation action arising from his or her practice, as specified.

(2) Existing law authorizes the director to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine.

This bill would additionally authorize the director or his or her designee to audit and review the aforementioned activities by any of the healing arts boards.

Existing law authorizes the director to employ investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law, the enforcement of which is charged to the department, or to any board in the department. Inspectors used by the boards are not required to be employees of the Division of Investigation, but may be employees of, or under contract to, the boards.

This bill would authorize healing arts boards to employ investigators who are not employees of the Division of Investigation, and would authorize those boards to contract for investigative services provided by the Department of Justice. The bill would also establish within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

The bill would require all healing arts boards within the department to report annually, by October 1, to the department and the Legislature certain information, including, but not limited to, the total number of complaints closed or resolved without discipline, the total number of complaints and reports referred for formal investigation, and the total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

The bill would also provide that it is an act of unprofessional conduct for any licensee of a healing arts board to fail to furnish information in a timely manner to the board or the board's investigators, or to fail to cooperate and participate in any disciplinary investigation pending against him or her, except as specified.

Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she has been convicted of a felony or misdemeanor.

This bill would expand that requirement to a licensee of any healing arts board, as specified, and would further require a report when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state or an agency of the federal government.

Existing law requires the district attorney, city attorney, and other prosecuting agencies to notify the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, and other allied health boards and the court clerk if felony charges have been filed against one of the board's licensees. Existing law also requires, within 10 days after a court judgment, the clerk of the court to report to the appropriate board when a 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 healing arts without a current and valid license, except as specified; or to fraudulently buy, sell, or obtain a license to practice healing arts. By creating new crimes, the bill would impose a state-mandated local program.

(3) Under existing law, healing arts licensees are regulated by various healing arts boards within the department. These boards are authorized to issue, deny, suspend, and revoke licenses based on various grounds and to take disciplinary action against a licensee for the failure to comply with their laws and regulations. Existing law requires or authorizes a board to appoint an executive officer to, among other things, perform duties delegated by the board.

This bill would authorize a healing arts board to delegate to its executive officer, where an administrative action has been filed by the board to revoke the license of a licensee and the licensee has failed to file a notice of defense or appear at the hearing, the authority to adopt a proposed default decision. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against the licensee or applicant.

The bill would also provide that the license of a licensee of a healing arts board shall be suspended if the licensee is incarcerated after the conviction of a felony and would require the board to notify the licensee of the suspension and of his or her right to a specified hearing. The bill would specify that no hearing is required, however, if the conviction was for a violation of federal law or state law for the use of dangerous drugs or controlled substances or specified sex offenses; a violation for the use of dangerous drugs or controlled substances would also constitute unprofessional conduct and a crime, thereby imposing a state-mandated local program.

The bill would prohibit the issuance of a healing arts license to any person who is a registered sex offender, and would provide for the revocation of a license upon the conviction of certain sex offenses, as defined. The bill would provide that the commission of, and conviction for, any act of sexual abuse, misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration as a sex offender, be considered a crime substantially related to the qualifications, functions, or duties of a healing arts licensee. The bill would impose requirements on boards with respect to individuals required to register as a sex offender.

This bill would authorize the Attorney General and his or her investigative agents and certain healing arts boards to inquire into any alleged violation of the laws under the boards' jurisdiction and to inspect documents subject to specified procedures. The bill would make the licensees of those healing arts boards or a health care facility that fails to comply with a patient's medical record request, as specified, within 15 days, or who fails or refuses to comply with a court order mandating release of records, subject to civil and criminal penalties, as specified. By creating a new crime, the bill would impose a state-mandated local program.

The bill would require the employer of certain health care licensees to report to the appropriate board within a specified timeframe information relating to a health care licensee who is suspended or terminated for cause or who resigns. The bill would require a board to investigate these reports, including the inspection and copying of certain documents relating to that suspension, termination, or resignation.

The bill would require specified healing arts boards, on or after July 1, 2013, to post on their Internet Web sites specified information in their possession, custody, or control regarding their licensees and their license status, prior discipline, and convictions.

The bill would authorize a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

(4) The bill would declare the intent of the Legislature that the Bureau of State Audits conduct a specified review of the Pharmacists Recovery Program by January 1, 2013.

(5) Existing law establishes in the Department of Justice the Health Quality Enforcement Section, whose primary responsibility is to investigate and prosecute proceedings against licensees and applicants

within the jurisdiction of the Medical Board of California and any committee of the board, the California Board of Podiatric Medicine, and the Board of Psychology.

This bill would authorize a healing arts board to utilize the services of the Health Quality Enforcement Section or licensing section. If utilized, the bill would require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

(6) The bill would delete, revise and recast various provisions of the Physical Therapy Practice Act and would make other conforming changes.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

~~Existing law, the Dental Practice Act, provides for the licensure and regulation of dentists by the Dental Board of California. Existing law establishes specified fees for licenses, permits, and certificates issued by the board. Existing law also sets forth specified fines and penalties for violations of the Dental Practice Act.~~

~~This bill would authorize the board to contract with a collection agency to collect outstanding fees, fines, or cost recovery amounts from persons who owe those moneys to the board, as specified. The bill would require the contract with a collection agency to contain specified safeguards to protect an individual's personal information from unauthorized disclosure and to provide for the liability of the collection agency for the unauthorized use or disclosure of that information.~~

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

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

SECTION 1. This act shall be known and may be cited as the Consumer Health Protection Enforcement Act.

SEC. 2. (a) The Legislature finds and declares the following:

(1) In recent years, it has been reported that many of the healing arts boards within the Department of Consumer Affairs take, on average, more than three years to investigate and prosecute violations of law, a timeframe that does not adequately protect consumers.

(2) The excessive amount of time that it takes healing arts boards to investigate and prosecute licensed professionals who have violated the law has been caused, in part, by legal and procedural impediments to the enforcement programs.

(3) Both consumers and licensees have an interest in the quick resolution of complaints and disciplinary actions. Consumers need prompt action against licensees who do not comply with professional standards, and licensees have an interest in timely review of consumer complaints to keep the trust of their patients.

(b) It is the intent of the Legislature that the changes made by this act will improve efficiency and increase accountability within the healing arts boards of the Department of Consumer Affairs, and will remain consistent with the long-held paramount goal of consumer protection.

(c) It is further the intent of the Legislature that the changes made by this act will provide healing arts boards within the Department of Consumer Affairs with the regulatory tools and authorities necessary to reduce the average timeframe for investigating and prosecuting violations of law by healing arts practitioners to between 12 and 18 months.

SEC. 3. Section 40 is added to the Business and Professions Code, to read:

40. (a) Notwithstanding any other provision of law, for purposes of a board investigation, a state agency shall, upon receiving a request in writing from a board for records about a particular licensee, immediately provide to the board all records about a licensee in the custody of the state agency, including, but not limited to, confidential records, medical records, and records related to closed or open investigations.

(b) If a state agency has knowledge that a person it is investigating is licensed by a board, the state agency shall notify the board that it is conducting an investigation against one of its 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. Section 44 is added to the Business and Professions Code, to read:

44. (a) A licensee of a board shall not include or permit to be included any of the following provisions in an agreement to settle a civil litigation action filed by a consumer arising from the licensee's practice, whether the agreement is made before or after the filing of an action:

(1) A provision that prohibits another party to the dispute from contacting or cooperating with the board.

(2) A provision that prohibits another party to the dispute from filing a complaint with the board.

(3) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board.

(b) A provision described in subdivision (a) is void as against public policy.

(c) A violation of this section constitutes unprofessional conduct and may subject the licensee to disciplinary action.

(d) If a board complies with Section 2220.7, that board shall not be subject to the requirements of this section.

SEC. 6. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director *or his or her designee* may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by ~~the Medical Board of California, the allied health professional boards, and the California Board of Podiatric Medicine~~ *any of the healing arts boards described in Division 2 (commencing with Section 500)*. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, *for their consideration.*

(b) The director shall report to the Chairpersons of the Senate *Committee on* Business ~~and~~, Professions ~~Committee~~ *and Economic Development* and the Assembly *Committee on* Health ~~Committee~~ annually~~, commencing March 1, 1995,~~ regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

SEC. 7. Section 155 of the Business and Professions Code is amended to read:

155. (a) In accordance with Section 159.5, the director may employ such investigators, inspectors, and deputies as are necessary *to* properly ~~to~~ investigate and prosecute all violations of any law, the enforcement of which is charged to the department or to any board, agency, or commission in the department.

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the

Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

(c) Investigators used by any healing arts board, as described in Division 2 (commencing with Section 500), shall not be required to be employees of the Division of Investigation and a healing arts board may contract for investigative services provided by the Department of Justice.

~~(c)~~

(d) Nothing in this section limits the authority of, or prohibits, investigators in the Division of Investigation in the conduct of inspections or investigations of any licensee, or in the conduct of investigations of any officer or employee of a board or the department at the specific request of the director or his or her designee.

SEC. 8. Section 159.5 of the Business and Professions Code is amended to read:

159.5. There is in the department the Division of Investigation. The division is in the charge of a person with the title of chief of the division. *There is in the division the Health Quality Enforcement Unit. The primary responsibility of the unit is to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards described in Section 720.*

Except as provided in Section ~~160, investigators who have the authority of peace officers,~~ *16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services,* as specified in ~~subdivision (a) of Section 160~~ *Section 160 of this code* and in subdivision ~~(a)~~ *(b)* of Section 830.3 of the Penal Code, shall be in the division and *the personnel* shall be appointed by the director.

SEC. 9. Section 505 is added to the Business and Professions Code, to read:

505. (a) Each healing arts board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:

(1) The total number of complaints closed or resolved without discipline, prior to accusation.

(2) The total number of complaints and reports referred for formal investigation.

(3) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.

(4) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.

(5) The total number of final licensee disciplinary actions taken, by category.

(6) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(7) The average time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

(8) The total number of licensees in diversion or on probation for alcohol or drug abuse, and the number of licensees successfully completing diversion programs or probation, and failing to do so, respectively.

(9) The total number of probation violation reports and probation revocation filings, and their dispositions.

(10) The total number of petitions for reinstatement, and their dispositions.

(b) "Action," for purposes of this section, includes proceedings brought by, or on behalf of, the healing arts board against licensees for unprofessional conduct that have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(c) A board that complies with Section 2313 shall not be subject to the requirements of this section.

(d) A report to be submitted pursuant to this section shall be submitted in compliance with Section 9795 of the Government Code.

(e) This section shall become inoperative on October 1, 2016.

SEC. 10. Section 726 of the Business and Professions Code is amended to read:

726. *(a)* The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division; *and* under any initiative act referred to in this division ~~and under Chapter 17 (commencing with Section 9000) of Division 3~~.

(b) For purposes of Division 1.5 (commencing with Section 475), the commission of, and conviction for, any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration pursuant to Section 290 of the Penal Code, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board described in this division.

~~This~~

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

SEC. 11. Section 734 is added to the Business and Professions Code, to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 12. Section 735 is added to the Business and Professions Code, to read:

735. A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct.

SEC. 13. Section 736 is added to the Business and Professions Code, to read:

736. (a) The use or prescribing for or administering to himself or herself of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or conviction of any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or conviction of any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct.

(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section. Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(c) A violation of subdivision (a) is a misdemeanor, and upon conviction shall be punished by a fine of up to ten thousand dollars ($10,000), or by imprisonment in the county jail of up to six months, or by both that fine and imprisonment.

SEC. 14. Section 737 is added to the Business and Professions Code, to read:

737. It shall be unprofessional conduct for any licensee of a healing arts board to fail to comply with the following:

(a) Furnish information in a timely manner to the healing arts board or the board's investigators or representatives if requested by the board.

(b) Cooperate and participate in any investigation or other regulatory or disciplinary proceeding pending against the licensee. However, this subdivision shall not be construed to deprive a

licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require a licensee to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

SEC. 15. Section 802.1 of the Business and Professions Code is amended to read:

802.1. (a) (1) ~~A physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine shall report either~~ *licensee of a healing arts board described in this division shall report any* of the following to the entity that issued his or her license:

(A) The bringing of an indictment or information charging a felony against the licensee.

(B) The conviction of the licensee, including any verdict of guilty, or plea of guilty or no contest, of any felony or misdemeanor.

(C) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government.

(2) The report required by this subdivision shall be made in writing within 30 days of the date of the bringing of the indictment or ~~information or of the conviction~~ *the charging of a felony, or of the arrest, conviction, or disciplinary action.*

(b) Failure to make a report required by this section shall be a public offense punishable by a fine not to exceed five thousand dollars ($5,000) *and shall constitute unprofessional conduct.*

SEC. 16. Section 803 of the Business and Professions Code is amended to read:

803. (a) Except as provided in subdivision (b), within 10 days after a judgment by a court of this state that a person who holds a license, certificate, or other similar authority from ~~the Board of Behavioral Sciences or from an agency mentioned in subdivision (a) of Section 800 (except a person licensed pursuant to Chapter 3 (commencing with Section 1200))~~ *a healing arts board described*

in this division, has committed a crime, or is liable for any death or personal injury resulting in a judgment for an amount in excess of thirty thousand dollars ($30,000) caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the ~~agency~~ *board* that issued the license.

SEC. 17. Section 803.5 of the Business and Professions Code is amended to read:

803.5. (a) The district attorney, city attorney, or other prosecuting agency shall notify the ~~Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, the State Board of Chiropractic Examiners, or other appropriate allied health board,~~ *appropriate healing arts board described in this division* and the clerk of the court in which the charges have been filed, of any filings against a licensee of that board charging a felony immediately upon obtaining information that the defendant is a licensee of the board. The notice shall identify the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is a licensee, and the clerk shall record prominently in the file that the defendant holds a license from one of the boards described above.

(b) The clerk of the court in which a licensee of one of the boards is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the applicable board.

SEC. 18. Section 803.6 of the Business and Professions Code is amended to read:

803.6. (a) The clerk of the court shall transmit any felony preliminary hearing transcript concerning a defendant licensee to ~~the Medical Board of California, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, or other~~

~~appropriate allied health board, as applicable,~~ *appropriate healing arts board described in this division* where the total length of the transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

(b) In any case where a probation report on a licensee is prepared for a court pursuant to Section 1203 of the Penal Code, a copy of that report shall be transmitted by the probation officer to the *appropriate healing arts* board.

SEC. 19. Section 803.7 is added to the Business and Professions Code, to read:

803.7. The Department of Justice shall ensure that subsequent reports and subsequent disposition information authorized to be issued to any board identified in Section 101 are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

SEC. 20. Section 803.8 is added to the Business and Professions Code, to read:

803.8. (a) The office of the Attorney General shall serve, or submit to a healing arts board for service, an accusation within 60 calendar days of receipt from the healing arts board.

(b) The office of the Attorney General shall serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.

(c) The office of the Attorney General shall set a hearing date within three days of receiving a notice of defense, unless the healing arts board gives the office of the Attorney General instruction otherwise.

SEC. 21. Section 822 of the Business and Professions Code is amended to read:

822. If a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

(a) Revoking the licentiate's certificate or license.

(b) Suspending the licentiate's right to practice.

(c) Placing the licentiate on probation.

(d) Taking such other action in relation to the licentiate as the licensing agency in its discretion deems proper, *including issuing a limited or restricted license.*

The licensing agency shall not reinstate a revoked or suspended certificate or license *or lift any restrictions or limitations* until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated.

SEC. 22. Section 857 is added to the Business and Professions Code, to read:

857. (a) Each healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California shall query the federal National Practitioner Data Bank prior to any of the following:

(1) Granting a license to an applicant who is currently residing in another state.

(2) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state.

(3) Granting a petition for reinstatement of a revoked or surrendered license.

(b) Notwithstanding subdivision (a), a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California may query the federal National Practitioner Data Bank prior to issuing any license.

(c) A healing arts board shall charge a fee to cover the actual cost to conduct the queries described in this section.

SEC. 23. Article 16 (commencing with Section 880) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 16. Unlicensed Practice

880. (a) (1) It is a public offense, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment, for:

(A) Any person who does not hold a current and valid license to practice a healing art under this division to engage in that practice.

(B) Any person who fraudulently buys, sells, or obtains a license to practice any healing art in this division or to violate any provision of this division.

(2) Subparagraph (A) of paragraph (1) shall not apply to any person who is already being charged with a crime under the specific healing arts licensing provisions for which he or she engaged in unauthorized practice.

(b) Notwithstanding any other provision of law, any person who is licensed under this division, and who supervises the practice of a healing art by any person who does not hold a current and valid license to practice that healing art under this division, is guilty of a public crime, punishable by a fine not to exceed one hundred thousand dollars ($100,000), by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

SEC. 24. Section 1688 is added to the Business and Professions Code, to read:

1688. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 25. Section 1688.1 is added to the Business and Professions Code, to read:

1688.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 26. Section 1688.2 is added to the Business and Professions Code, to read:

1688.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled

substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 27. Section 1688.3 is added to the Business and Professions Code, to read:

1688.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 28. Section 1688.4 is added to the Business and Professions Code, to read:

1688.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government

Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 29. Section 1688.5 is added to the Business and Professions Code, to read:

1688.5. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 30. Section 1688.6 is added to the Business and Professions Code, to read:

1688.6. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 31. Section 1947.1 is added to the Business and Professions Code, to read:

1947.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 32. Section 1947.2 is added to the Business and Professions Code, to read:

1947.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 33. Section 1947.3 is added to the Business and Professions Code, to read:

1947.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled

substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 34. Section 1947.4 is added to the Business and Professions Code, to read:

1947.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 35. Section 1947.5 is added to the Business and Professions Code, to read:

1947.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government

Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 36. Section 1947.6 is added to the Business and Professions Code, to read:

1947.6. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 1947.7 is added to the Business and Professions Code, to read:

1947.7. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by

the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 38. Section 1947.8 is added to the Business and Professions Code, to read:

1947.8. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical

disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 39. Section 2246 of the Business and Professions Code is amended to read:

2246. *(a)* Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(b) Except as otherwise provided, any proposed decision or decision issued under this article in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 40. Section 2533.5 is added to the Business and Professions Code, to read:

2533.5. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 41. Section 2533.6 is added to the Business and Professions Code, to read:

2533.6. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section

shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 42. Section 2533.7 is added to the Business and Professions Code, to read:

2533.7. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has

been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 43. Section 2533.8 is added to the Business and Professions Code, to read:

2533.8. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this Section.

SEC. 44. Section 2533.9 is added to the Business and Professions Code, to read:

2533.9. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 45. Section 2533.10 is added to the Business and Professions Code, to read:

2533.10. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 46. Section 2533.11 is added to the Business and Professions Code, to read:

2533.11. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect

to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 47. Section 2533.12 is added to the Business and Professions Code, to read:

2533.12. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall

be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 2533.13 is added to the Business and Professions Code, to read:

2533.13. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information including the name and license number in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2533.11 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 49. Section 2533.14 is added to the Business and Professions Code, to read:

2533.14. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 50. Section 2570.38 is added to the Business and Professions Code, to read:

2570.38. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 51. Section 2570.39 is added to the Business and Professions Code, to read:

2570.39. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 52. Section 2570.40 is added to the Business and Professions Code, to read:

2570.40. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled

substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 53. Section 2570.41 is added to the Business and Professions Code, to read:

2570.41. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 54. Section 2570.42 is added to the Business and Professions Code, to read:

2570.42. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government

Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 55. Section 2570.43 is added to the Business and Professions Code, to read:

2570.43. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee

is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the healing arts board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 56. Section 2570.44 is added to the Business and Professions Code, to read:

2570.44. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the

release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 57. Section 2570.45 is added to the Business and Professions Code, to read:

2570.45. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or

termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 2570.46 is added to the Business and Professions Code, to read:

2570.46. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its

possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2570.44 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the

Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 59. Section 2570.47 is added to the Business and Professions Code, to read:

2570.47. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to

practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 60. Section 2608.5 of the Business and Professions Code is repealed.

~~2608.5. Each member of the board, or any licensed physical therapist appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility providing physical therapy care, treatment or services and the physical therapy staff thereof, with respect to the physical therapy care, treatment, services, or facilities provided therein, and may inspect physical therapy patient records with respect to the care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the board to any person other than a physical therapist and shall be subject to the restrictions against disclosure described in Section 2263.~~

SEC. 61. Section 2660.5 of the Business and Professions Code is repealed.

~~2660.5. The board shall deny a physical therapist license or physical therapist assistant approval to an applicant who is required to register pursuant to Section 290 of the Penal Code. This section does not apply to an applicant who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code.~~

SEC. 62. Section 2661.8 is added to the Business and Professions Code, to read:

2661.8. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 63. Section 2661.9 is added to the Business and Professions Code, to read:

2661.9. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any

settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 64. Section 2661.10 is added to the Business and Professions Code, to read:

2661.10. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when

the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 65. Section 2661.11 is added to the Business and Professions Code, to read:

2661.11. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 66. Section 2661.12 is added to the Business and Professions Code, to read:

2661.12. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 67. Section 2661.13 is added to the Business and Professions Code, to read:

2661.13. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 68. Section 2661.14 is added to the Business and Professions Code, to read:

2661.14. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 69. Section 2661.15 is added to the Business and Professions Code, to read:

2661.15. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 2661.16 is added to the Business and Professions Code, to read:

2661.16. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information including the name and license number in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

(b) With regard to prior discipline of a licensee, whether or not the licensee or former licensee has been subject to discipline by

the board or by the board of another state or jurisdiction, as described in Section 803.1.

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2661.14 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 71. Section 2661.17 is added to the Business and Professions Code, to read:

2661.17. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical

disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 72. Section 2766 is added to the Business and Professions Code, to read:

2766. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 73. Section 2766.1 is added to the Business and Professions Code, to read:

2766.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 74. Section 2766.2 is added to the Business and Professions Code, to read:

2766.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and

no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 75. Section 2766.3 is added to the Business and Professions Code, to read:

2766.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set

forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 76. Section 2766.4 is added to the Business and Professions Code, to read:

2766.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 77. Section 2766.5 is added to the Business and Professions Code, to read:

2766.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not

limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 78. Section 2766.6 is added to the Business and Professions Code, to read:

2766.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each

day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars

($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 79. Section 2766.7 is added to the Business and Professions Code, to read:

2766.7. (a) Unless otherwise provided, on or after July 1, 2013, the board shall post on the Internet the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(1) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(3) Any felony conviction of a licensee reported to the board.

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

(5) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

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

(7) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the healing arts board and shall be adopted by regulation.

(b) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(c) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the

licensee's address, nor the city and county of the licensee's address of record.

SEC. 80. Section 2766.8 is added to the Business and Professions Code, to read:

2766.8. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation.

Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 81. Section 2879.1 is added to the Business and Professions Code, to read:

2879.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 82. Section 2879.2 is added to the Business and Professions Code, to read:

2879.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a

licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 83. Section 2879.3 is added to the Business and Professions Code, to read:

2879.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 84. Section 2879.4 is added to the Business and Professions Code, to read:

2879.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 85. Section 2879.5 is added to the Business and Professions Code, to read:

2879.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 86. Section 2879.6 is added to the Business and Professions Code, to read:

2879.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names,

except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 87. Section 2879.7 is added to the Business and Professions Code, to read:

2879.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying

the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable

to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 88. Section 2879.8 is added to the Business and Professions Code, to read:

2879.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 2879.7 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977

(Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 89. Section 2879.10 is added to the Business and Professions Code, to read:

2879.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 90. Section 2960.1 of the Business and Professions Code is amended to read:

2960.1. *(a)* Notwithstanding Section 2960, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, or with a former patient within two years following termination of therapy, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 91. Section 2969.1 is added to the Business and Professions Code, to read:

2969.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 92. Section 2969.2 is added to the Business and Professions Code, to read:

2969.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 93. Section 2969.3 is added to the Business and Professions Code, to read:

2969.3. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of

this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 94. Section 2969.4 is added to the Business and Professions Code, to read:

2969.4. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 95. Section 3112 is added to the Business and Professions Code, to read:

3112. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a certificate of registration has been filed and the registrant has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the certificate of registration has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a certificate of registration has been filed by the board and the registrant has agreed to the revocation or surrender of his or her certificate of registration.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 96. Section 3112.1 is added to the Business and Professions Code, to read:

3112.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a registrant or applicant in lieu of the issuance of an accusation or statement of issues against that registrant or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a registrant executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 97. Section 3112.2 is added to the Business and Professions Code, to read:

3112.2. (a) The certificate of registration of a registrant shall be suspended automatically during any time that the registrant is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of registration of the registrant has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the registrant in writing of the certificate of registration suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the registrant was convicted was substantially related to the qualifications, functions, or duties of a registrant, the board shall suspend the certificate of registration until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a registrant and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest

of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a registrant in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a registrant may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the registrant so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a registrant. If the conviction of a registrant who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a certificate of registration issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 98. Section 3112.3 is added to the Business and Professions Code, to read:

3112.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any

finding of fact that the registrant engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the certificate.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 99. Section 3112.4 is added to the Business and Professions Code, to read:

3112.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for registration in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is registered under this chapter, the board shall promptly revoke the certificate of registration of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the certificate of registration on probation.

(3) The board shall not reinstate or reissue the individual's certificate of registration. The board shall not issue a stay of certificate of registration denial nor place the certificate of registration on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a certificate of registration to an individual who is required to register as a sex offender shall be applicable.

SEC. 100. Section 3112.5 is added to the Business and Professions Code, to read:

3112.5. (a) Notwithstanding any other provision of law making a communication between a registrant and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any

other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a registrant, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the registrant or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from registrants in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the registrant is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a registrant for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The registrant shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other

types of documents that belong to or are controlled by a health facility or clinic.

SEC. 101. Section 3112.6 is added to the Business and Professions Code, to read:

3112.6. (a) (1) Notwithstanding any other provision of law, a registrant who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the registrant is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A registrant who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable

to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a registrant shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and

shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the certificate.

(d) A failure or refusal of a registrant to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her certificate.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a registrant who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 102. Section 3112.7 is added to the Business and Professions Code, to read:

3112.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall

be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 3112.8 is added to the Business and Professions Code, to read:

3112.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every registrant for which the board licenses:

(a) With regard to the status of every registrant, whether or not the registrant or former registrant is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a registrant reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a registrant that resulted in the termination or revocation of a registrant's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3112.6 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 104. Section 3112.9 is added to the Business and Professions Code, to read:

3112.9. (a) Unless otherwise provided, if a registrant possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the certificate or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a registrant who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a registrant's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a registrant whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the registrant by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 105. Section 3405 is added to the Business and Professions Code, to read:

3405. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 106. Section 3405.1 is added to the Business and Professions Code, to read:

3405.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 107. Section 3405.2 is added to the Business and Professions Code, to read:

3405.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled

substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 108. Section 3405.3 is added to the Business and Professions Code, to read:

3405.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 109. Section 3405.4 is added to the Business and Professions Code, to read:

3405.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government

Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 110. Section 3405.5 is added to the Business and Professions Code, to read:

3405.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee

is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 111. Section 3405.6 is added to the Business and Professions Code, to read:

3405.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist a board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the

release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, a board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records.

SEC. 112. Section 3405.7 is added to the Business and Professions Code, to read:

3405.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title

2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 3405.8 is added to the Business and Professions Code, to read:

3405.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a

temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3405.6 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or

social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 114. Section 3405.9 is added to the Business and Professions Code, to read:

3405.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation.

Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 115. Section 3531.1 is added to the Business and Professions Code, to read:

3531.1. (a) The committee may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The committee may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the committee and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 116. Section 3531.2 is added to the Business and Professions Code, to read:

3531.2. (a) Notwithstanding Section 11415.60 of the Government Code, the committee may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable committee's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable committee's Internet Web site.

(e) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed settlement agreements adopted pursuant to this section.

SEC. 117. Section 3531.3 is added to the Business and Professions Code, to read:

3531.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The committee shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The committee shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the committee shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has

been affirmed on appeal or has otherwise become final, and until further order of the committee.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the committee.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the committee when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the committee from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the committee shall not apply to proceedings conducted pursuant to this section.

SEC. 118. Section 3531.4 is added to the Business and Professions Code, to read:

3531.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 119. Section 3531.5 is added to the Business and Professions Code, to read:

3531.5. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the committee shall be subject to the following requirements:

(1) The committee shall deny an application by the individual for licensure in accordance with the procedures set forth in

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the committee shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The committee shall not stay the revocation and place the license on probation.

(3) The committee shall not reinstate or reissue the individual's license. The committee shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 120. Section 3531.6 is added to the Business and Professions Code, to read:

3531.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the committee. Members of the committee, deputies, employees, agents, the office of the Attorney General, and representatives of the committee shall

keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the committee about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the committee and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the committee or any other federal or state law, regulation, or rule relevant to the practice regulated by the committee, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of the committee, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The committee may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other

authority of the committee to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the committee in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the committee.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 121. Section 3531.7 is added to the Business and Professions Code, to read:

3531.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the committee within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the committee, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require

health care facilities to assist the committee in obtaining the patient's authorization. The committee shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee, shall pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the committee, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the committee pursuant to this section shall be deposited into the fund administered by the committee.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the committee.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If the committee complies with Section 1684.1, 2225.5, or 2969, the committee shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 122. Section 3531.8 is added to the Business and Professions Code, to read:

3531.8. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the committee the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 3531.9 is added to the Business and Professions Code, to read:

3531.9. Unless otherwise provided, on or after July 1, 2013, the committee shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the committee licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the committee.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the committee.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3531.7 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of

what types of information are not disclosed. These disclaimers and statements shall be developed by the committee and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 124. Section 3531.10 is added to the Business and Professions Code, to read:

3531.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The committee shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the committee, in the discretion of the committee. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon

a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) If the committee complies with Section 2310 it shall not be subject to the requirements of this section.

SEC. 125. Section 3665 is added to the Business and Professions Code, to read:

3665. (a) The committee may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the

hearing and a proposed default decision revoking the license has been issued.

(b) The committee may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the committee and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 126. Section 3665.1 is added to the Business and Professions Code, to read:

3665.1. (a) Notwithstanding Section 11415.60 of the Government Code, the committee may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable committee's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable committee's Internet Web site.

(e) The executive officer shall, at scheduled committee meetings, report to the committee the number of proposed settlement agreements adopted pursuant to this section.

SEC. 127. Section 3665.2 is added to the Business and Professions Code, to read:

3665.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The committee shall, immediately upon receipt of the certified copy of the record of conviction, determine whether

the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The committee shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the committee shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the committee.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the committee.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the committee when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made

suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 128. Section 3665.3 is added to the Business and Professions Code, to read:

3665.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or

attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 129. Section 3665.4 is added to the Business and Professions Code, to read:

3665.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the committee shall be subject to the following requirements:

(1) The committee shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the committee shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The committee shall not stay the revocation and place the license on probation.

(3) The committee shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the committee from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this

paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 130. Section 3665.5 is added to the Business and Professions Code, to read:

3665.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the committee and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the committee or any other federal or state law, regulation, or rule relevant to the practice regulated by the committee, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General

or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. The committee may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the committee to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the committee.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 131. Section 3665.6 is added to the Business and Professions Code, to read:

3665.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the committee together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to the

committee together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the committee, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the committee in obtaining the patient's authorization. The committee shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee, shall pay to the committee a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the committee shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the committee, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the committee a

civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board is guilty of a misdemeanor punishable by a fine payable to the committee not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the committee against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the committee constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the committee pursuant to this section shall be deposited into the fund administered by the committee.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If the committee complies with Section 1684.1, 2225.5, or 2969, the committee shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 132. Section 3665.7 is added to the Business and Professions Code, to read:

3665.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the committee the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 3665.8 is added to the Business and Professions Code, to read:

3665.8. Unless otherwise provided, on or after July 1, 2013, the committee shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the committee licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, "current accusation" means an accusation that has not been dismissed, withdrawn, or settled, and has not been

finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the committee.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 3665.8 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 134. Section 3665.9 is added to the Business and Professions Code, to read:

3665.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The committee shall

notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a committee may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the committee, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 135. Section 3769.4 is added to the Business and Professions Code, to read:

3769.4. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 136. Section 3769.5 is added to the Business and Professions Code, to read:

3769.5. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and

shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 137. Section 3769.6 is added to the Business and Professions Code, to read:

3769.6. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 138. Section 3769.7 is added to the Business and Professions Code, to read:

3769.7. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain

an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 139. Section 3769.8 is added to the Business and Professions Code, to read:

3769.8. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated

under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 140. Section 3769.9 is added to the Business and Professions Code, to read:

3769.9. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 141. Section 3796.10 is added to the Business and Professions Code, to read:

3796.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant

to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 142. Section 4316 is added to the Business and Professions Code, to read:

4316. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 143. Section 4316.1 is added to the Business and Professions Code, to read:

4316.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section

shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 144. Section 4316.2 is added to the Business and Professions Code, to read:

4316.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has

been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 145. Section 4316.3 is added to the Business and Professions Code, to read:

4316.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 146. Section 4316.4 is added to the Business and Professions Code, to read:

4316.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 147. Section 4316.5 is added to the Business and Professions Code, to read:

4316.5. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the healing arts board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 148. Section 4316.6 is added to the Business and Professions Code, to read:

4316.6. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due

regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the

penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 149. Section 4375 is added to the Business and Professions Code, to read:

4375. (a) It is the intent of the Legislature, through a request in 2012 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the Pharmacists Recovery Program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that pharmacists and intern pharmacists participating in the program are appropriately monitored, and the public is protected from pharmacists and intern pharmacists who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2013. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files.

(b) It is the intent of the Legislature that the audit shall be paid for with funds from the Pharmacy Board Contingent Fund.

SEC. 150. Section 4526 is added to the Business and Professions Code, to read:

4526. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 151. Section 4526.1 is added to the Business and Professions Code, to read:

4526.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 152. Section 4526.2 is added to the Business and Professions Code, to read:

4526.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony

for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this

subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 153. Section 4526.3 is added to the Business and Professions Code, to read:

4526.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 154. Section 4526.4 is added to the Business and Professions Code, to read:

4526.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 155. Section 4526.5 is added to the Business and Professions Code, to read:

4526.5. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members

of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation

of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 156. Section 4526.6 is added to the Business and Professions Code, to read:

4526.6. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this

time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating

the release of records to a healing arts board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types

of documents that belong to or are controlled by a health facility or clinic.

SEC. 157. Section 4526.8 is added to the Business and Professions Code, to read:

4526.8. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and the license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 4526.6 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 158. Section 4526.9 is added to the Business and Professions Code, to read:

4526.9. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The healing arts board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent

discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 159. Section 4888 is added to the Business and Professions Code, to read:

4888. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 160. Section 4888.1 is added to the Business and Professions Code, to read:

4888.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 161. Section 4888.2 is added to the Business and Professions Code, to read:

4888.2. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the

license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described

in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 162. Section 4888.3 is added to the Business and Professions Code, to read:

4888.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 163. Section 4888.4 is added to the Business and Professions Code, to read:

4888.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 164. Section 4888.5 is added to the Business and Professions Code, to read:

4888.5. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 4888.6 is added to the Business and Professions Code, to read:

4888.6. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5

(commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 166. Section 4888.7 is added to the Business and Professions Code, to read:

4888.7. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed

pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 167. Section 4964.1 is added to the Business and Professions Code, to read:

4964.1. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative

action to revoke a license has been filed by the board and the licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 168. Section 4964.2 is added to the Business and Professions Code, to read:

4964.2. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 169. Section 4964.3 is added to the Business and Professions Code, to read:

4964.3. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions,

or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 170. Section 4964.4 is added to the Business and Professions Code, to read:

4964.4. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 171. Section 4964.55 is added to the Business and Professions Code, to read:

4964.55. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant

to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 172. Section 4964.6 is added to the Business and Professions Code, to read:

4964.6. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time

allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the healing arts board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the healing arts board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 173. Section 4964.7 is added to the Business and Professions Code, to read:

4964.7. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to

the healing arts board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall

be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 174. Section 4964.8 is added to the Business and Professions Code, to read:

4964.8. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 4964.9 is added to the Business and Professions Code, to read:

4964.9. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 4964.7 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of

what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 176. Section 4964.10 is added to the Business and Professions Code, to read:

4964.10. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing

to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 177. Section 4982.26 of the Business and Professions Code is amended to read:

4982.26. *(a)* The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that

contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 178. Section 4990.44 is added to the Business and Professions Code, to read:

4990.44. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the board and the

licensee has agreed to the revocation or surrender of his or her license.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 179. Section 4990.45 is added to the Business and Professions Code, to read:

4990.45. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 180. Section 4990.46 is added to the Business and Professions Code, to read:

4990.46. (a) The license of a licensee shall be suspended automatically during any time that the licensee is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the license of the licensee has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the licensee in writing of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the licensee was convicted was substantially related to the qualifications, functions, or duties of a licensee, the board shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a licensee in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions,

or duties of a licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 181. Section 4990.47 is added to the Business and Professions Code, to read:

4990.47. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the licensee.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 182. Section 4990.48 is added to the Business and Professions Code, to read:

4990.48. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant

to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for licensure in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is licensed under this chapter, the board shall promptly revoke the license of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the license on probation.

(3) The board shall not reinstate or reissue the individual's license. The board shall not issue a stay of license denial nor place the license on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a license to an individual who is required to register as a sex offender shall be applicable.

SEC. 183. Section 4990.49 is added to the Business and Professions Code, to read:

4990.49. (a) Notwithstanding any other provision of law making a communication between a licensee and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a licensee, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the licensee or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from licensees in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the licensee is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time

allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a licensee for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The licensee shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 184. Section 4990.50 is added to the Business and Professions Code, to read:

4990.50. (a) (1) Notwithstanding any other provision of law, a licensee who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to

the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall

be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the healing arts board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 185. Section 4990.51 is added to the Business and Professions Code, to read:

4990.51. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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. Section 4990.52 is added to the Business and Professions Code, to read:

4990.52. Unless otherwise provided, on or after July 1, 2013, the board shall post on its Internet Web site the following information, including the name and license number, in its possession, custody, or control regarding every licensee for which the board licenses:

(a) With regard to the status of every license, whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice ordered pursuant to Section 23 of the Penal Code, or subject to any of the enforcement actions described in Section 803.1.

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

(c) Any felony conviction of a licensee reported to the board.

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

(e) Any malpractice judgment or arbitration award imposed against a licensee and reported to the board.

(f) Any hospital disciplinary action imposed against a licensee that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason pursuant to Section 4990.50 or 805.

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

(h) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of

what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(i) The information provided on the Internet shall be in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) and shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records.

(j) Information provided on the Internet may not include personal information, unless otherwise provided pursuant to this chapter, including the home telephone number, date of birth, or social security number. The information may not include the licensee's address, but may include the city and county of the licensee's address of record.

SEC. 187. Section 4990.53 is added to the Business and Professions Code, to read:

4990.53. (a) Unless otherwise provided, if a licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government and that license or authority is suspended or revoked outright, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing

to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 188. Section 4992.33 of the Business and Professions Code is amended to read:

4992.33. *(a)* The board shall revoke any license issued under this chapter upon a decision made in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that

contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in Section 729, when that act is with a patient, or with a former patient when the relationship was terminated primarily for the purpose of engaging in that act. The revocation shall not be stayed by the administrative law judge or the board.

(b) Except as otherwise provided, any proposed decision or decision issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision or decision shall not contain any order staying the revocation of the licensee.

(c) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 189. Section 12529.8 is added to the Government Code, to read:

12529.8. (a) Any healing arts board described in Division 2 (commencing with Section 500) of, the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall assign attorneys to work on location

at the licensing unit of the Division of Investigation of the Department of Consumer Affairs.

(b) The report requirements contained in Section 12529.7 shall apply to any healing arts board that utilizes those provisions for enforcement.

(c) This section shall not apply to any healing arts board listed in subdivision (a) of Section 12529.

SEC. 190. (a) It is the intent of the Legislature that the Department of Consumer Affairs shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees. The Legislature intends the system to be designed as an integrated system to support all business automation requirements of the department's licensing and enforcement functions.

(b) The Legislature also intends the department to enter into contracts for telecommunication, programming, data analysis, data processing, and other services necessary to develop, operate, and maintain the enterprise information technology system.

SEC. 191. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

~~SECTION 1. Section 1623 is added to the Business and Professions Code, to read:~~

~~1623. (a) Notwithstanding any other provision of law, the board may contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person who owes that money to the board, and, for those~~

~~purposes, may provide to the collection agency the personal information of that person, including his or her birth date, telephone number, and social security number. The contractual agreement shall provide that the collection agency may use or release personal information only as authorized by the contract, and shall provide safeguards to ensure that the personal information is protected from unauthorized disclosure. The contractual agreement shall hold the collection agency liable for the unauthorized use or disclosure of personal information received or collected under this section.~~

~~(b) The board shall not use a collection agency to recover outstanding fees, fines, or cost recovery amounts until the person has exhausted all appeals and the decision is final.~~

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Attachment C:

Senate Committee on Business, Professions, and Economic Development Committee Analysis

Senate Bill 544 (Price)
Professions and Vocations: Regulatory Boards

As Amended: April 25, 2011

Written by: Rosielyn Pulmano, Consultant

Hearing Date: May 2, 2011 Bill No: SB 544

SENATE COMMITTEE ON BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT
Senator Curren D. Price, Jr., Chair

Bill No: SB 544 Author: Price
As Amended: April 14, 2011 Fiscal: Yes

SUBJECT: Professions and vocations: regulatory boards

SUMMARY: Enacts the Consumer Health Protection Enforcement Act that includes various provisions affecting the investigation and enforcement of disciplinary actions against licensees of healing arts boards.

Existing law:

1) Establishes the Department of Consumer Affairs (DCA) which oversees more than 40 boards, bureaus, committees, commissions and other programs which license and regulate more than 100 businesses and 200 professional categories, including doctors, nurses, dentists, engineers, architects, contractors, cosmetologists and automotive repair facilities, and other diverse industries.

2) Establishes the Office of Attorney General (AG) for the prosecution of cases against licensees of DCA's regulatory boards and bureaus.

3) Establishes the Office of Administrative Hearings charged with hearing administrative law cases, pursuant to the Administrative Procedures Act (APA), brought by the AG's Office on behalf of DCA's regulatory boards and bureaus.

4) Requires specified boards within the DCA to disclose on the Internet information on their respective licensees, including information on the status of every license, suspensions and revocations of licenses issued and other related enforcement actions.

5) Provides under the Medical Practice Act that the Medical Board of California (MBC) shall disclose certain information about physicians and surgeons, including information on whether the licensee is in good standing, subject to a temporary restraining order, interim suspension order, or any other enforcement actions, as specified.

6) Allows the Director of the DCA to audit and review inquiries, complaints, and disciplinary proceedings regarding licensees of the MBC, and the California Board of Podiatric Medicine. Allows the Director to make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, and submit a report to the Legislature on the findings of the audit and review.

7) Establishes within the DCA, the Division of Investigation (DOI), to investigate alleged misconduct by licensees of boards. Allows the Director of the DCA to employ such investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law. States Legislative intent that inspectors used by boards are not required to be employees of the DOI, but may be either employees, or under contract to the boards.

8) Allows state departments and agencies to formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding, and specifies that the settlement may be on any terms the parties determine are appropriate. States that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

9) States that a board or an administrative law judge may issue an interim suspension order suspending any licentiate or imposing license restrictions, as specified.

10) Requires a physician and surgeon's certificate to be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed.

11) States that any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor. Defines sexual contact as sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

12) Establishes the Sex Offender Registration Act which requires specified persons for the rest of his or her life while residing in California, or while attending school or working in California, to register, as specified.

13) Prohibits a physician and surgeon from including, or permitting to include the following in a civil dispute settlement agreement: a provision that prohibits another party to the dispute from contacting or cooperating with the MBC; a provision that prohibits another party to the dispute from filing a complaint with the MBC; and, a provision that requires another party to the dispute to withdraw a complaint he or she has filed with the MBC. States that such provisions are void as against public policy, and its violation is subject to disciplinary action by the MBC.

14) Provides in the Medical Practice Act that the AG's Office and his or her investigative agents, and the MBC or the California Board of Podiatric Medicine may inquire into any alleged

violation of the Medical Practice Act or any other federal or state law, and may inspect documents relevant to those investigations according to specified procedures. Requires that the names of any patients on those records that are reviewed to remain confidential. Allows any document relevant to an investigation to be inspected, and copies may be obtained, where patient consent is given.

15) Specifies, for physicians and surgeons, dentists, and psychologists, penalties for failure to produce medical records requested pursuant to a patient's written authorization and a court order mandating release of a record. Specifies penalties for health care facilities that fail to produce medical records.

16) Requires any employer of a vocational nurse, psychiatric technician, or respiratory care therapist to report to the appropriate board the suspension or termination for cause of any licensed vocational nurse, psychiatric technician or respiratory care therapist in its employ. Defines suspension or termination for cause as suspension or termination from employment for any of the following reasons: (a) use of controlled substances or alcohol, as specified; (b) unlawful sale of controlled substances or other prescription items; (c) patient or client abuse, neglect, physical harm, or sexual contact with a patient or client; (d) falsification of medical records; (e) gross negligence or incompetence and (f) theft from patients or clients, other employees, or the employer. Makes failure to report punishable by an administrative fine not to exceed $10,000 per violation.

17) Requires peer review reporting by a peer review body, as defined, of specified actions taken against or undertaken by a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, or dentist.

18) Allows a board to order a licentiate to be examined by one or more physicians whenever it appears that any person holding a license, certificate or permit may be unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate. States that 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: revoking the licentiate's certificate or license; suspending the licentiate's right to practice; placing the licentiate on probation; and taking any other action the licensing agency deems proper.

19) Provides that a hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. Defines an accusation as a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged.

20) Establishes the federal Health Care Quality Improvement Act, administered by the U. S. Department of Health and Human Services to manage the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank which collects and releases certain information relating to the professional competence and conduct of health care professionals.

21) Specifies in the Medical Practice Act that the conviction of a charge violating any federal or state statute or regulation regulating dangerous drugs or controlled substance constitutes unprofessional conduct.

22) Requires the clerk of court to report any judgment in excess of $30,000 that is related to rendering unprofessional services by specified licensees; and to transmit felony preliminary hearing transcript against a physician and surgeon.

23) Requires the district attorney, city attorney, or other prosecuting agency to notify the MBC, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners of any filings charging a felony against a licensee, as specified.

24) Establishes a drug diversion program for osteopathic physicians and surgeons, registered nurses, dentists, pharmacists, physical therapists, physician assistants, and veterinarians.

25) Establishes a vertical enforcement and prosecution model for investigations of cases against physician and surgeons and other healing arts licensees.

26) Provides for a listing of general provisions applicable to other boards under the DCA which shall also be applicable to the Chiropractic Board which are not considered inconsistent with the Chiropractic Initiative Act.

This bill:

1) Establishes the Consumer Health Protection Enforcement Act. States Legislative findings and declarations on the need to timely investigate and prosecute licensed health care professionals who have violated the law, 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.

2) Expands the current authority of the Director of the DCA to audit the MBC, and the California Board of Podiatric Medicine to include all healing arts boards. Clarifies that the recommendations of the Director to the healing arts boards pursuant to the audit and review are for the consideration of the healing arts boards. Allows a designee of the Director to perform the audit and review.

3) Requires a state agency if it has knowledge that a person it is investigating is licensed by a board to notify the board that it is conducting an investigation against one of its licentiates. States that 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. Indicates that the state agency shall cooperate with the board in providing any requested information. Requires a board to maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this provision, and prohibits a board from sharing, selling, or transferring the information to any third party unless it is otherwise authorized by federal or state law.

4) Requires 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 to provide records to the board upon request prior to receiving payment from the board for the cost of providing the records. States that these records include, but are not limited to, confidential records, medical records, and records related to closed or open investigations.

5) Prohibits a licensee of a board from including or permitting 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: a) A provision that prohibits another party to the dispute from contacting or cooperating with the board; b) A provision that prohibits another party to the dispute from filing a complaint with the board; or c) A provision that requires another party to the dispute to withdraw a complaint he or she has filed with the board. States that any agreement that contains any of these provisions is void as against public policy, and constitutes unprofessional conduct.

6) Expands the current authority of the Director of the DCA to audit the MBC, and the California Board of Podiatric Medicine to include all healing arts boards. Clarifies that the recommendations of the Director to the healing arts boards pursuant to the audit and review are for the consideration of the healing arts boards. Allows a designee of the Director to perform the audit and review.

7) States that investigators used by the healing arts boards shall not be required to be employees of the DOI and the healing arts boards may contract for investigative services provided by the AG.

8) Establishes within the DOI the Health Quality Enforcement Unit to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards.

9) Requires each healing arts board, within DCA, to report annually to the DCA and the Legislature, not later than October 1 of each year on specific information, including information relating to complaints, accusations filed, citations issued, and number of disciplinary actions. Sunsets this report requirement on October 1, 2016.

10) Provides 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.

11) 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.

c) The use or prescribing for or administering to himself or herself of any controlled substance or the use of any of the dangerous drugs, as specified, 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 any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination, thereof. States that a violation of this provision is a misdemeanor punishable by a fine of up to $10,000, imprisonment in the county jail of up to 6 months, or both the fine and imprisonment.

12) Makes it unprofessional conduct for any licensee for failure to comply 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.

13) 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.

14) Requires the district attorney, city attorney, other prosecuting agency, or clerk of the court to notify the appropriate healing arts boards if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the healing arts board.

15) Requires the AG's Office to ensure that subsequent reports and subsequent disposition information authorized to be issued by any board, as specified, are submitted to that board within 30 days from notification of subsequent arrests, convictions, or other updates.

16) Requires the AG's Office to do the following:

a) Serve, or submit to a healing arts board for service, an accusation within 60 calendar days of 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 a notice of defense, unless the healing arts board gives the AG instruction otherwise.

17) Includes issuing a limited or restricted license in the action that existing law allows a healing arts board to take against a licentiate whose ability to practice may be impaired because of mental or physical illness.

18) Requires each healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the federal National Practitioner Data Bank (NPDB) prior to any of the following:

    a) Granting a license to an applicant who is currently residing in another state.

    b) Granting a license to an applicant who is currently or has ever been licensed as a health care practitioner in California or another state.

    c) Granting a petition for reinstatement of a revoked or surrendered license.

19) Allows a healing arts board, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to query the NPDB prior to issuing any license.

20) Requires a healing arts board to charge a fee to cover the actual cost to conduct the queries.

21) Specifies that it is a public offense, punishable by a fine not to exceed $100,000 or imprisonment, to engage in any practice including healing arts practice without a current and valid license. States that this provision applies to a licensee who supervises the practice of any person who does not hold a current and valid license to practice.

22) For specified healing arts boards, allows a healing arts board to delegate to its executive officer or executive director 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.

23) For specified healing arts boards, allows a healing arts 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.

24) For specified healing arts boards, allows 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 that licensee or applicant. Requires the settlement to include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated. Specifies that a person who enters a 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. 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.

25) For specified healing arts boards, requires the automatic suspension of any licensee who is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. Requires the healing arts board 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.

26) For specified healing arts boards, provides that a decision issued by an administrative law judge that contains a finding that a licensee or registrant has engaged in any act of sexual exploitation, as defined, with a patient, or has committed an act or been convicted of a sex offense as defined, shall contain an order of revocation. Specifies that the revocation shall not be stayed by the administrative law judge.

27) For specified healing arts boards, specifies certain requirements for healing arts board when dealing with any applicant or licensee who is required to register as a sex offender.

28) For specified healing arts boards, allows the AG and his or her investigative agents, and a healing arts board and its investigators and representatives to inquire into any alleged violation of the laws under the jurisdiction of the healing arts board or any other federal or state law, regulation, or rule relevant to the practice regulated by the healing arts board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

   a) Any document relevant to an investigation may be inspected, and copies may be obtained, where patient consent is given.

   b) 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.

29) For specified healing arts boards, specifies that where certified documents are requested from licensees in accordance with Item #28) above, by the AG, or his or her agents or deputies, or 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. States that good cause includes, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Makes failure to produce requested certified documents or copies thereof, after being informed of the required deadline, unprofessional conduct.

30) For specified healing arts boards, states that any provision of law making a communication between a licensee of a healing arts board and his or her patients a privileged communication shall not apply to investigations or proceedings conducted by a healing arts board. Requires the names of any patients whose records are reviewed to be confidential, unless specified. States that the authority to examine records of patients in the office of a licensee is limited to records of patients who have complained to the healing arts board about that licensee.

31) For specified healing arts boards, specifies that 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 healing arts board, within15 days of receiving the request and authorization, shall pay to the healing arts board a civil penalty of up to $1,000 per day for each day that the documents have not been produced after the 15th day, up to $10,000, unless the licensee is unable to provide the documents within this time period for good cause.

32) For specified healing arts boards, requires a health facility 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 healing arts board together with a notice citing this section and describing the penalties for failure to comply with this requirement. Specifies that failure to provide the authorizing patient's certified medical records to the healing arts 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 $10,000, unless the health care facility is unable to provide the documents within this time period for good cause. Requires healing arts boards to 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.

33) For specified healing arts boards, states that 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 a healing arts board, shall pay to the healing arts board a civil penalty of up to $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 $10,000, unless it is determined that the order is unlawful or invalid. Indicates that 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. Indicates that 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 $5,000, as specified. Indicates that multiple acts by a licensee in violation of this provision is punishable by a fine not to exceed $5,000 or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment. 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.

34) For specified healing arts boards, provides that 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 a healing arts board, that is accompanied by a notice citing this requirement and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to $1,000 per day for each day that the documents have not been produced, up to $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. Indicates that any health care facility that fails or refuses to comply is guilty of a misdemeanor punishable by a fine payable to the board not to exceed $5,000. Indicates that multiple acts by a health care facility in violation of this provision is punishable by a fine not to exceed $5,000, shall be reported to the State Department of Public Health, and considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

35) For specified healing arts boards, specifies that the provisions requiring the production of medical records do not apply to a licensee who does not have access to and control over certified medical records.

36) For specified healing arts boards, requires any employer of a health care licensee to report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any health care licensee in its employ within 15 business days, as specified. Indicates that this reporting requirement does not constitute a waiver of confidentiality of medical records, and that the information reported or disclosed shall be kept confidential and not subject to discovery in civil cases. States that no person shall incur any civil penalty as a result of making this report.

37) Defines, for purposes of Item #36) above, resignation, suspension or termination for cause as any of the following reasons:

   a) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

   b) Unlawful sale of a controlled substance or other prescription items.

   c) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

   d) Gross negligence or incompetence.

   e) Theft from a patient or client, any other employee, or the employer.

38) Defines, for purposes of Item #36) above, gross negligence as a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent health care 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 above standard of care.

39) Defines incompetence for purposes of Item #36) above, as the lack of possession of and the failure to exercise that degree of learning, skill, care and experience ordinarily possessed by a responsible health care licensee.

40) States that a willful failure of an employer to make a report required in Item #36) above is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation. Defines willful as knowing and intentional violation of a known legal duty. States that 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 $50,000.

41) For specified healing arts boards, provides that on or after July 1, 2013, every healing arts 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 healing arts board or by the board of another state or jurisdiction, as described; any felony conviction of a licensee reported to the healing arts board; all current accusations filed by the AG's Office; and any malpractice judgment or

arbitration award.

42) For specified healing arts boards, provides that 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, as specified. Requires 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.

43) Specifies that it is the intent of the Legislature, through a request in 2012 from the Joint Legislative Audit Committee, that the Bureau of State Audits conduct a thorough performance audit of the Pharmacists Recovery Program to evaluate the effectiveness and efficiency of the program, and make recommendations regarding the continuation of the program and any changes or reforms required to ensure that pharmacists and intern pharmacists participating in the program are appropriately monitored, and the public is protected from pharmacists and intern pharmacists who are impaired due to alcohol or drug abuse or mental or physical illness. The audit shall be completed by January 1, 2013. The board and its staff shall cooperate with the audit, and the board shall provide data, information, and case files as requested by the auditor to perform all of its duties. The provision of confidential data, information, and case files by the board to the auditor shall not constitute a waiver of any exemption from disclosure or discovery or of any confidentiality protection or privilege otherwise provided by law that is applicable to the data, information, or case files. Provides that it is the intent of the Legislature that the audit shall be paid for with funds from the Pharmacy Board Contingent Fund.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. **Purpose.** The Author is the Sponsor of this measure. The Author states that this bill provides healing arts boards several tools to improve their enforcement process and ensure patient safety. According to the author, some of DCA's healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner, and are taking an average of three years or more to investigate and prosecute these cases. The author points out that this is an unacceptable timeframe given that the highest priority of these boards is the protection of the public.

2. **Background.** On July 11, 2009, the *Los Angeles Times*, in conjunction with Pro-Publica, a nonprofit investigative news agency, published an article entitled "*When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer*," charging that the BRN, which oversees California's more than 350,000 nurses, often takes years to act on complaints of egregious misconduct. The article indicated that nurses with histories of drug abuse, negligence, violence, and incompetence continue to provide care, and BRN often took more than three years on average to investigate and discipline errant nurses. The article also pointed out that complaints often take a circuitous route through several clogged bureaucracies; the BRN failed to act against nurses who have been sanctioned by others and failed to use its authority to immediately suspend dangerous nurses from practicing; there were failures in the probation monitoring of troubled nurses; there is a lack of reporting requirement for hospitals to report nurses who have been fired or suspended for harming a patient or other serious

misconduct similar to what is required of vocational nurses, psychiatric technicians and respiratory care therapists; and, nurses convicted of crimes, including sex offenses and attempted murder continue to be licensed. On July 25, 2009, the *LA Times* published another article on the failures of BRN's drug diversion program. This article pointed out that participants in the program continue to practice while intoxicated, stole drugs from the bedridden and falsified records to cover their tracks. Moreover, more than half of those participating in drug diversion did not complete the program, and even those who were labeled as "public risk" or are considered dangerous to continue to treat patients did not trigger immediate action or public disclosure by BRN. The article further pointed out that because the program is confidential, it is impossible to know how many enrollees relapse or harm patients. But the article points out that a review of court and regulatory records filed since 2002, as well as interviews with diversion participants, regulators and experts suggests that dozens of nurses have not upheld their end of the bargain and oversight is lacking. These revelations, including other articles revealing lengthy enforcement timeframes against problem nurses who continue to practice and provide care to the detriment of patients, led Governor Schwarzenegger to replace four members of the BRN and appoint members to two long-time vacancies.

On July 27, 2009, DCA convened a meeting for the purpose of taking testimony and evidence relevant to the BRN enforcement program. BRN's discussion focused on its proposals that were contained in the "*Enforcement Report On the Board of Registered Nursing.*" The report pointed out several barriers to BRN's enforcement process, but specifically indicated that for the board's diversion program, when a substance abuse case is referred to the diversion program, the investigation is placed on hold while the licensee decides if he/she wants to enter diversion. This practice allows the licensee to delay final disposition of the case. In addition, there is limited communication between the diversion program and the enforcement program which can delay investigation of licensees who are unsuccessfully diverted and are terminated from the program, and that the BRN lacks a number of enforcement tools, including the ability to automatically suspend licensees pending a hearing.

On August 17, 2009, this Committee held an informational hearing entitled "*Creating a Seamless Enforcement Program for Consumer Boards*" and investigated many of the problems pointed out by the LA Times, as well as others related to the BRN and other healing arts boards. A Background Paper was prepared for the hearing which pointed out many of the existing problems and made specific recommendations for improving the enforcement programs of the healing arts boards. This bill codifies many of the recommendations listed in the Background Paper for the informational hearing and well as other recommendations proposed by the DCA.

3. **Previous Legislation.** SB 1111 (Negrete McLeod) of 2010, contained many of the provisions that are codified in this bill. SB 1111 failed passage in this Committee.

4. **The Following Provisions have General Application to All the Healing Arts Boards.**

   a) **Access to Records/Documents from Governmental Agencies.** Requires a state agency, upon receiving a request from a board, to provide all records in the custody of the agency including but not limited to confidential reports, medical records and records related to closed or open investigations. Requires a healing arts board to maintain the confidentiality of any personal identifying information.

Justification. When a regulatory program conducts an investigation on one of its licensees, there can be significant delays caused by the amount of time it takes to secure records from various state agencies. This proposal would solve this problem by requiring these agencies to release information relevant to investigations, upon the request of a board.

b) **Payment to Agencies for Record/Documents Received.** Requires all local and state law enforcement agencies, state and local governments, state agencies and licensed health care facilities, and employers of any licensee of a board to provide records requested prior to receiving payment from the board.

Justification. Only a small number of external governmental agencies charges boards for producing records (i.e., Federal courts, several Los Angeles county agencies). However, under current practices, procedures involved in receiving approval for and completing the payment can delay delivery of the requested records.

c) **Prohibition of Gag Clauses in Civil Litigation Action.** Prohibits a healing arts licensee from including, or permitting to be included, any provision in a civil dispute settlement agreement which would prohibit a person from contacting, cooperating with or filing a complaint with a board based on any action arising from his or her practice.

Justification. 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.

d) **Director's Authority to Audit Enforcement Programs of Health Boards.** Existing law authorizes the Director of DCA 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 (MBC) and the California Board of Podiatric Medicine. This bill allows the Director to audit and review the aforementioned activities for any of the healing arts boards. The Director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

Justification. 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.

e) **Allow Health Boards to Contract for Investigative Services provided by the Department of Justice.** Allows a healing arts board to contract with the Department of Justice to provide investigative services as determined necessary by the Executive Officer.

Justification. 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.

f) **Create Within the Division of Investigation (DOI) a Health Quality Enforcement Unit.** Creates within DOI a special unit titled the "Health Quality Enforcement Unit" to focus on health care quality cases and to work closely with the AG's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

Justification. 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.

g) **Annual Enforcement Reports by Boards to the Department and Legislature.** Requires healing arts boards to report annually, by October 1, to the DCA and the Legislature certain information, including, but not limited to, the total number of consumer calls received by the board, the total number of complaint forms received by the board, the total number of convictions reported to the board, and the total number of licensees in diversion or on probation for alcohol or drug abuse.

Justification. 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.

h) **Conviction of Sexual Misconduct – Substantially Related Crime.** Provides that a conviction of sexual misconduct or a felony requiring registration as a registered sex offender shall be considered a crime substantially related to the qualifications, functions, or duties of a board license.

Justification. Existing law provides that for physicians and surgeons, dentists and other health professionals, a conviction of sexual misconduct or a felony requiring registration as a registered sex offender 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, or have been required to register as a sex offender pursuant to a felony conviction, 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.

i) **Unprofessional Conduct for Drug Related Offense**. Specifies 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.

Justification. 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.

j) **Unprofessional Conduct for Failure to Cooperate With Investigation of Board.** Specifies that failure to furnish information in a timely manner to the board or cooperate in any disciplinary investigation constitutes unprofessional conduct.

Justification. 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.

k) **Reporting by Licensee of Disciplinary Action.** Requires a healing arts licensee to submit a written report for any disciplinary action taken by another licensing authority or authority of this state or of another state or an agency of the federal government and any indictment or information charging a felony against the licensee or any conviction of a crime.

Justification. 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 been convicted of a felony or misdemeanor. There is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

l) **Report of Crime or Personal Injury Judgment by Clerk of Court.** Requires that the clerk of the court provide notice to a healing arts board for which the licensee is licensed, if there is a 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 their negligence, error or omission in

practice, or his or her rendering unauthorized professional services.

Justification. 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.

m) **Report of Felony Charges by DA, City Attorney, or Clerk of Court.** Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Justification. 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.

n) **Report of Preliminary Hearing Transcript of Felony by Clerk of Court.** Requires that any filings of charges of a felony be reported to all appropriate healing arts boards for which the licensee is licensed.

Justification. There is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

o) **Notification of Subsequent Reports and Subsequent Disposition Information by DOJ.** Requires the Department of Justice to provide notification within 30 days of subsequent reports and subsequent disposition information or other updates of licensees to boards.

Justification. 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.

p) **Enforcement Timeframes for the Attorney General's Office.** Requires the AG's Office to serve an accusation within 60-calendar days after receipt of a request for accusation from a board; serve a default decision within 5 days following the time period allowed for the filing of a Notice of Defense and to set a hearing date within three days of receiving a Notice of Defense, unless instructed otherwise by the board.

Justification. 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.

q) **Clarifies that a board has an option to issue a limited or restricted license to a licentiate whose ability to practice may be impaired because of mental or physical illness.**

Justification. Existing law allows healing arts boards to revoke, suspend, place on probation or take any other appropriate action against a licensee if the licensee's ability to practice his or her profession safely is impaired because of mental or physical illness affecting competency. According to the Legislative Counsel, the Americans with Disabilities Act prohibits discrimination against disabled persons by public entities, and that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, including a public entity that administers a licensing program. Although healing arts boards are authorized to issue a probationary license to licensees with physical or mental illness, some licensees disfavor the use of the term probationary license because of the negative implication associated with probation. The clarification contained in this bill does not require a healing arts board to issue limited or restricted license, but instead enumerates that these are options for a healing arts board to take against a licensee with physical or mental illness affecting competency to practice.

r) **Checking Information Maintained by the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB).** Requires healing arts boards to check the NPDB and the HIPDB under the following conditions: (1) Prior to 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. Allows a healing arts board to query the NPDB prior to issuing any license. Allows a healing arts board to charge a fee to cover the actual costs to conduct the search.

Justification. 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.

For background purposes, the NPDB and HIPDB, managed by the Health Resources and Services Administration of the U.S. Department of Health and Human Services, serves as an electronic repository of information on adverse licensure actions, certain actions restricting clinical privileges, and professional society membership actions taken against physicians, dentists, and other practitioners. The legislation that led to the creation of the NPDB was enacted because the U.S. Congress believed that the increasing occurrence of medical malpractice litigation and the need to improve the quality of medical care had become nationwide problems that warranted greater efforts than any individual State could undertake. The intent is to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from

State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. The information reported to these databanks is not public information.

One of the articles published by the *LA Times* pointed out that these databanks were missing critical cases, including those who have harmed patients in California. The *LA Times* asserted that there has been sporadic reporting to these databanks, and state boards, hospitals and other entities could be missing information necessary to ensure the protection of the public.

s) **Unlicensed Practice – Public Crime.** Specifies that it is a public offense, punishable by a fine not to exceed $100,000 or imprisonment, to engage in any practice, including healing arts practice, without a current and valid license.

Justification. 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.

t) **Allow Healing Arts Boards to Utilize the Vertical Enforcement and Prosecution Model.** Expands the use of the vertical enforcement and prosecution model for cases handled by all other health boards.

Justification. Allowing healing arts boards to utilize the vertical enforcement and prosecution model that currently applies to physicians and surgeons could be beneficial especially for complex types of actions.

u) **Intent Language for a New Information Technology System.** Provides that it is the intent of the Legislature that the DCA 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.

Justification. DCA's current licensing and enforcement database systems are antiquated and impede the boards' abilities to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. Implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. The Governor's 2011-2012 Budget appropriated funds for the implementation of this system.

5. **The Following Provisions Have Been Placed Into Individual Practice Acts of Healing Arts Boards.**

   a) **Allow Executive Officers (EO) to Adopt Default Decisions and Stipulated Settlements.** Allows a healing arts board to delegate to the executive officer the authority to adopt a proposed default decision in an administrative action to revoke a license if a licensee fails to file a notice of defense, appear at the hearing, or has agreed to surrender his or her license. Require the EO to report to the board the number of default decisions and stipulated settlements adopted. Requires that a stipulated settlement give notice to licensees, to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. Allows a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

   Justification. 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, has 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 decision is "not rocket science" and should only take a matter of hours.

   Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

   - Dental Board of California
   - Dental Hygiene Committee within the Dental Board of California
   - Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
   - The California Board of Occupational Therapy
   - Physical Therapy Board of California
   - Board of Registered Nursing
   - Board of Vocational Nursing and Psychiatric Technicians
   - Psychology Board of California
   - The State Board of Optometry
   - The Physician Assistant Committee within the Medical Board of California
   - The Naturopathic Medicine Committee within the Osteopathic Medical Board
   - Respiratory Care Board of California
   - California State Board of Pharmacy

- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

b) **Automatic Suspension of License While Incarcerated.** Provides that the license of a healing arts licensee shall be suspended automatically if the licensee is incarcerated after the conviction of a felony, regardless of whether the conviction has been appealed, and requires the board to notify the licensee of the suspension and of his or her right to a specified (due process) hearing.

Justification. 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.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

c) **Mandatory Revocation for Sexual Acts and Registration as Sex Offender.** States that a decision issued by an administrative law judge that contains a finding that a healing arts practitioner engaged in any act of sexual contact with a patient, or any finding that the licensee has committed a sex offense, as defined, shall contain an order of revocation. Also, adds a new section that would require the board to deny a license to an applicant or revoke the license of a licensee who has been required to register as a sex offender.

Justification. 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.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Medical Board of California (Sex Offense Provision Only)
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Psychology (Sex Offense Provision Only)
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

d) **Access to Medical Records/Documents Pursuant to Board Investigations.** Authorizes the AG and his or her investigative agents and healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. Provides that any document relevant to an investigation may be inspected, and copies may be obtained where patient written authorization is given. Imposes civil and criminal penalties for licensees or health facilities for failure to comply with a patient's medical record request or with a court order mandating release of record.

Justification. Provisions authorizing the AG and its investigative agents and boards to inquire into any alleged violations of the laws under the board's jurisdiction and to inspect documents subject to specified procedures currently exists for physicians and surgeons. Furthermore, existing law requires physicians and surgeons, dentists, and psychologists to produce medical records accompanied by a patient's written authorization and pursuant to a court order (subpoena), and prescribes penalties for failure to produce the records. When a board or the AG is trying to obtain important documents and medical records pursuant to a disciplinary action of a licensee, requirements for obtaining these documents and records should be consistent with those of other health care practitioners. Language has been included which protects those licensees who may not be responsible for medical records or have no access or control over these records. Also, medical records can only be obtained under two circumstances: (1) The patient has given written authorization for release of the records to a board; and, (2) the board or the AG has sought a court order and the court

has issued a subpoena mandating the release of records. Under both circumstances penalties would apply if the records are not supplied by those who have both possession and control over the records. There is no reason why the requirement for obtaining important medical records and documents pursuant to an investigation by a board should not uniformly apply to all healing arts boards.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

e) **Employer of Health Care Practitioner Reporting Requirements.** Requires any employer of a healing arts licensee to report to the respective board the suspension or termination for cause, as defined (serious violations of professional practice), or resignation in lieu of suspension or termination, of any healing arts licensee in its employ. Requires the information reported to be confidential and not subject to discovery in civil cases, and to include the facts and circumstances of the suspension, termination or resignation. Requires a healing arts board to investigate the circumstances underlying the report within 30 days to determine if an interim suspension order or temporary restraining order should be issued.

Justification. Currently employers of vocational nurses, psychiatric technicians and respiratory care therapists are required to report to the respective boards the suspension or termination for cause of these health care practitioners. The MBC, the Board of Podiatric Medicine, Board of Behavioral Sciences, Board of Psychology and the Dental Board also have more extensive reporting requirements for peer review bodies and hospitals which are specified in Section 805 of the B&P Code. There is no reason why the remaining healing arts boards should not have similar reporting requirements for those licensees who have been suspended or terminated from employment for serious disciplinary reasons.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- The State Board of Optometry

- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

f) **Information Provided on the Internet.** Requires healing arts boards to disclose the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the healing arts board or by the board of another state or jurisdiction. Prohibits the disclosure of personal information, including home telephone number, date of birth, or social security number.

Justification. 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.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Psychology
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

g) **Automatic Suspension of License if Another State or Agency Revokes of Suspends the Licensee.** Requires the automatic suspension of a licensee if another regulatory/licensing authority of this state, another state or an agency of the federal government suspends or revokes the license of a healing arts practitioner. Specifies due process provisions.

Justification. 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.

Pertains to the Following Boards: This provision will affect the following healing arts boards under their specific Practice Act:

- Dental Board of California
- Dental Hygiene Committee within the Dental Board of California
- Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board
- The California Board of Occupational Therapy
- Physical Therapy Board of California
- Board of Registered Nursing
- Board of Vocational Nursing and Psychiatric Technicians
- The State Board of Psychology
- The State Board of Optometry
- The Physician Assistant Committee within the Medical Board of California
- The Naturopathic Medicine Committee within the Osteopathic Medical Board
- Respiratory Care Board of California
- California State Board of Pharmacy
- The Veterinary Medical Board
- The Acupuncture Board
- The Board of Behavioral Sciences

h) **Bureau of State Audits Review of the Pharmacists Recovery Program in 2012.**

Justification. 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 Pharmacists Recovery Program is protecting the public and rehabilitating licensees.

6. **Oppose Unless Amended.** The California Nurses Association (CNA) has taken an oppose unless amended position on the following provisions of this bill:

a) Access to records. CNA states that the bill's proposal to require state agencies, state and local governments, law enforcement agencies, health care facilities, and employers to turn over records pertaining to licensees is broad, and raises privacy concerns.

b) Reporting of Charges. CNA is concern that licensees are being required to report charges to the board, particularly when there is not a subsequent conviction as this raises due process concerns.

c) Alcohol and Unprofessional Conduct. CNA's concern is how this bill will be implemented.

d) Restricted or limited license. CNA states it is unclear as to how or why the board would implement a limited or restricted license for registered nurses.

e) Required Actions Against Sex offenders. CNA states it is unclear why this bill would give a sex offender who is required to be a sex offender because of a misdemeanor conviction [of indecent exposure] an exemption from the requirement to deny licensure application, or to revoke licensure.

f) Internet Disclosures. These provisions are overly broad, the necessity of the postings is unclear, and the disclosures would be punitive and unfair toward licensees.

g) Attorney General Timeframes. It is unclear if the timelines are realistic and can actually be implemented.

h) Supervising Unlicensed Practice. As employees, registered nurses generally do not make decisions on the hiring of other nurses, and do not generally have control over who the employer requires a nurse to supervise. CNA states that this language should be amended to apply to facilities or independent practitioners who employ persons unlawfully engaging in unlicensed practice, or who knowingly aid and abet unlicensed practice.

SUPPORT AND OPPOSITION:

Support: None on file as of April 27, 2011

Oppose Unless Amended:

California Nurses Association

Oppose:

Non on file as of April 27, 2011.

Consultant: Rosielyn Pulmano

Attachment D:

Letter Addressed to Senator Price Regarding Senate Bill 544

STATE OF CALIFORNIA
dca
ARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
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April 28, 2011

The Honorable Curren D. Price, Jr.
Chair, Business, Professions and Economic Development Committee
California State Senate
State Capitol, Room 2053
Sacramento, CA 95814

Subject: Senate Bill 544 (Price): April 14, 2011 Amended Version

Dear Senator Price:

Thank you for introducing Senate Bill 544 as amended. The enactment 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 success of reducing the timeframes for investigation and prosecution of violations is directly related to the ability of the Board to hire the allocated Consumer Protection Enforcement Initiative (CPEI) positions. The Board is currently unable to fill six (6) vacant positions due to the Governor's Executive Order relative to hiring, therefore some contingency provision may be necessary. Additionally, while the Board may intend to reduce the timeframe of investigating and prosecuting a case, it will be unable to control the ability of the Department of Justice to meet the necessary timeframes.

Since the Board does not meet until the end of May, this letter does not reflect an official Board position, rather it identifies provisions contained within the bill that: (1) may require additional clarification, (2) are duplicative of current provisions in the Act, and (3) may fiscally impact the Board's operations. Additionally, the Board has previously taken positions on similar provisions contained within Senate Bill 1111 (Negrete McLeod) from the 2009-2010 Legislative Session and the Consumer Protection Enforcement Initiative issued by the Department of Consumer Affairs (Department).

Additional Clarification Requested:

The Legislative findings and declarations specify that it is the Legislature's intent to reduce the timeframe for investigating and prosecuting violations of the law to between 12 and 18 months. However, it may be necessary to clarify if the 12 to 18 month timeframe begins at the time a complaint is filed with the Board, or if it begins from the time a complaint is found to warrant an investigation.

Business and Professions Code Sections 40 and 42 require state agencies to immediately provide records requested by the Board prior to payment. However, the proposed addition does not define "immediate". Existing law, Business and Professions Code Section 1684.1, requires licensees to provide records requested by the Board within 15 days of receipt of the request or face a civil penalty. Additionally, what recourse is there for a state agency's non-compliance with the Board's request for records.

Business and Professions Code Section 726 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. The bill also specifies that these provisions do 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. However, the proposed amendments do not define an "equivalent domestic relationship".

Business and Professions Code Section 1688.1 authorizes 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. It is unclear who has the responsibility of writing the settlement language. Currently the Deputy Attorney General and the paralegal assigned to the case draft the settlement language.

The proposed additions of Business and Professions Code Sections 1947.1 through 1947.8 pertain to the Dental Hygiene Committee of California (DHCC). The DHCC administers its own enforcement program and is autonomous from the Dental Board except when deciding scope of practice issues. However, the proposed language refers to the "board" in these sections rather than "committee" as used throughout Business and Professions Code Sections 1900 through 1966.6.

The proposed addition of Business and Professions Code Section 1947.6 requires any employer of a licensee to report the suspension or termination for cause of any licensee in its employ. The bill defines suspension or termination for cause as suspension or termination from employment for gross negligence or incompetence as well as other specified reasons. The determination of a licensee committing gross negligence or incompetence is typically made through the Board's enforcement process and not determined by an employer.

Duplication in the Dental Practice Act:

The bill proposes the addition of Business and Professions Code Section 1688.4 relative to the denial, revocation, or suspension of a license to an individual who is required to register as a sex offender. The proposed language is duplicative of existing law, Business and Professions Code Section 1687.

Fiscal Impact on the Board:

Requiring the Board to query the National Practitioner Data Bank (NPDB) will cause significant fiscal impact on the operations of the Board. The NPDB may only be queried through the use of a credit card; the Board currently uses a Cal-Card to query the NPDB for applicants. Each year the use of the Cal-Card is suspended from June 1 until the passage of a budget. During previous years when the budget has not passed until September or October, the applicant's licensure has been delayed for several months due to the inability of the Board to obtain NPDB information. Each query of the NPDB costs $4.75. With an estimated 1,200 queries per year, this provision will require a staffing augmentation.

Requiring the Board to post specified information regarding licensees on the Internet on or after July 1, 2013 will require additional work of existing staff. While the Board currently provides most of this information on its web site, the license verification web site will need to be modified to accommodate the additional information to be disclosed. This will require approximately eighty (80) additional hours of analytical and computer programming staff time to compile the information, modify the Board's web site, and add the necessary information to the web site. The additional 80 hours will likely result in overtime pay to existing staff. Once the web site is updated, the work load associated with maintenance would be minor and absorbable.

Previous Board Positions:

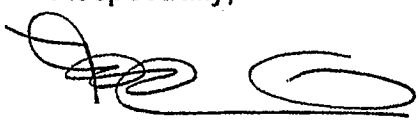
Business and Professions Code Section 116 provides that the Director of the Department or his or her designee may audit and review the enforcement programs of all the healing arts boards. At its February 25, 2010 meeting, the Board reviewed the proposed Consumer Protection Enforcement Initiative and discussed the proposed

authority of the Director or designee to audit and review the Board's enforcement program. The Board discussed the possibility of the Director's audit and review to be limited to closed cases. The Board agreed that the Board's disciplinary process should be allowed to function independently, but be subject to review once cases are closed.

Absent Board discussions regarding mandatory revocation for a sex offense and prohibition of gag orders in settlements for civil litigation, we are still evaluating the affects these provisions will have and will provide a report with additional information as soon as possible. We respectfully request to respond at a later date.

Thank you for the opportunity to provide comments regarding Senate Bill 544. If you have any questions or concerns, please feel free to contact me at your convenience.

Respectfully,



Richard E. DeCuir
Executive Officer

cc: Members of the Senate Business, Professions, and Economic Development Committee
Bill Gage, Chief Consultant, Senate Business, Professions, and Economic Development Committee
Members of the Dental Board of California
Brian Stiger, Senior Chief Deputy Director and Acting Director, Department of Consumer Affairs
Richard Woonacott, Deputy Director, Division of Legislative and Policy Review, Department of Consumer Affairs

AGENDA ITEMS 13-18

Committee Reports

STATE OF CALIFORNIA
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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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MEMORANDUM

DATE	May 5, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Items 13-18:** Committee Reports

Committee Chairs will give verbal reports.

AGENDA ITEM 19

Portfolio

STATE OF CALIFORNIA
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MEMORANDUM

DATE	May 3, 2011
TO	Dental Board of California
FROM	Donna Kantner, Manager, Licensing and Examination Unit Dental Board of California
SUBJECT	**Item 19:** Update from Subcommittee Regarding Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

Background:

AB 1524 was passed by the Legislature in 2010 creating a new format of clinical examination for California dental students, generally known as the "Portfolio" exam. The Board was required to develop regulatory language in order for the bill to pass. Now begins the process of creating a structure for the exam through development of standardized criteria for assessment and grading of applicants' competency, training and calibration of examiners, and a process by which the Board will independently monitor and audit the portfolio examination.

The Board has contracted with COMIRA, Inc. for psychometric services to spearhead the development and implementation of the content and structure, common standards, standardized assessment and grading criteria, a Portfolio Examination Application and Candidate Handbook, selection criteria for each school's competency examiners and to ensure that the process is suitable for statistical analyses.

Update:

On April 14, 2011, COMIRA, Executive Officer Richard DeCuir, Board President Dr. John Bettinger, Exam Committee Chair Dr. Stephen Casagrande and I met with representatives of the six California dental schools regarding the examination development. COMIRA stated that all six schools will be engaged in the process to ensure the exam is reliable, valid and consistent with the requirements of Business and Professions Code Section 139 relative to examination development and validation. COMIRA stated that the tasks specified in the contract result in a timeline that extends into 2012. Participants agreed that this is an opportunity to lead the nation into an examination process that cares for patients in the same way that a practitioner would normally proceed with patient care.

Drs. Bettinger and Casagrande will further elaborate on the status of the Portfolio implementation.

AGENDA ITEM 20(a)

EFCS Report Permits and Website

STATE OF CALIFORNIA
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MEMORANDUM

DATE	May 3, 2011
TO	Dental Board of California
FROM	Suzanne McCormick, DDS Board Liaison to the Elective Facial Cosmetic Surgery Permit Credentialing Committee
SUBJECT	**Agenda Item 20A:** Discussion and Possible Action To Accept the EFCS Permit Credentialing Committee Recommendation for Issuance of Permit and Changes to the Board's Website to Clarify the Permit Application Process

Background

The Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee met on April 27, 2011via teleconference. Committee members and staff participated in Rancho Mirage, Redlands, Poway, Sacramento, and San Diego locations. There was no public in attendance.

In closed session, the Committee reviewed one application (Applicant Dr. AA) for an unlimited permit and recommended tabling it until the applicant could provide further documentation.

In addition to application review, the Committee discussed changes to the website which it hopes will clarify the application process for the Elective Facial Cosmetic Surgery Permit until regulations can be developed. The revised language is included in this packet for the Board's review.

The next meeting of the EFCS Permit Credentialing Committee is scheduled for July 13, 2011.

Action Requested

The Committee requests that the Dental Board accept the Committee's recommended changes to the website which will clarify the application process for the Elective Facial Cosmetic Surgery Permit.

PROPOSED CHANGES TO THE DENTAL BOARD WEBSIDE

5/20/2011

Licensed Dentists

ELECTIVE FACIAL COSMETIC SURGERY PERMITS

Business and Professions Code, Section 1638.1, states a person licensed pursuant to Section 1634 who wishes to perform elective facial cosmetic surgery shall first apply for and receive a permit to perform elective facial cosmetic surgery from the board.

APPLYING FOR AN ELECTIVE FACIAL COSMETIC SURGERY PERMIT

The primary requirements for a permit to perform Elective Facial Cosmetic Surgery are defined in Business and Professions Code, Section 1638.1.

The Committee recommends that the applicant first choose either Pathway A or Pathway B by which the application is being made.

~~The requirements for an Elective Facial Cosmetic Surgery Permit include, but may not be limited to submitting the following documentation:~~

1. ~~A completed application form.~~
2. ~~Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.~~
3. ~~Proof that the applicant has satisfied the criteria specified in either subparagraph (A) or (B) of Section 1638.1(c)(2).~~
4. ~~Submit to the board a letter from the program director of the accredited residency program, or from the director of a postresidency fellowship program accredited by the Commission on Dental Accreditation of the American Dental Association.~~
5. ~~Submit to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform. The Committee recommends that you submit no more than 30 operative reports. Applicants may request that their permit be limited to specific categories of procedures (Category I and/or II), as specified on the application. As a result, operative reports submitted should be reflective and supportive of the permit category for which the applicant is applying.~~
6. ~~Documentation showing the surgical privileges the applicant possesses at any licensed general acute care hospital and any licensed outpatient surgical facility in this state.~~
7. ~~Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.~~
8. ~~An application fee of $500.00~~

PATHWAY A: THE REQUIREMENTS FOR AN ELECTIVE FACIAL COSMETIC SURGERY PERMIT INCLUDE, BUT MAY NOT BE LIMITED TO SUBMITTING THE FOLLOWING DOCUMENTATION:

1. A completed application form.
2. Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.
3. Proof of certification, or a candidate for certification, by the American Board of Oral and Maxillofacial Surgery.
4. A letter from the program director of the accredited residency program, or from the director of a postresidency fellowship program accredited by the Commission on Dental Accreditation of the American Dental Association.

5. Submit to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform. The Committee recommends that you submit no more than 30 operative reports. Applicants may request that their permit be limited to specific categories of procedures (Category I and/or II), as specified on the application. As a result, operative reports submitted should be reflective and supportive of the permit category for which the applicant is applying. In addition, operative reports should be clear and dark enough to be reproduced. The Committee recommends that the applicant organize the reports submitted, grouping the procedures by category I and category II and provide the Committee with an index of the reports. A sample index is provided.
6. Documentation showing the surgical privileges the applicant possesses at any licensed general acute care hospital and any licensed outpatient surgical facility in this state.
7. Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.
8. An application fee of $500.00

Pathway B: The requirements for an Elective Facial Cosmetic Surgery Permit include, but may not be limited to submitting the following documentation:

1. A completed application form.
2. Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.
3. Submit to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform. The Committee recommends that you submit no more than 30 operative reports. Applicants may request that their permit be limited to specific categories of procedures (Category I and/or II), as specified on the application. As a result, operative reports submitted should be reflective and supportive of the permit category for which the applicant is applying. In addition, operative reports should be clear and dark enough to be reproduced. The Committee recommends that the applicant organize the reports submitted, grouping the procedures by category I and category II and provide the Committee with an index of the reports. A sample index is provided. Submitting the operative reports in an organized way will ensure the application process moves along quickly.
4. Proof that the applicant has been granted privileges by the medical staff at a licensed general acute care hospital to perform the surgical procedures [cosmetic contouring of the osteocartilaginous facial structure, which may include, but is not limited to, rhinoplasty and otoplasty and/or cosmetic soft tissue contouring or rejuvenation, which may include, but is not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation], at that hospital.
5. Proof that the applicant is on active status on the staff of a general acute care hospital and maintains the necessary privileges based on the bylaws of the hospital to maintain that status.
6. An application fee of $500.00

RENEWING YOUR PERMIT

An Elective Facial Cosmetic Surgery Permit expires when the permitholder license expires and must be renewed every two years. Every six years, prior to renewal of the permitholder's licensed and permit, the permitholder shall submit evidence acceptable to the credentialing committee that he or she has maintained continued competence to perform the procedures authorized by the permit.

PERMIT HOLDERS HOLDING A LIMITED ELECTIVE FACIAL COSMETIC SURGERY (EFCS) PERMIT AND WANTING TO UPGRADE PRIVILEGES TO UNLIMITED.

The requirements to upgrade a limited Elective Facial Cosmetic Surgery Permit to an unlimited permit include, but may not be limited to submitting the following documentation:

1. A completed application.
2. Submit to the board of at least 10 operative reports from residency training or proctored procedures that are representative of procedures that the licensee intends to perform. The Committee

recommends that you submit no more than 30 operative reports. Applicants seeking an unlimited permit should submit operative reports that are reflective and supportive of the permit category for which the applicant is applying. In addition, operative reports should be clear and dark enough to be reproduced. The Committee recommends that the applicant organize the reports submitted, grouping the procedures by category I and category II and provide the Committee with an index of the reports. A sample index is provided. Submitting the operative reports in an organized way will ensure the application process moves along quickly.

3. An application fee of $500.00

If the Committee grants a new unlimited permit, the permit holder's prior limited permit number will be cancelled and a new permit number will be issued.

For more information, contact the Dental Board at (916) 263-2300.

SAMPLE

Name: _____ Index of Operative Reports

Operative Report	Surgery Type	Procedure(s)	Date	Position
1	Soft Tissue			
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16	Osteocartilaginous			
17				
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AGENDA ITEM 20(b)

EFCS Report Appointments

STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

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Dental Board of California
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MEMORANDUM

DATE	May 5. 2011
TO	Dental Board of California
FROM	Karen Fischer, Coordinator Elective Facial Cosmetic Surgery Permit Program
SUBJECT	**Agenda Item 20B:** Discussion and Possible Action Regarding Consideration of the Subcommittee's Recommendation to Appoint a Member to the Elective Facial Cosmetic Surgery Permit Credentialing Committee

Background

On January 25, 2011, Dr. Suzanne McCormick, Board Liaison to the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee received notification that Nestor Karas, DDS, MD, who had most recently been serving as Chair of the Credentialing Committee, resigned. Dr. Karas was one of the first members appointed to the Committee at its inception in 2007, and was a key participant in the development of SB 438, the legislation that created the Elective Facial Cosmetic Surgery Permit program.

At the February 2011 meeting, Board President Dr. Bettinger, appointed a subcommittee (Drs. McCormick and Whitcher) to review the applications, to interview the candidates, and to report back to the Board at it's May meeting with a recommendation to fill the vacancy on the Elective Facial Cosmetic Surgery Permit Credentialing Committee.

The requirements of candidacy for this position are (1) an oral and maxillofacial surgeon who is licensed by the Medical Board of California, and is Board certified by the American Board of Oral and Maxillofacial Surgeons, and (2) active status on the staff of a licensed general acute care hospital in the state.

A summary of the steps taken to solicit input into filling the vacancy in accordance with Business & Professions Code section 1638.1(3) follows:

"The Board shall solicit from the following organizations input and recommendations regarding members to be appointed to the credentialing committee:

- The Medical Board of California

- The California Dental Association
- The California Association of Oral and Maxillofacial Surgeons
- The California Medical Association
- The California Society of Plastic Surgeons"

A letter was sent certified mail to the above mentioned organizations on February 22, 2011. There was a follow-up letter similarly mailed on April 4, 2011, followed by telephone calls and emails.

Two organizations responded, each with one recommendation: The California Association of Oral and Maxillofacial Surgeons, and The California Society of Plastic Surgeons. The Medical Board of California, the California Medical Association, and the California Dental Association replied that they had no recommendation at this time.

The candidate information was forwarded to the subcommittee for review. Drs. McCormick and Whitcher will report their findings at the May 2011 Board meeting.

ACTION REQUESTED

Accept the Subcommittee's recommendation to fill the vacancy on the Elective Facial Cosmetic Surgery Permit Credentialing Committee.

AGENDA ITEM 21

Record Retention

STATE OF CALIFORNIA
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DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	April 28, 2011
TO	Dental Board of California
FROM	Donna Kantner, Manager, Licensing and Examination Unit Dental Board of California
SUBJECT	**Item 21:** Discussion and Possible Action Regarding Subcommittee Report on Record Retention of Inactive Patient Records

Background:

Currently there is no law or regulation that specifies the length of time that patient records must be kept on file. Staff is unable to provide clear direction to licensees since there is no statute or regulation in this area.

At its February 24-25, 2011 meeting, Dr. Bettinger appointed a subcommittee of Dr. Olinger and Dr. Morrow to research the issue and report back at the Board's next meeting.

Attached is the report of the subcommittee which includes the following recommendations:

1. Require that records be maintained for at least 7 years from the date an adult patient was last seen.

2. For an unemancipated minor patient, dental records must be maintained for at least one year after the minor has reached the age of 18 years and not less than seven years from the date the patient was last seen.

Any recommendation accepted by the Board would require either a statutory or regulatory change to implement.

Requested Action:

Staff requests that the Board discuss the recommendations of the Subcommittee and make a decision to accept, reject or take no action on the recommendations.

If recommendations are accepted, staff will need to seek legislation or pursue regulations to implement the change.

1. **The American Health Information Management Association (AHIMA) provided the following information regarding California law and regulations for retention of medical records: (No information was available regarding dental records)**

   Hospitals must maintain medical records for a minimum of seven years following patient discharge, except for minors. Records of minors must be maintained for at least one year after a minor has reached age 18, but in no event for less than seven years. (Calif. Code Regs. Tit. 22 Sections 70751 (c) and 71551 (c))

   Acute psychiatric hospitals, skilled nursing facilities and primary care clinics must maintain medical records and x-rays for a minimum of seven years following patient discharge, except for minors. Records of minors must be maintained for at least one year after a minor has reached age 18, but in no event for less than seven years. (Calif. Code Regs. Tit. 22 Section73543 (a); 74731 (a); 75055 (a); 75343 (a); 77143 (a))

2. **The American Dental Association provided the following information:**

   "State laws and participating provider contracts generally specify the time following the last patient visit that records must be maintained. There is usually a different requirement for the retention of records of children; these records must be kept for a certain period after the child reaches the age of majority. HIPAA also affects recordkeeping requirements for offices that are covered by generally requiring that such offices maintain patient records for six (6) years and two (2) years after a patient's death. The office's professional liability insurance company will likely have recommendations about retention."

3. **The California Dental Association Practice Support Center provided the following information:**

   "State law does not define the period for which a dentist must maintain patient records after the patient discontinues treatment with the dentist. Records of unemancipated minors shall be kept at least one year after the minor has reached the age of 18 years, and in any case, not less than seven years. It is best for you to contact your professional liability carrier for its recommendation. Ideally, all dental records, active and inactive, should be maintained indefinitely. Records must be kept for seven years after a dental practice ceases operations."

4. **The Dentist Insurance Company (California) provided the following information:**

   "The California Dental Board does not address how long a dentist must maintain patient records after the patient discontinues treatment. Ideally, all dental records (active/inactive, radiographs and models) should be maintained indefinitely as they are your best defense in the event of a claim or lawsuit. TDIC recommends disposing of inactive patients' records after:

   - Ten (10) years from the date an adult patient was last seen.
   - Ten (10) years from the minor patient's last treatment or seven (7) years past the patient's 18th birthday (age 25), whichever is longer.
   - A patient who has not returned for treatment within 24 months is considered inactive.

Report from Subcommittee for Retention of Dental Records (Dr. Olinger and Dr. Morrow)

It is the Subcommittee for Retention of Dental Records recommendation that dental records must be retained for at least seven (7) years from the date an adult patient was last seen. For an unemancipated minor patient, dental records must be maintained for at least one (1) year after the minor has reached the age of 18 years, and in any case, not less than seven (7) years from the date the patient was last seen. Other entities may require retention of records for a longer period of time. Ideally, all dental records, active and inactive, should be maintained indefinitely.

AGENDA ITEM 22

Continuing Competency

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MEMORANDUM

DATE	April 22, 2011
TO	Dental Board Members
FROM	Karen Fischer, Administrative Analyst Dental Board of California
SUBJECT	**Agenda Item 22:** Discussion and Possible Action to Conduct a Feasibility Study for a Continuing Competency Program

Background

Each month, the Department of Consumer Affairs (DCA) Director conducts a teleconference with Board/Bureau Presidents/ Chairs to discuss the areas of interest and/or concern. The April 2011 teleconference was devoted to the discussion of continuing competency. There were presentations given by Mr. David Swankin, CEO of the Citizen Advocacy Center, and Dr. Martin Crane, former Chair of the Federation of State Medical Boards (FSMD). Mr. Swankin spoke about the history and progress of implementing continuing competency programs and models for implementation. Dr. Crane gave an overview of the FSMB maintenance of licensure model and how this model might be transferable to other healing arts professions. Teleconference participants had the opportunity to ask questions of both the presenters.

This item has been placed on the agenda to see if the Board is interested in researching the feasibility of implementing a Continuing Competency Program.