STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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

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

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

Thursday, August 11, 2011

Department of Consumer Affairs
1625 North Market Blvd, 1st Floor Hearing Room, S-102
Sacramento, CA 95834

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

Thursday, August 11, 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 - Open Session

ROLL CALL.....Establishment of a Quorum

***CLOSED SESSION - FULL BOARD**

(a) Executive Officer Performance Evaluation
*The Board will meet in closed session as authorized by Government Code Section 11126(a)(1)

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

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

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

***CLOSED SESSION – EXAMINATION APPEALS COMMITTEE**

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

OPEN SESSION RESUMES (Approximately 10:30 a.m..)

COMMITTEE MEETINGS – SEE ATTACHED AGENDAS

- EXAMINATION COMMITTEE
  See attached Examination Committee agenda

- LICENSING, CERTIFICATION, AND PERMITS COMMITTEE
  See attached Licensing, Certification, and Permits Committee agenda

- DENTAL ASSISTING COMMITTEE
  See attached Dental Assisting Committee agenda

LEGISLATIVE AND REGULATORY COMMITTEE
See attached Legislative and Regulatory Committee agenda

ENFORCEMENT COMMITTEE
See attached Enforcement Committee agenda

FULL BOARD MEETING RESUMES

AGENDA ITEM 1..... Presentation on the use of Botox in Dentistry by Dr. Louis Malcmacher, President of the American Academy of Facial Esthetics.

AGENDA ITEM 2..... Discussion and Possible Action Regarding Scope of Practice Issues and Board Policy Related to the Use of Botox and Dermal Fillers.

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

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

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

AGENDA ITEM 4..... Renewal Application for Universidad De La Salle. Discussion Regarding: (1) Current Status and Review of the School's Application; (2) the Board's Authority to Approve a Specified Curriculum within a School of Dentistry or Only a Dental School; and, (3) the Board's Authority to Extend the School's Approval Pending Completion of its Review.

AGENDA ITEM 5..... Future Dates for Board Meetings

AGENDA ITEM 6..... Discussion and Possible Action Regarding SB 540 (Price) – Legislative Proposal for the Dental Board of California's Sunset Review

AGENDA ITEM 7..... Discussion and Possible Action Regarding SB 544 (Price), Professions and Vocations: Regulatory Boards Relating to the Consumer Health Protection Enforcement Act

AGENDA ITEM 8..... Discussion and Possible Action Regarding Eligibility Requirements for Special Permits *(Business and Professions Code Section 1640)*

AGENDA ITEM 9..... Update on Pending Regulatory Packages:

A. Dental Assisting Educational Programs and Courses *(California Code of Regulations, Title 16, Sections 1070, 1070.1, 1070.2, 1070.6, 1070.7, 1070.8 and 1071)*
B. Minimum Standards for Infection Control *(California Code of Regulations, Title 16, Section 1005)*
C. Consumer Protection Enforcement Initiative *(California Code of Regulations, Title 16, Sections 1018.05 and 1020)*
D. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines *(California Code of Regulations, Title 16, Sections 1018 and 1020.5)*
E. Sponsored Free Health Care Events *(California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18)*

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

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

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MEMORANDUM

DATE	July 18, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 1:** Presentation by Dr. Malcmacher, President of the American Academy of Facial Esthetics

Dr. Louis Malcmacher, President of the American Academy of Facial Esthetics, requested that he be placed on the Agenda in order to give a Presentation.

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MEMORANDUM

DATE	July 26, 2011
TO	Dental Board of California
FROM	Dr. John Bettinger, Dental Board President Dental Board of California
SUBJECT	**Agenda Item 2: Discussion and Possible Action Regarding Scope of Practice Issues and Board Policy Related to the use of Botox and Dermal Fillers**

The Dental Board of California receives regular inquiries from licensed dentists regarding the use of BOTOX and dermal fillers in California. Many states allow general dentists to inject BOTOX and dermal fillers.

The Dental Board's website posting on the use of BOTOX is as follows:

> *"Botox or any related agents can only be used for the diagnosis and treatment of TMD/myofascial conditions as part of a comprehensive treatment plan. Use for isolated cosmetic purposes is illegal, unless privileged under the Facial Cosmetic Surgery Permit. For further information, please contact our Sacramento Enforcement Unit at 916-274-6326 or our Southern California Enforcement Field Office at 714-247-2100* (please see Business and Professions Code, Sections *1625* and *1638.1*)*."*

We have been advised by legal counsel that this language is not accurate and needs to be updated.

Action:
The Board is being asked to determine the appropriate policy restrictions under current statutes. The statutes that pertain to this issue follow.

Business & Professions Code, Section 1625.

1625. Dentistry is the diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of malpositions of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation. Without limiting the foregoing, a person practices dentistry within the meaning of this chapter who does any one or more of the following:

(a) By card, circular, pamphlet, newspaper or in any other way advertises himself or represents himself to be a dentist.

(b) Performs, or offers to perform, an operation or diagnosis of any kind, or treats diseases or lesions of the human teeth, alveolar process, gums, jaws, or associated structures, or corrects malposed positions thereof.

(c) In any way indicates that he will perform by himself or his agents or servants any operation upon the human teeth, alveolar process, gums, jaws, or associated structures, or in any way indicates that he will construct, alter, repair, or sell any bridge, crown, denture or other prosthetic appliance or orthodontic appliance.

(d) Makes, or offers to make, an examination of, with the intent to perform or cause to be performed any operation on the human teeth, alveolar process, gums, jaws, or associated structures.

(e) Manages or conducts as manager, proprietor, conductor, lessor, or otherwise, a place where dental operations are performed.

Business & Professions Code, Section 1638.1

1638.1. (a) (1) 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.

(2) A permit issued pursuant to this section shall be valid for a period of two years and must be renewed by the permitholder at the time his or her license is renewed. Every six years, prior to renewal of the permitholder's license 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. The credentialing committee may limit a permit consistent with paragraph (1) of subdivision (e) if it is not satisfied that the permitholder has established continued competence.

(b) The board may adopt regulations for the issuance of the permit that it deems necessary to protect the health, safety, and welfare of the public.

(c) A licensee may obtain a permit to perform elective facial cosmetic surgery by furnishing all of the following information on an application form approved by the board:

(1) Proof of successful completion of an oral and maxillofacial surgery residency program accredited by the Commission on Dental Accreditation of the American Dental Association.

(2) Proof that the applicant has satisfied the criteria specified in either subparagraph (A) or (B):

(A) (i) Is certified, or is a candidate for certification, by the American Board of Oral and Maxillofacial Surgery.

(ii) Submits 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, stating that

the licensee has the education, training, and competence necessary to perform the surgical procedures that the licensee has notified the board he or she intends to perform.

(iii) Submits documentation 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 from both of the following categories:

(I) Cosmetic contouring of the osteocartilaginous facial structure, which may include, but is not limited to, rhinoplasty and otoplasty.

(II) Cosmetic soft tissue contouring or rejuvenation, which may include, but is not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation.

(iv) Submits documentation to the board showing the surgical privileges the applicant possesses at any licensed general acute care hospital and any licensed outpatient surgical facility in this state.

(B) (i) Has been granted privileges by the medical staff at a licensed general acute care hospital to perform the surgical procedures set forth in paragraph (A) at that hospital.

(ii) Submits to the board the documentation described in clause (iii) of subparagraph (A).

(3) 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.

(d) The application shall be accompanied by an application fee of five hundred dollars ($500) for an initial permit. The fee to renew a permit shall be two hundred dollars ($200).

(e) (1) The board shall appoint a credentialing committee to review the qualifications of each applicant for a permit. Upon completion of the review of an applicant, the committee shall make a recommendation to the board on whether to issue or not issue a permit to the applicant. The permit may be unqualified, entitling the permitholder to perform any facial cosmetic surgical procedure authorized by this section, or it may contain limitations if the credentialing committee is not satisfied that the applicant has the training or competence to perform certain classes of procedures, or if the applicant has not requested to be permitted for all procedures authorized by this section.

(2) The credentialing committee shall be comprised of five members, as follows:

(A) A physician and surgeon with a specialty in plastic and reconstructive surgery who maintains active status on the staff of a licensed general acute care hospital in this state.

(B) A physician and surgeon with a specialty in otolaryngology who maintains active status on the staff of a licensed general acute care hospital in this state.

(C) Three oral and maxillofacial surgeons licensed by the board who are board certified by the American Board of Oral and Maxillofacial Surgeons, and who maintain active status on the staff of a licensed general acute care hospital in this state, at least one of whom shall be licensed as a physician and surgeon in this state. Two years after the effective date of this section, any oral and maxillofacial surgeon appointed to the committee who is not licensed as a physician and surgeon shall hold a permit pursuant to this section.

(3) The board shall solicit from the following organizations input and recommendations regarding members to be appointed to the credentialing committee:

(A) The Medical Board of California.

(B) The California Dental Association.
(C) The California Association of Oral and Maxillofacial Surgeons.
(D) The California Medical Association.
(E) The California Society of Plastic Surgeons.
(F) Any other source that the board deems appropriate.
(4) The credentialing committee shall meet at a time and place directed by the board to evaluate applicants for permits. A quorum of three members shall be required for the committee to consider applicants and make recommendations to the board.
(f) A licensee may not perform any elective, facial cosmetic surgical procedure except at a general acute care hospital, a licensed outpatient surgical facility, or an outpatient surgical facility accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the American Association for Ambulatory Health Care (AAAHC), the Medicare program, or an accreditation agency approved by the Medical Board of California pursuant to subdivision (g) of Section 1248.1 of the Health and Safety Code.
(g) For purposes of this section, the following terms shall have the following meanings:
(1) "Elective cosmetic surgery" means any procedure defined as cosmetic surgery in **subdivision (d) of Section 1367.63** of the Health and Safety Code, and **excludes** any procedure that constitutes reconstructive surgery, as defined in subdivision (**c) of Section 1367.63** of the Health and Safety Code.
(2) "Facial" means those regions of the human body described in Section 1625 and in any regulations adopted pursuant to that section by the board.
(h) A holder of a permit issued pursuant to this section shall not perform elective facial cosmetic surgical procedures unless he or she has malpractice insurance or other financial security protection that would satisfy the requirements of Section 2216.2 and any regulations adopted thereunder.
(i) A holder of a permit shall comply with the requirements of subparagraph (D) of paragraph (2) of subdivision (a) of Section 1248.15 of the Health and Safety Code, and the reporting requirements specified in Section 2240, with respect to any surgical procedure authorized by this section, in the same manner as a physician and surgeon.
(j) Any violation of this section constitutes unprofessional conduct and is grounds for the revocation or suspension of the person's permit, license, or both, or the person may be reprimanded or placed on probation. Proceedings initiated by the board under this section shall be conducted in accordance with 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.
(k) On or before January 1, 2009, and every four years thereafter, the board shall report to the Joint Committee on Boards, Commissions and Consumer Protection on all of the following:
(1) The number of persons licensed pursuant to Section 1634 who apply to receive a permit to perform elective facial cosmetic surgery from the board pursuant to subdivision (a).
(2) The recommendations of the credentialing committee to the board.
(3) The board's action on recommendations received by the credentialing committee.
(4) The number of persons receiving a permit from the board to perform elective facial cosmetic surgery.

(5) The number of complaints filed by or on behalf of patients who have received elective facial cosmetic surgery by persons who have received a permit from the board to perform elective facial cosmetic surgery.

(6) Action taken by the board resulting from complaints filed by or on behalf of patients who have received elective facial cosmetic surgery by persons who have received a permit from the board to perform elective facial cosmetic surgery.

Health and Safety Code, Section 1367.63

1367.63. (a) Every health care service plan contract, except a specialized health care service plan contract, that is issued, amended, renewed, or delivered in this state on or after July 1, 1999, shall cover reconstructive surgery, as defined in subdivision (c), that is necessary to achieve the purposes specified in subparagraph (A) or (B) of paragraph (1) of subdivision (c). Nothing in this section shall be construed to require a plan to provide coverage for cosmetic surgery, as defined in subdivision (d).

(b) No individual, other than a licensed physician competent to evaluate the specific clinical issues involved in the care requested, may deny initial requests for authorization of coverage for treatment pursuant to this section. For a treatment authorization request submitted by a podiatrist or an oral and maxillofacial surgeon, the request may be reviewed by a similarly licensed individual, competent to evaluate the specific clinical issues involved in the care requested.

(c) (1) "Reconstructive surgery" means surgery performed to correct or repair abnormal structures of the body caused by congenital defects, developmental abnormalities, trauma, infection, tumors, or disease to do either of the following:

(A) To improve function.

(B) To create a normal appearance, to the extent possible.

(2) As of July 1, 2010, "reconstructive surgery" shall include medically necessary dental or orthodontic services that are an integral part of reconstructive surgery, as defined in paragraph (1), for cleft palate procedures.

(3) For purposes of this section, "cleft palate" means a condition that may include cleft palate, cleft lip, or other craniofacial anomalies associated with cleft palate.

(d) "Cosmetic surgery" means surgery that is performed to alter or reshape normal structures of the body in order to improve appearance.

(e) In interpreting the definition of reconstructive surgery, a health care service plan may utilize prior authorization and utilization review that may include, but need not be limited to, any of the following:

(1) Denial of the proposed surgery if there is another more appropriate surgical procedure that will be approved for the enrollee.

(2) Denial of the proposed surgery or surgeries if the procedure or procedures, in accordance with the standard of care as practiced by physicians specializing in reconstructive surgery, offer only a minimal improvement in the appearance of the enrollee.

(3) Denial of payment for procedures performed without prior authorization.

(4) For services provided under the Medi-Cal program (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the

Welfare and Institutions Code), denial of the proposed surgery if the procedure offers only a minimal improvement in the appearance of the enrollee, as may be defined in any regulations that may be promulgated by the State Department of Health Care Services.

(f) As applied to services described in paragraph (2) of subdivision (c) only, this section shall not apply to Medi-Cal managed care plans that contract with the State Department of Health Care Services pursuant to Chapter 7 (commencing with Section 14000) of, Chapter 8 (commencing with Section 14200) of, or Chapter 8.75 (commencing with Section 14590) of, Part 3 of Division 9 of the Welfare and Institutions Code, where such contracts do not provide coverage for California Children's Services (CCS) or dental services.

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MEMORANDUM

DATE	July 19, 2011
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 3 (A):** Discussion and Possible Action Regarding Comments Received During the 45-day Public Comment Period for the Board's Proposed Rulemaking to Amend Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines and

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

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

The Substance Abuse Coordination Committee (SACC) met on April 11, 2011 and revised requirements contained in the *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*.

Comments Received During the 45-Day Public Comment Period:

Comments Received from the California Dental Association:
Bill Lewis, California Dental Association (CDA), delivered verbal testimony at the regulatory hearing on May 10, 2011 in response to the proposed regulatory action. Mr. Lewis indicated CDA's overall support of the proposed regulations as drafted. Mr. Lewis thanked the Dental Board of California and staff for finding a balance between implementing the Uniform Standards, as created by the Substance Abuse Coordination Committee, and recognizing the distinction between the appropriate roll of the Board's Diversion Program and disciplinary action. Mr. Lewis stated that it is important that the

Board maintain flexibility and discretion while treating individuals self-referred into the Diversion Program and not in a one-size fits all approach.

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

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

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

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

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

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

how and whether to apply the standards. The analysis in support of these conclusions follows.

<u>The Board has been expressly delegated the authority to make rules by the Legislature.</u>

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

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

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

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

The first step "is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d 999.) "If the statutory language is clear and unambiguous, there is no need for construction." (*Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 606, 257 Cal.Rptr. 320, 770 P.2d 732.) "[T]he Legislature is presumed to have meant what it said, and the plain meaning of the statute governs." (*People v. Johnson* (2002) 28 Cal.4th 240, 244, 121 Cal.Rptr.2d 197, 47 P.3d 1064.) It is assumed that when enacting a statute, the legislature is deemed to be aware of statutes already in existence and to have enacted new laws in light of the existing law with an intent to maintain a consistent body of statutes (*People v. Harrison* (1989) 48 Cal.3d 321, 329 citing *People v. Overstreet* (1986) 42 Cal.3d. 891,897; *Burlington Northern and Sante Fe Ry. Co. v. Public Utilities Com'n* (2003) 112 Cal.App.4th 881, 889.)

Looking at the plain language of section 315, the statute merely states that each board "shall use" the standards proposed by the SACC. It says nothing about the SACC's power to either adopt rules that must be adopted by the boards or that the boards have no discretion but to apply these terms in every case, regardless of the facts of the case.

On the contrary, the failure of the Board to exercise its discretion in every case could subject the Board to legal challenges for any decision it issues when it has expressly been delegated the authority to exercise its discretion. (See, e.g., *Ventimiglia v. Board of Behavioral Sciences* (2008)168 Cal.App.4th 296, 300-301.)

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

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

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

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MEMORANDUM

DATE	August 4, 2011
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 3 (A):** Discussion and Possible Action Regarding Comments Received During the 45-day Public Comment Period for the Board's Proposed Rulemaking to Amend Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines and

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

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

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

Issue #3:
When a clinical diagnostic evaluation is ordered as a condition of probation, the Board is responsible for determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment. When making that determination, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The licensee's history;
- The documented length of sobriety/time that has elapsed since substance abuse;

- The recommendation of the clinical evaluator;
- The scope and pattern of use;
- The licensee's treatment history; and ,
- The nature, duration, and severity of substance abuse.

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

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

1. The group meeting facilitator shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The group meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last ~~five (5)~~ year~~s~~.
3. The group facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The group meeting facilitator shall report any unexcused absence to the Board within twenty-four (24) hours.

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

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

(37) TREATMENT/REHABILITATION PROGRAM FOR SUBSTANCE ABUSE After a receipt of a clinical diagnostic evaluation, the Board or its designee may order that Respondent enter an inpatient or outpatient alcohol or other drug abuse recovery program or equivalent program as approved by the Board or its designee. If so ordered, then within seven (7) days from the date of the order, Respondent shall enter an inpatient or outpatient alcohol or other drug abuse recovery program or an equivalent program as approved by the Board or its designee. Components of the treatment program shall be relevant to the violation and to the Respondent's current status in

recovery or rehabilitation. Respondent shall provide the Board or its designee with proof that the approved program was successfully completed. Terminating the program without permission or being expelled for cause shall constitute a violation of probation by Respondent. All costs associated with the program shall be paid by Respondent.

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

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

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

University of San Diego

May 9, 2011

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

re: DBC's Disciplinary Guidelines Regulations

Dear Ms. Wallace:

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

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

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

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

Center for Public Interest Law ■ Children's Advocacy Institute ■ Energy Policy Initiatives Center
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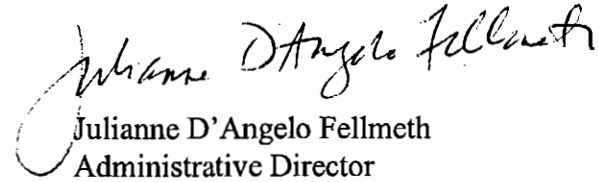
www.cpil.org ■ www.caichildlaw.org ■ www.sandiego.edu/epic
Reply to: ☒ San Diego ☐ Sacramento

Thank you for your consideration of these comments.

Sincerely,



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

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
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REGULATORY HEARING

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

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

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

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

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

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

TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

PROPOSED MODIFIED TEXT

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

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

ARTICLE 4.5
UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE
AND DISCIPLINARY GUIDELINES

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

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

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

ARTICLE 5.5.
IMPAIRED LICENTIATES PROGRAM

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

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

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

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

DENTAL BOARD OF CALIFORNIA

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

Revised:
~~**August 30, 2010**~~
~~**February 25, 2011**~~
August 11, 2011

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

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

INTRODUCTION

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

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

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

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

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

LEGAL AUTHORITY

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

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

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

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

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE

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

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

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

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

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

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

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

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

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

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

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

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

2. Group Meeting Facilitator Qualifications and Requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Major and Minor Violations:

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

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

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

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

Minor Violations include, but are not limited to:

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

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

Drug Testing Standards:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Collection of specimens shall be observed.

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

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

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

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

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

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

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

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

IV. TOLLING

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

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

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

DISCIPLINARY GUIDELINES

FACTORS TO BE CONSIDERED

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

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

Evidence of Rehabilitation:

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

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

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

Mitigation Evidence:

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

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

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

PROBATIONARY TERMS AND CONDITIONS

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

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

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

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

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

LIST OF ~~STANDARD~~ PROBATIONARY TERMS AND CONDITIONS

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

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

14. Notification to Employer

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

Additional Probation Conditions:

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

MODEL INTRODUCTORY LANGUAGE
TO BE USED FOR ALL PROBATIONARY ORDERS

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

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

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

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

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

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

Language for Additional Permits

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

STANDARD PROBATION CONDITIONS FOR ALL DECISIONS AND ORDERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ADDITIONAL CONDITIONS OF PROBATION MODEL LANGUAGE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. PREVIOUS TESTING/SOBRIETY

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

II. VIOLATION(S) OUTSIDE OF EMPLOYMENT

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

III. NOT EMPLOYED IN HEALTH CARE FIELD

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

IV. TOLLING

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

V. SUBSTANCE USE DISORDER NOT DIAGNOSED

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

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

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

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

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

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

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

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

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

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

Option 1:

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

OR

Option 2:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Option #1: Condition Precedent

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

Option #2 Condition Subsequent

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

(35) FACILITATED GROUP SUPPORT MEETINGS –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RECOMMENDED PENALTIES

B&P Refers to Business and Professions Code

Section 123 B&P Subversion of Examinations

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

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

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

****

Section 125.6 B&P Refusal to Treat Patient

Maximum Penalty: Revocation

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

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

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

****

Section 125.9B&P Failure to Comply with Citation

Maximum Penalty: Revocation

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

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

****

Section 498 B&P License Secured by Fraud or Misrepresentation

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

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

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

****

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

Maximum Penalty: Revocation

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

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

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

****

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

Maximum Penalty: Revocation of registration of dental service.

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

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

Also see Section 1680(g)

****

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

Maximum Penalty: Revocation

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

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

See Section 1680(h)-(l)

****

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

Maximum Penalty: Revocation of registration of dental referral service.

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

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

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

See Section 1680(p)

****

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

Maximum Penalty: Revocation

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

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

****

Section 732 B&P Failure to Refund Overpayments to Patients

Maximum Penalty: Revocation

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

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

****

Section 810 B&P Insurance Fraud

Maximum Penalty: Revocation

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

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

See Section 1680(a)

****

Section 822 B&P Psychological or Physical Illness

Maximum Penalty: Revocation

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

Psychological Illness:

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

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

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

Physical Illness:

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

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

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

****

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

Maximum Penalty: Revocation

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

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

****

Section 1645 B&P Continuing Education Violations

Maximum Penalty: Revocation

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

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

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

1. Suspension, 30 days (15)

Section 1680(n)

****

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

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

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

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

****

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

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

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

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

****

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

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

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

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

****

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

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

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

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

****

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

Maximum Penalty: Revocation

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

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

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

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

****

Section 1670.1 B&P Conviction of a Crime

Maximum Penalty: Revocation

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

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

****

Section 1671 B&P Violation of Probation

Maximum Penalty: Revocation

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

The maximum penalty should be given for repeated similar offenses.

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

3. Ethics Course (30)

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

Please see Section 651 B&P for proposed penalty.

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

Additional conditions:

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

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

****

Section 1680(t) Unsanitary Conditions

Maximum Penalty: Revocation

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

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

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

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

****

Section 1680(u) B&P Abandonment of Patient

Maximum Penalty: Revocation

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

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

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

****

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

Maximum Penalty: Revocation

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

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

****

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

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

Minimum Penalty: Revocation, five (5) years probation

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

****

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

Maximum Penalty: Revocation

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

1. Standard Conditions (1-14); and

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

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, 5 years probation

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

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

****

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

Maximum Penalty: Revocation

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

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

(Section 650.2 B&P)

****

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

Maximum Penalty: Revocation

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

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

****

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

Maximum Penalty: Revocation

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

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

****

Section 1680(ad) Unsafe and Sanitary Conditions

Maximum Penalty: Revocation

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

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

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

****

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

Maximum Penalty: Revocation

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

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

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

****

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

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, five (5) years

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

Optional Conditions Where Appropriate:

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

****

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

Maximum Penalty: Revocation

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

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

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

****

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

Maximum Penalty: Revocation

Minimum Penalty: Revocation stayed, 5 years probation

1. Standard Conditions (1-14)
2. Suspension, 60 days (15)
3. Supervised Practice (18)
4. Psychological Evaluation (23)
5. Psychotherapy (24)
6. Diversion (26) or Clinical Diagnostic Evaluation (36)
7. Biological Testing (27)
8. Abstain from use of Alcohol, Controlled Substances and Dangerous Drugs (28)
9. Surrender/Partial Surrender of DEA permit (29)
10. Ethics Course (30)
11. Controlled Substance-Maintenance of Records and Inventories (33)
12. Facilitated Group Support Meetings (35)

****

Section 1682 B&P Violation of Requirements re Patients Undergoing Conscious Sedation or General Anesthesia

Maximum Penalty: Revocation of licensure and/or Permit

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

1. Standard Conditions (1-14)
2. Remedial Education (16)
3. Examination (17)
4. Supervised Practice (18)
5. Restricted Practice (19)
6. Ethics Course (30)

Section 1647 B&P

****

Section 1683 B&P Treatment Entries in Patient Records

Maximum Penalty: Revocation of licensure and/or Permit

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

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

If violation is not severe enough to warrant a 3 year probation, consideration should be given to a lesser probationary period or public reprimand with a requirement to take a course approved by the Board in how to maintain patient records.

****

Section 1684 B&P Service Beyond the Scope of License

Maximum Penalty: Revocation

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

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

Options and additions where appropriate

1. Suspension (15)
2. Remedial Education (16)
3. Examination (17)
4. Supervised Practice (18)
5. Restricted Practice (19)
6. Restitution (31)
7. Clinical Training Program (34)

****

Section 1685 B&P Permitting Dental Care that Discourages Necessary or Encourages Excessive or Improper Treatment

Maximum Penalty: Revocation

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

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

Options and additions where appropriate

1. Suspension, 30 days (15)
2. Remedial Education (16)
3. Examination (17)
4. Restitution (21)
5. Clinical Training Program (34)

****

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

Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by
Department of Consumer Affairs,
Substance Abuse Coordination Committee

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

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

Substance Abuse Coordination Committee

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#1 SENATE BILL 1441 REQUIREMENT

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

#1 Uniform Standard

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

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

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

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

    - is approved by the board.

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

3. The clinical diagnostic evaluation report shall:

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

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

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

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

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

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

#2 SENATE BILL 1441 REQUIREMENT

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

#2 Uniform Standard

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

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

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

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

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

#3 SENATE BILL 1441 REQUIREMENT

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

#3 Uniform Standard

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

#4 SENATE BILL 1441 REQUIREMENT

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

#4 Uniform Standard

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

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

TESTING FREQUENCY SCHEDULE

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

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

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

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

EXCEPTIONS TO TESTING FREQUENCY SCHEDULE

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

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

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

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

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

OTHER DRUG STANDARDS

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

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

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

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

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

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

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

Collection of specimens shall be observed.

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

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

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

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

PETITIONS FOR REINSTATEMENT

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

contains different provisions for reinstatement or reduction of penalty.

OUTCOMES AND AMENDMENTS

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

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

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

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

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

#5 SENATE BILL 1441 REQUIREMENT

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

#5 Uniform Standard

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

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

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

Group Meeting Facilitator Qualifications and Requirements:

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

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

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

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

#6 SENATE BILL 1441 REQUIREMENT

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

#6 Uniform Standard

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

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

#7 SENATE BILL 1441 REQUIREMENT

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

#7 Uniform Standard

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

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

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

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

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

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

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

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

    c) Review the licensee's work attendance.

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

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

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

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

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

#8 SENATE BILL 1441 REQUIREMENT

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

#8 Uniform Standard

When a licensee tests positive for a banned substance:

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

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

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

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

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

1. Consult the specimen collector and the laboratory;

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

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

#9 SENATE BILL 1441 REQUIREMENT

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

#9 Uniform Standard

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

#10 SENATE BILL 1441 REQUIREMENT

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

#10 Uniform Standard

Major Violations include, but are not limited to:

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

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

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

Minor Violations include, but are not limited to:

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

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

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

#11 SENATE BILL 1441 REQUIREMENT

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

#11 Uniform Standard

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

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

1. Demonstrated sustained compliance with current recovery program.

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

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

#12 SENATE BILL 1441 REQUIREMENT

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

#12 Uniform Standard

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

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

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

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

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

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

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

#13 SENATE BILL 1441 REQUIREMENT

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

#13 Uniform Standard

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

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

(a) Specimen Collectors:

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

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

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

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

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

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

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

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

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

(b) Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

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

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

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

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

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

(c) Work Site Monitors:

1. The worksite monitor must meet the following qualifications:

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

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

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

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

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

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

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

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

   c) Review the licensee's work attendance.

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

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

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

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

(d) Treatment Providers

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

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

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

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

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

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

(e) General Vendor Requirements

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

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

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

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

#14 SENATE BILL 1441 REQUIREMENT

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

#14 Uniform Standard

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

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

#15 SENATE BILL 1441 REQUIREMENT

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

#15 Uniform Standard

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

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

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

#16 SENATE BILL 1441 Requirement

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

#16 Uniform Standard

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

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

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

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

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

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

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

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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MEMORANDUM

DATE	August 3, 2011
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 3(B):** Discussion and Possible Action Regarding Adoption of Proposed Amendments to Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

Background:
Following the Board's consideration of comments received during the required 45-day public comment period, the Board may hold discussion and take action to adopt proposed amendments to California Code of Regulations, Title 16, Sections 1018 and 1020.5 for the Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines.

Action Requested:
Depending on the Board's response to the comments received, staff requests the Board take one of the following actions:

A. If the Board rejects the comments received, then the Board would:
Adopt the final text as noticed and direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law and authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, CCR, Sections 1018 and 1020.5.

B. If the Board accepts any comments received or modifies the text to include the SACC's changes, then the Board would:
Modify the text in response to the comments and recommendations received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, CCR, Sections 1018 and 1020.5 as noticed in the modified text.

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MEMORANDUM

DATE	August 3, 2011
TO	Dental Board of California
FROM	Donna Kantner, Manager, Licensing and Examination Unit Dental Board of California
SUBJECT	**Agenda Item 4:** Renewal Application for Universidad De La Salle. Discussion Regarding: (1) Current Status and Review of the School's Application; (2) the Board's Authority to Approve a Specified Curriculum within a School of Dentistry or Only a Dental School; and, (3) the Board's Authority to Extend the School's Approval Pending Completion of its Review.

Background:

In December 2004, the Dental Board notified the Universidad De La Salle Bajio that its dental curriculum had been granted full approval according to the provisions of Section 1636.4 of the Business and Professions Code, which sets out the requirements for the evaluation, approval and renewal of foreign dental schools by the Board. Section 1636.4(g) requires that each approved institution submit a renewal application every seven years.

On January 31, 2011, the Board transmitted via overnight mail a renewal application and copies of the applicable statutes and regulations, requesting that the renewal application be returned no later than May 1, 2011 to conform to regulatory timelines.

At its February 24, 2011 meeting, the Board voted that a subcommittee be created to review the renewal application and documents when submitted by the school. President Bettinger appointed Dr. Huong Le and Dr. Steven Morrow to act as this Subcommittee.

The renewal package was received by staff at the Board office on Friday, April 29, 2011 and copies of it were forwarded to the Subcommittee for review on Monday, May 2, 2011. The renewal application contained several volumes that were in Spanish, preventing a complete review by the subcommittee until a translation was received. On May 2, Drs. Le and Morrow met via teleconference with the Board's Legal counsel Kristy Shellans, her supervisor Don Chang and Richard DeCuir. The consensus at the meeting was that the Board has the option to extend the review and approval process.

On June 15, the English translation was received of the materials that were originally submitted in Spanish. The translations were forwarded to Dr. Le and Dr. Morrow for review on June 15. The subcommittee's initial review of the translated materials revealed a number of items that the school must provide before the application can be considered complete and a full review can begin. These requirements were communicated to the school on August 2 in the attached letter.

Due to the deficiencies of the initial renewal application described above, the subcommittee may not have the opportunity to complete its review prior to the new dates proposed for the site visit.

Legal counsel Kristy Shellans will provide a legal opinion at the meeting regarding the Board's authority to approve a specified curriculum within a school of dentistry and the Board's authority to extend the school's approval pending completion of its review.

Drs. Morrow and Le will provide the Board with additional information at the meeting.

STATE OF CALIFORNIA
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August 2, 2011

Dental School, Universidad De La Salle Bajio
1123 Tomo 1. Av.
Col. Lomas Del Campestre, Universidad 602
Apdo. Postal 1-444
C.P. 37150
Leon, Guanajuato, Mexico

Dear President Govela Gutierrez and Dr. Mary Jean McGrath Bernal:

The Board has completed its initial review of your application for renewal. The following additional information and supporting documentation is necessary for the Board to determine if your application is complete pursuant to Title 16, California Code of Regulations Section 1024.4(c). Accordingly, the Board is requesting additional information as follows:

1. Provide a copy of the School of Dentistry's formal and ongoing outcomes assessment process, as required in Institutional Standards #1: Institutional Mission, Purposes and Objectives, if it is different than the University's assessment process. A copy of the School of Dentistry's Strategic Plan will be accepted as alternative documentation. If the assessment process is the same, please confirm this in writing to the Board.

2. Provide enrollment and attrition data for the past 10 years to support the admission standards for all Dentistry programs offered at the University (California program, National program, and International Dental program), including entry requirements and pre-requisites, as required by Institutional Standards #2: Educational Program: Admissions Policy.

3. Provide course content and learning objectives in the form of course syllabi, for all basic science and clinical science course in all dental programs identified in #2 above to support the requirements of Institutional Standards #3: Educational Program: Curriculum.

4. Provide a copy of the school's Radiation Safety Manual, including policy on the use of diagnostic ionizing radiation in patient care and research as required by Institutional Standards #6: Patient Care Services.

5. Provide data supporting the performance of routine maintenance and calibration of ionizing radiation equipment for the last 5 years, as required by Institutional Standards #5: Resources and facilities and Institutional Standards #6: Patient Care Services..

6. Provide a copy of the School's Quality Assurance Protocol or Standards of Care for its patient care program as required by Institutional Standards #6: Patient Care Services.

7. Provide data in support of the school's level of compliance with the stated Standards of Care over the past three (3) years. Also identify the methods used to collect the data.

8. Provide copies of data reports resulting from your stated clinical record audits for the previous twelve (12) months as required by Institutional Standards #6: Patient Care Services.

9. Provide information on Clinical Outcomes Assessment measures (methods) employed and data reports resulting from these outcomes measurements as required by Institutional Standards #6: Patient Care Services. Include corrective measurements taken, when indicated as required by Institutional Standards #6: Patient Care Services.

10. Provide a document listing the competencies (foundational knowledge, behavioral and clinical) that are required of your students for graduation as required by Institutional Standards #3: Educational Program: Curriculum.

11. Provide data for the last 5 years or provide documentation of the criteria used to determine if your students have successfully demonstrated competency in the above stated competencies as required by Institutional Standards #3: Educational Program: Curriculum. If data is included, provide a a description of the methods employed for data collection as required by Institutional Standards #3: Educational Program: Curriculum.

12. Provide grade summary reports for a 50% random sample of the 2011 graduating classes from the School of Dentistry as required by Institutional Standards #2: Admission Policies – California program, Dental – National program, and International Dental program.

13. Provide data for the number of students matriculated (entered) and the number of students graduated from the School of Dentistry as required by Institutional Standards #2: Admission Policies – California program and National program for the last five (5) years.

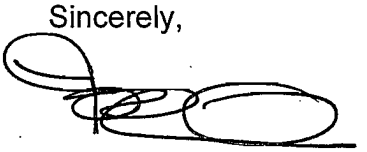
14. Provide data for the number of students matriculated (entered) and the number of students graduated from the International Dental program for the past two (2) years as required by Institutional Standards #2: Admission Policies.

15. Provide data for the number of your students that have taken the National Board Part one examination, the National Board Part two examination and the number of students that passed these examinations for the past 5 years as required by Institutional Standards #3: Educational Program: Curriculum.

16. Explain the process of Dental student transfer from the National program to the California program before he or she has completed the National program as required by Institutional Standards #3: Educational Program: Curriculum.

Please be advised that until the Board receives and approves the additional information as listed above, your renewal application will be considered incomplete. If you have any questions or require additional information please do not hesitate to contact me directly at (916) 263-2188.

Sincerely,



Richard DeCuir, Executive Officer
Dental Board of California

Cc: Huong Le, DDS, Board Member
Stephen Morrow, DDS, Board Member

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MEMORANDUM

DATE	July 19, 2011
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 5: Future Board Meeting Dates**

The Dental Board will need to set the 2012 meeting schedule in order for staff to negotiate contracts for future meeting space locations. A 2012 calendar is attached for your reference.

Pursuant to Business and Professions Code, Section 1607, the Board shall meet regularly once each year in San Francisco and Los Angeles and at such other times and places as the Board may designate, for the purpose of transacting its business.

Following are possible dates in 2012 to consider:

<u>San Diego:</u>
Feb 23-24
Mar 8-9

<u>San Francisco:</u>
May 10-11
May 17-18

<u>Sacramento:</u>
Aug 9-10
Aug 16-17
Aug 23-24

<u>Los Angeles:</u>
Nov 8-9
Nov 15-16

JANUARY 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 New Year's Day	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16 ML King Day	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

December 2011

S	M	T	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February 2012

S	M	T	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29			

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FEBRUARY 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2 Groundhog Day	3	4
5	6	7	8	9	10 California Dental Hygiene Educators Association Annual Session →	11
12 Lincoln's B-Day →	13	14 Valentines Day	15	16	17	18
19	20 President's Day	21	22	23	24	25
26	27 Golf Association in San Diego →	28	29			

January 2012

S	M	T	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

March 2012

S	M	T	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

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MARCH 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	10
11 Daylight Savings	12	13	14	15	16	17 St. Patrick's Day American Dental Education Association Annual Session Orlando, FL →
18 →	19	20 Vernal equinox	21	22	23	24
25	26	27	28	29	30	31

February 2012

S	M	T	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29			

April 2012

S	M	T	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

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APRIL 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 April Fool's Day	2	3	4	5	6 Good Friday	7 Passover
8 Easter	9	10	11	12	13	14
15	16 Taxes Due	17	18	19 CADAT Annual Conference Costa Mesa	20	21
22 Earth Day American Association of Dental Boards Mid-Year Meeting Chicago, IL	23	24	25 Admin Assist Day	26	27	28
29	30					

March 2012

S	M	T	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

May 2012

S	M	T	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

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MAY 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3 California Dental Association Annual Meeting Anaheim	4	5
6	7	8	9	10	11	12
13 Mother's Day	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28 Memorial Day	29	30	31		

April 2012

S	M	T	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

June 2012

S	M	T	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

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JUNE 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10	11	12	13 American Dental Hygienists Association Annual Session Phoenix	14 Flag Day	15	16
17 Father's Day	18	19	20 June Solstice	21	22	23
24	25	26	27	28	29	30

May 2012

S	M	T	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

July 2012

S	M	T	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

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JULY 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4 Independence Day	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20 Ramadan begins	21
22 Parents' Day	23	24	25	26	27	28
29	30	31				

June 2012

S	M	T	W	Th	F	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

August 2012

S	M	T	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

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AUGUST 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19 Aviation Day	20	21	22	23	24	25
26	27	28	29	30	31	

July 2012

S	M	T	W	Th	F	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

September 2012

S	M	T	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

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SEPTEMBER 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3 Labor Day	4	5	6	7	8
9 Grandparents Day	10	11 Patriot Day	12 World Oral Health Day	13	14	15
16	17 Rosh Hashanah	18	19	20	21	22 Autumnal equinox
23	24	25	26 Yom Kippur	27	28	29
30						

August 2012

S	M	T	W	Th	F	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

October 2012

S	M	T	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

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OCTOBER 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8 Columbus Day	9	10	11	12	13
14	15	16	17 American Association of Dental Boards San Francisco	18 American Dental Association San Francisco	19	20
21	22	23	24 United Nations Day	25	26	27
28	29	30	31 Halloween			

September 2012

S	M	T	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

November 2012

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				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

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NOVEMBER 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4 Daylight Savings	5	6	7	8	9 California Dental Association Newport Beach →	10
11 Veterans Day →	12	13	14	15	16	17
18	19	20	21	22 Thanksgiving	23	24
25	26	27	28	29	30	

October 2012

S	M	T	W	Th	F	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

December 2012

S	M	T	W	Th	F	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

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DECEMBER 2012

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9 Chanukkah	10	11	12	13	14	15
16	17	18	19	20	21 Dec. Solstice	22
23	24 Christmas Eve	25 Christmas Day	26 Kwanzaa begins	27	28	29
30	31 New Year's Eve					

November 2012

S	M	T	W	Th	F	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

January 2013

S	M	T	W	Th	F	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

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MEMORANDUM

DATE	July 21, 2011
TO	Dental Board of California
FROM	Karen Fischer, Administrative Analyst Dental Board of California
SUBJECT	**Agenda Item 6:** Discussion and Possible Action Regarding SB 540 (Price) – Legislative Proposal for the Dental Board of California's Sunset Review

Status of SB 540 (Price) Since the May 2011 Dental Board Meeting

At its May 2011 meeting, the Board directed staff to submit a letter to Senator Price, indicating the Board's support of SB 540 while at the same time outlining concerns about the legislation. (A copy of that letter is attached.)

Specifically, the Board asked for Senator Prices' consideration of the following:

1. Re-consideration of the composition of the Board to include eight dentists, five public members, and two dental assistants.

2. Additional enforcement methods that would assist enforcement staff in handling of minor to moderate violations more quickly and appropriately. These methods include time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. Suggested language has been provided to the Committee staff.

3. Further clarification of issues relating to the Dental Assisting Council.

4. Language to ensure that the Board will be able to continue to collect current Dental Assisting 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.

SB 540 was heard in the Assembly Business & Professions Committee on July 5, 2011. Drs. Bettinger, Whitcher, Ms. Fran Burton and staff attended the hearing.

The bill was amended July 12th. The amendments specify that the composition of the Board will be eight (8) practicing dentists, one (1) registered dental hygienist, one (1) registered dental assistant, and five (5) public members; and contain a provision that the next sunset date of the Dental Board is January 1, 2016. (The July 12, 2011 amended version of SB 540 is attached.)

With regard to clarification of issues relating to the Dental Assisting Council, we have been told that amendments have been submitted to the Legislative Counsel and will be made in the Assembly Appropriations Committee.

In response to the Board's request for clarification relating to its ability to collect dental assisting fees after January 1, 2012, the Senate Business, Professions, and Economic Development Committee staff inserted the following language expressing the legislative intent regarding this issue:

> *SEC. 20. It is the intent of the Legislature that any fees established by the Dental Board of California under Section 1725 of the Business and Professions Code that are in effect on December 31, 2011, continue to apply on and after January 1, 2012, until the board changes those fees by regulation, as set forth in Section ~~14~~ 12 of this act.*

According to our legal counsel, "legislative intent" language regarding dental assisting fees may be insufficient and not legally defensible. If "legislative intent" language is necessary to clarify the statute, it may be easier to amend the law itself.

Currently the bill does not contain amendments to provide for enforcement tools such as time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment.

SB 540 was re-referred to the Appropriations Committee where it is scheduled to be heard on August 17th at 9:00 am.

Action:
No Board action requested.

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Dental Board of California
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May 24, 2011

The Honorable Curren D. Price, Jr.
Chair, Senate Business, Professions and Economic Development Committee
State Capitol, Room 2053
10th & L Streets
Sacramento, CA 95814

Subject: Senate Bill 540 (Price), Amended May 12, 2011

Dear Senator Price:

The intent of this letter is to extend the Dental Board of California's support of Senate Bill 540, while at the same time providing you with our concerns about this legislation as outlined below:

1. The Board believes that dental assistant representation on the Board is critical and therefore opposes removing the dental assistant position from the Board. Public testimony from the professional organizations expressed similar concern at the Board's quarterly meeting in San Francisco last week. We respectfully request that you re-consider the composition of the Board to include eight dentists, five public members, and two dental assistants.

2. We request that you continue to consider additional enforcement methods that would assist enforcement staff in handling of minor to moderate violations more quickly and appropriately. These methods include time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment. Suggested language has been provided to your Committee staff.

3. With regard to the proposed creation of a Dental Assisting Council, the Board took no position. However, we request further clarification of the following items:
    a. 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?
    b. Does this language prohibit the Board from seeking input from other entities outside the Council on issues relating to dental assisting?
    c. Is it the intent of this legislation that the Council consider disciplinary matters in closed session?

d. Will the legislation be amended to include conflict of interest language for the qualifications of the Dental Assisting Council appointees?

4. The current version of the bill requires that Registered Dental Assistant fees be raised by regulation rather than resolution. As written, SB 540 prohibits the Board from collecting fees until after the regulations are promulgated which could be up to one year. We request that you provide an amendment to ensure that the Board will be able to continue to collect current 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. Unless this legislation is amended, the Board will be unable to collect current dental assisting fees after January 1, 2012 until the regulations become effective. Suggested language has already been provided to your Committee staff.

The Board appreciates the opportunity to continue to work with you and your staff on Senate Bill 540. If you have any questions, please feel free to contact me.

Sincerely,

John Bettinger, DDS,
President, Dental Board of California

cc: Members of the Dental Board of California
Bill Gage, Chief Consultant
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

AMENDED IN ASSEMBLY JULY 12, 2011

AMENDED IN ASSEMBLY JUNE 27, 2011

AMENDED IN SENATE MAY 12, 2011

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, 1695.5, 1725, 1752.3, 1753.4, 1901, 1905.2, and 1973 of, to add Section 1611.3 to, to repeal and amend ~~Section 1616.5 of,~~ *Sections 1601.1 and 1616.5 of, and* to repeal and add Section 1742 of, ~~and to repeal, amend, and add Section 1601.1 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 ~~the board~~ *those provisions* until January 1, 2016, and instead specify that the board would be subject to review by the appropriate policy committees of the Legislature. The bill would change the membership of the board~~, until January 1, 2014,~~ to include ~~a total of 5 public members, and would, on and after January 1, 2014, delete the dental hygienist member and the dental assistant member, and provide for a total of 7 public members to the board~~ *one additional public member,* 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 be appointed by the board, to consider matters relating to dental assistants and make recommendations to the board and standing committees of the board, as specified.

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 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:

1 SECTION 1. Section 651 of the Business and Professions Code
2 is amended to read:
3 651. (a) It is unlawful for any person licensed under this
4 division or under any initiative act referred to in this division to
5 disseminate or cause to be disseminated any form of public
6 communication containing a false, fraudulent, misleading, or
7 deceptive statement, claim, or image for the purpose of or likely

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 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) (1) This section shall become operative on January 1, 2014.~~

~~(2) 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, one registered dental hygienist, one registered dental assistant, and five 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, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.~~

~~SEC. 5. 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 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 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 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.~~

~~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. Two of the public members and two of the~~

~~dentist members appointed by the Governor shall each serve a term of three years. The 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. 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 ~~four~~ *five* public members. Of the eight practicing dentists, one shall be a member of a faculty of any California dental college, and one shall be a dentist practicing in a nonprofit community clinic. The appointing powers, described in Section 1603, may appoint to the board a person who was a member of the prior board. The board shall be organized into standing committees dealing with examinations, enforcement, and other subjects as the board deems appropriate.

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

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

(d) This section shall remain in effect only until January 1, ~~2012~~ *2016*, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2012~~ *2016*, deletes or extends that date. ~~The~~ *Notwithstanding any other provision of law, the* repeal of this section renders the board subject to ~~the~~ review ~~required~~ by ~~Division 1.2 (commencing with Section 473)~~ *the appropriate policy committees of the Legislature*.

SEC. 4. 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 ~~two~~ *three* of the public members, the dental hygienist member, the dental assistant member, and the eight licensed dentist members of the board. The Senate ~~Rules~~ 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 appointed by the Governor shall each serve for a term of two years. One 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 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.

~~SEC. 7.~~

SEC. 5. 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. 8.~~

SEC. 6. 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. 9.~~

SEC. 7. 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. 10.~~

SEC. 8. 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, 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. 11.~~

SEC. 9. 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 for licensees and shall ensure that probationary and evaluation reports are conducted consistently and regularly.

~~SEC. 12.~~

SEC. 10. 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. 13.~~

SEC. 11. 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. 14.~~

SEC. 12. 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. 15.~~

SEC. 13. Section 1742 of the Business and Professions Code is repealed.

~~SEC. 16.~~

SEC. 14. 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 and the standing committees of 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, and shall include two members of the board and appointees from each of the following categories:

(1) Each incorporated, nonprofit professional society, association, or other entity in California whose membership is comprised of registered dental assistants shall recommend one registered dental assistant and one registered dental assistant in extended functions who shall be considered for selection by the board. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 500 individuals for the last five years, and shall have bylaws that require its members to comply with a code of ethics. To qualify, a registered dental assistant and a registered dental assistant in extended functions shall be currently licensed and working clinically in private dental practice or public safety net or dental health care clinics, shall have been licensed as a registered dental assistant or registered dental assistant in extended functions for no less than five years, and shall not be an employee of a current member of the board. No more than two members shall be a member of the faculty of any registered dental assistant educational program approved by the board.

(2) One dental assisting educator selected by the board from a board-approved or commission-accredited registered dental assisting program whose license shall be current and issued by the board for no less than five years and whose teaching experience shall be verified as being no less than five years.

(3) Two at-large registered dental assistants selected by the board.

(c) No council appointee shall have served previously on the dental assisting forum or have any financial interest in any registered dental assistant school. All final candidate qualifications and applications for board-appointed council members shall be made available in the published board materials with final candidate selection conducted during the normal business of the board during public meetings.

(d) A vacancy occurring during a term shall be filled by appointment by the board for the unexpired term, according to the criteria applicable to the vacancy within 90 days after it occurs.

(e) Each member shall meet the qualifications specified in Section 1602 and comply with conflict of interest requirements that apply to board members.

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

(g) 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, three members *shall* serve a term of three years, and the remaining members, if any, shall serve a term of four years, as determined by the board.

(h) Recommendations by the council pursuant to this section shall be approved, modified, or rejected by the board within 90 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the recommendation, the council may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation, which shall be provided by the board within 30 days of the request.

(i) The board shall make all the initial appointments by July 1, 2012.

(j) The appointment of the two board members on the council shall be effective only until January 1, 2014.

~~SEC. 17.~~

SEC. 15. 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. 18.~~

SEC. 16. 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. 19.~~

SEC. 17. Section 1901 of the Business and Professions Code is amended to read:

1901. There is hereby created within the Dental Board of California a Dental Hygiene Committee of California in which the administration of this article is vested.

~~SEC. 20.~~

SEC. 18. Section 1905.2 of the Business and Professions Code is amended to read:

1905.2. Recommendations by the committee regarding scope of practice issues, as specified in paragraph (8) of subdivision (a) of Section 1905, shall be approved, modified, or rejected by the board within 90 days of submission of the recommendation to the board. If the board rejects or significantly modifies the intent or scope of the recommendation, the committee may request that the board provide its reasons in writing for rejecting or significantly modifying the recommendation, which shall be provided by the board within 30 days of the request.

~~SEC. 21.~~

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.

~~SEC. 22.~~

SEC. 20. It is the intent of the Legislature that any fees established by the Dental Board of California under Section 1725 of the Business and Professions Code that are in effect on December 31, 2011, continue to apply on and after January 1, 2012, until the board changes those fees by regulation, as set forth in Section ~~14~~ *12* of this act.

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STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
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MEMORANDUM

DATE	August 1, 2011
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 7:** Discussion and Possible Action Regarding SB 544 (Price), Professions and Vocations: Regulatory Boards Relating to the Consumer Health Protection Enforcement Act

Background

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). Prior to the bill being amended, Senate Business and Professions Committee staff provided the healing arts boards with an outline of the changes that were to be included in SB 544 **(Attachment A – Enforcement Changes for Healing Arts Boards)**. 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 – Senate Bill 544, As Amended April 14, 2011)**. Committee staff completed an analysis of the April 14, 2011 amended version of the bill in preparation of a hearing scheduled for May 2, 2011**(Attachment C – Senate Committee on Business, Professions, and Economic Development Bill Analysis)**.

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 – Letter Addressed to Senator Price Regarding Senate Bill 544)**. 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. During the hearing, the bill was identified as a two-year bill and will be carried over to next year.

The April 14, 2011 version of SB 544 contains a total of one-hundred-and-ninety-one (191) sections containing various amendment and additions to the Business and Professions Code and the Government Code. Of the one-hundred-and-ninety-one

sections, there are forty (40) sections that contain proposed amendments and additions that will directly affect the Board. These proposed amendments and additions are included in the: (1) general provisions of the Business and Professions Code applicable to the Department of Consumer Affairs and all healing arts boards, and (2) provisions contained in the Dental Practice Act.

As part of the Board's Sunset Review process, staff identified three enforcement tools that require legislative action. The following tools were presented to Committee staff to enable to Board to address minor to moderate violations of the Dental Practice Act:

1. Time limitations on public disclosure for citations issued for less egregious violations,
2. Letter of Admonishment, and
3. Notice of Correction

Committee staff advised the Board that these additional enforcement tools would be included in SB 544 when the bill was picked up again in 2012.

Action Requested:

The purpose of this agenda item is to seek the Board's position on the provisions contained in SB 544 as currently amended. Please note that this is a two-year bill and the provisions may be amended in 2012. It is important to begin this process now, as we may find ourselves in between meetings when the bill begins moving again and staff may need to send a letter regarding the Board's position.

Due to the enormity of this bill, staff requests the Board review each of the provisions of this bill over the course of two meetings. For the August meeting, staff has prepared an analysis of the seventeen (17) provisions contained within SB 544 that amend the Dental Practice Act. Staff will prepare an analysis of the proposed amendments to the Business and Profession Code general provisions for the November meeting.

Staff requests the Board take one of the following actions:

- Request the Board President appoint a subcommittee to work with staff to develop preliminary positions and correlating rationales for each of the forty (40) proposed provisions contained in SB 544 and the proposed enforcement tools to present to the Board at the next meeting for consideration; or

- Discuss as a full Board and take positions on each of the following seventeen (17) proposed amendments that relate to the Dental Practice Act at the August meeting, and discuss and take positions on the remaining amendments to the general provisions at the November meeting.

ENFORCEMENT TOOLS REQUIRING STATUTORY AMENDMENTS AS PRESENTED DURING THE BOARD'S SUNSET REVIEW PROCESS

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.

Time Limitations on Public Disclosure for Citations Issued:
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.

Letter of Admonishment:
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.

Notice of Correction:
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.

ANALYSIS OF PROVISIONS CONTAINED IN SENATE BILL 544 (PRICE): AMENDMENTS AND ADDITIONS TO THE DENTAL PRACTICE ACT

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1) Proposed Addition of Business and Professions Code Section 1688 (SEC. 24, Page 18 of SB 544)

Summary:
This bill authorizes the Board to delegate to its executive officer the authority to adopt a proposed default decision where there is an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued. This bill requires the executive officer to report to the Board the number of proposed default decision adopted pursuant to this section.

This bill authorizes the Board to delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts board and the licensee has agreed to the revocation or surrender his or her license. This bill requires the executive officer to report to the Dental Board the number of proposed settlement agreements adopted pursuant to this section.

Analysis:
This language is permissive and does not require the Board to delegate authority to the Executive Officer. When reviewing the proposed Consumer Protection Enforcement Initiative regulatory language in 2010, the Board voted to not include the delegation of authority in the proposed regulatory language.

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2) Proposed Addition of Business and Professions Code Section 1688.1 (SEC. 25, Page 18 of SB 544)

Summary:
This bill allows the Board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant. The bill requires the settlement to include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated and specifies that a person who enters a settlement is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement. The bill states that any settlement executed against a licensee shall be considered discipline, and a public record to be posted on the applicable board's Internet Website. The executive officer is required to report to the Dental Board the number of proposed settlement agreements adopted pursuant to this section.

Analysis:
This proposed language may violate due process laws and the Administrative Procedure Act. The factual basis and findings for a violation are contained within the Accusation or Statement of Issues before reaching settlement agreements.

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3) Proposed Addition of Business and Professions Code Section 1688.2 (SEC. 26, Page 19 of SB 544)

Summary:
This bill requires the automatic suspension of any licensee who is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The Board is required to notify the licensee in writing of the suspension and of his or her right to elect to have the issue of penalty heard, as specified.

Analysis:
This provision will aid the Board with expediting the disciplinary process for licensees who have been incarcerated.

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4) Proposed Addition of Business and Professions Code Section 1688.3 (SEC. 27, Page 21 of SB 544)

Summary:
This bill provides that any proposed decision issued by an administrative law judge that contains a finding of fact that a licensee has engaged in any act of sexual contact, as defined, with a patient, or has committed a sex offense as defined, shall contain an order of revocation. This bill specifies that the revocation shall not be stayed by the administrative law judge.

Analysis:
The Board’s current Disciplinary Guidelines specify that the maximum penalty for the commission of act of sexual abuse or misconduct with a patient is revocation, and the minimum penalty is revocation stayed with five years of probation for consensual sex with one patient. This new provision would eliminate the Board's discretion when deciding penalties for crimes relating to sexual contact between patients and licensees. Business and Professions Code Section 729 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.

Existing law, Business and Professions Code Section 1687, authorizes the Board to deny, revoke, or suspend the license of an individual who is required to register as a sex offender. The proposed amendment contradicts existing law, and will effectively repeal it if this bill is enacted.

5) Proposed Addition of Business and Professions Code Section 1688.4 (SEC. 28, Page 21 of SB 544)

Summary:
This bill requires the Board to deny an application for licensure by a registered sex offender. This bill requires the Board to revoke the license of an individual required to register as a sex offender. The Board is not authorized to reinstate or reissue the license or issue a stay of denial or place the licensee on probation.

Analysis:
This proposed language is duplicative of existing law, Business and Professions Code Section 1687. The proposed language also states that the Board shall "promptly" revoke the license of an individual required to register as a sex offender. Adding the term "promptly" is undefined and may cause confusion as to what would qualify as prompt revocation of a license.

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6) Proposed Addition of Business and Professions Code Section 1688.5 (SEC. 29, Page 22 of SB 544)

Summary:
This bill provides that on or after July 1, 2013, the Board shall post on the Internet specified information in its possession, custody, or control regarding every licensee for which the board licenses, including whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice order, as specified, or subject to any of the enforcement actions, as specified; whether or not the licensee or former licensee has been subject to discipline by the Board or by the board of another state or jurisdiction, as described; any felony conviction of a licensee reported to the Board; all current accusations filed by the AG's Office; any malpractice judgment or arbitration award; any hospital disciplinary action imposed against a licensee as a result of termination or revocation of the licensee's hospital staff privileges for a medical disciplinary cause; any misdemeanor conviction of a license that results in the disciplinary action of an accusation that is not subsequently withdrawn or dismissed; and appropriate disclaimers and explanatory statements to accompany the above information. This bill specifies that the information on the Internet will be in accordance with the California Public Records Act and it may not include personal information, as specified.

Analysis:
The Board's license verification web site will need to be modified to accommodate the information required to be disclosed. This will require additional work load of staff to compile this information, modify the Board's web site, add the necessary information to the web site, and maintain of the web site.

7) Proposed Addition of Business and Professions Code Section 1668.6 (SEC. 30, Page 24 of SB 544)

Summary:
This bill provides for the automatic suspension of a Board licensee, if the licensee holds a license in another state that has been suspended or revoked, for the duration of the suspension or revocation. This bill requires the Board to notify the licensee of the suspension and their right to have the issue of penalty heard. The Board, upon its own motion for good cause shown, may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so. This bill provides that the issue of penalty will be heard by an administrative law judge alone or with a panel of the Board in the discretion of the Board. This bill provides that the record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license, including a transcript of the testimony, may be received in evidence. These provisions do not apply to a licensee who maintains their primary practice in California, as specified. This bill provides that these provisions will not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason whose suspension or revocation has been stayed. This bill provides that this shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

Analysis:
This will assist the board if quickly suspending a license of a practitioner whose license has been suspended or revoked in another state that is substantially related to their ability to safely practice and with providing better public protection.

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8) Proposed Addition of Business and Professions Code Section 1947.1 (SEC. 31, Page 25 of SB 544)

Summary:
This bill allows the Board to 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. This bill requires the executive officer to report to the Board the number of proposed default decision adopted pursuant to this section.

This bill allows the Board to delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts Board and the licensee has agreed to the revocation or surrender his or her license. This bill requires the executive officer to report to the Board the number of proposed settlement agreements adopted pursuant to this section.

Analysis:
This bill proposes additions of Business and Professions Code Sections 1947.1 through 1947.8 pertaining to the Dental Hygiene Committee of California. All references to "board" in these sections should be changed to "committee" as the Dental Hygiene Committee runs their own enforcement program and is autonomous from the Dental Board except when defining scope of practice.

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9) Proposed Addition of Business and Professions Code Section 1947.2 (SEC. 32, Page 25 of SB 544)

Summary:
This bill allows the Board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant. This bill requires the settlement to include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated and specifies that a person who enters a 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. This bill states that any settlement executed against a licensee shall be considered discipline, and a public record to be posted on the applicable board's Internet Website. This bill requires the executive officer to report to the Board the number of proposed settlement agreements adopted pursuant to this section.

Analysis:
This bill proposes additions of Business and Professions Code Sections 1947.1 through 1947.8 pertaining to the Dental Hygiene Committee of California. All references to "board" in these sections should be changed to "committee" as the Dental Hygiene Committee runs their own enforcement program and is autonomous from the Dental Board except when defining scope of practice.

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10) Proposed Addition of Business and Professions Code Section 1947.3 (SEC. 33, Page 26 of SB 544)

Summary:
This bill requires the automatic suspension of any licensee who is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. This bill 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

Analysis:
This bill proposes additions of Business and Professions Code Sections 1947.1 through 1947.8 pertaining to the Dental Hygiene Committee of California. All references to "board" in these sections should be changed to "committee" as the Dental Hygiene

Committee runs their own enforcement program and is autonomous from the Dental Board except when defining scope of practice.

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11) Proposed Addition of Business and Professions Code Section 1947.4 (SEC. 34, Page 28 of SB 544)

Summary:
This bill provides that any proposed decision issued by an administrative law judge that contains a finding of fact that a licensee has engaged in any act of sexual contact, as defined, with a patient, or has committed a sex offense as defined, shall contain an order of revocation. This bill specifies that the revocation shall not be stayed by the administrative law judge.

Analysis:
This bill proposes additions of Business and Professions Code Sections 1947.1 through 1947.8 pertaining to the Dental Hygiene Committee of California. All references to "board" in these sections should be changed to "committee" as the Dental Hygiene Committee runs their own enforcement program and is autonomous from the Dental Board except when defining scope of practice.

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12) Proposed Addition of Business and Professions Code Section 1947.5 (SEC. 35, Page 28 of SB 544)

Summary:
This bill requires the board to deny an application for licensure by a registered sex offender. This bill requires the board to revoke the license of an individual required to register as a sex offender. The board is not authorized to reinstate or reissue the license or issue a stay of denial or place the licensee on probation.

Analysis:
This bill proposes additions of Business and Professions Code Sections 1947.1 through 1947.8 pertaining to the Dental Hygiene Committee of California (DHCC). All references to "board" in these sections should be changed to "committee" as the Dental Hygiene Committee runs their own enforcement program and is autonomous from the Dental Board except when defining scope of practice.

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13) Proposed Addition of Business and Professions Code Section 1947.6 (SEC. 36, Page 29 of SB 544)

Summary:
This bill requires any employer of a RDH, RDHEF, or RDHAP to report to the board the suspension or termination for cause of any licensed RDH, RDHEF, or RDHAP in its employ. This bill 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. This bill makes willful failure to report punishable by an administrative fine not to exceed $100,000 per violation. This bill makes any failure, other than willful failure, to report punishable by an administrative fine not to exceed $50,000 per violation

Analysis:
This bill proposes additions of Business and Professions Code Sections 1947.1 through 1947.8 pertaining to the Dental Hygiene Committee of California (DHCC). All references to "board" in these sections should be changed to "committee" as the Dental Hygiene Committee runs their own enforcement program and is autonomous from the Dental Board except when defining scope of practice. The employer reporting requirements are not included in proposed provisions relating to the Board.

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14) Proposed Addition of Business and Professions Code Section 1947.7 (SEC. 37, Page 31 of SB 544)

Summary:
This bill provides that on or after July 1, 2013, the Board shall post on the Internet specified information in its possession, custody, or control regarding every licensee for which the board licenses, including whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice order, as specified, or subject to any of the enforcement actions, as specified; whether or not the licensee or former licensee has been subject to discipline by the Board or by the board of another state or jurisdiction, as described; any felony conviction of a licensee reported to the Board; all current accusations filed by the AG's Office; any malpractice judgment or arbitration award; any hospital disciplinary action imposed against a licensee as a result of termination or revocation of the licensee's hospital staff privileges for a medical disciplinary cause; any misdemeanor conviction of a license that results in the disciplinary action of an accusation that is not subsequently withdrawn or dismissed; and appropriate disclaimers and explanatory statements to accompany the above information. This bill specifies that the information on the Internet will be in accordance with the California Public Records Act and it may not include personal information, as specified.

Analysis:
This bill proposes additions of Business and Professions Code Sections 1947.1 through 1947.8 pertaining to the Dental Hygiene Committee of California (DHCC). All references to "board" in these sections should be changed to "committee" as the Dental Hygiene Committee runs their own enforcement program and is autonomous from the Dental Board except when defining scope of practice.

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15) Proposed Addition of Business and Professions Code Section 1947.8 (SEC. 38, Page 32 of SB 544)

Summary:
This bill provides for the automatic suspension of a Board licensee, if the licensee holds a license in another state that has been suspended or revoked, for the duration of the suspension or revocation. This bill requires the Board to notify the licensee of the suspension and their right to have the issue of penalty heard. The Board, upon its own motion for good cause shown, may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so. This bill provides that the issue of penalty will be heard by an administrative law judge alone or with a panel of the Board in the discretion of the Board. This bill provides that the record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license, including a transcript of the testimony, may be received in evidence. These provisions do not apply to a licensee who maintains their primary practice in California, as specified. This bill provides that these provisions will not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason whose suspension or revocation has been stayed. This bill provides that this shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

Analysis:
This bill proposes additions of Business and Professions Code Sections 1947.1 through 1947.8 pertaining to the Dental Hygiene Committee of California (DHCC). All references to "board" in these sections should be changed to "committee" as the Dental Hygiene Committee runs their own enforcement program and is autonomous from the Dental Board except when defining scope of practice.

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16) Proposed Addition of Government Code Section 12529.8 (SEC. 189, Page 217 of SB 544)

Summary:
This bill authorizes any healing arts board to utilize the vertical enforcement and prosecution models of some or all of its enforcement actions. This bill authorizes the healing arts boards to utilize the services of the DOJ Health Quality Enforcement Section or the licensing section. If a healing arts board elects to utilize these services, DOJ shall assign attorneys to work on location at the licensing until of the Division of Investigation of the Department of Consumer Affairs.

Analysis:
This provision is permissive and does not require the Board to utilize the vertical enforcement and prosecution models.

17) Proposed Legislative Intent Language (SEC. 190, Page 218 of SB 544)

Summary:
The bill states that 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 for healing arts license information, as specified

Analysis:
The Department is currently working on the BreEZe system that will be used for all healing arts license information.

Attachment A

Enforcement Changes for Healing Arts Boards

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)
Amended April 14, 2011 Version

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

or rescinded as provided in subdivision (c). The board shall notify the licensee of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the specific healing art.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone or with a panel of the board, in the discretion of the board. A licensee may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the license or authority to practice is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon a showing to the administrative law judge or panel by the licensee that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded. If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the licensee's out-of-state license or authority to practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee's license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee's license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

SEC. 95. Section 3112 is added to the Business and Professions Code, to read:

3112. (a) The board may delegate to its executive officer the authority to adopt a proposed default decision where an administrative action to revoke a certificate of registration has been filed and the registrant has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the certificate of registration has been issued.

(b) The board may delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a certificate of registration has been filed by the board and the registrant has agreed to the revocation or surrender of his or her certificate of registration.

(c) The executive officer shall, at scheduled board meetings, report to the board the number of proposed default decisions or proposed settlement agreements adopted pursuant to this section.

SEC. 96. Section 3112.1 is added to the Business and Professions Code, to read:

3112.1. (a) Notwithstanding Section 11415.60 of the Government Code, the board may enter into a settlement with a registrant or applicant in lieu of the issuance of an accusation or statement of issues against that registrant or applicant, as applicable.

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) A person who enters a settlement pursuant to this section is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a registrant executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board's Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board's Internet Web site.

(e) The executive officer shall, at scheduled board meetings, report to the board the number of proposed settlement agreements adopted pursuant to this section.

SEC. 97. Section 3112.2 is added to the Business and Professions Code, to read:

3112.2. (a) The certificate of registration of a registrant shall be suspended automatically during any time that the registrant is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of registration of the registrant has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The board shall notify the registrant in writing of the certificate of registration suspension and of his or her right to elect to have the issue of penalty heard as provided in subdivision (d).

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing before an administrative law judge from the Office of Administrative Hearings it is determined that the felony for which the registrant was convicted was substantially related to the qualifications, functions, or duties of a registrant, the board shall suspend the certificate of registration until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(c) Notwithstanding subdivision (b), a conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state, regulating dangerous drugs or controlled substances, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a registrant and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest

of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the board.

(d) (1) Discipline may be ordered against a registrant in accordance with the statutes and regulations of the board when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Office of Administrative Hearings. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a registrant may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the registrant so elects, the issue of penalty shall be heard in the manner described in subdivision (b) at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a registrant. If the conviction of a registrant who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in a conviction, including a transcript of the testimony in those proceedings, may be received in evidence.

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a certificate of registration issued by the board shall not apply to proceedings conducted pursuant to this section.

SEC. 98. Section 3112.3 is added to the Business and Professions Code, to read:

3112.3. (a) Except as otherwise provided, any proposed decision or decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any

finding of fact that the registrant engaged in any act of sexual contact with a patient, as defined in subdivision (c) of Section 729, or any finding that the licensee has committed a sex offense, shall contain an order revoking the license. The proposed decision shall not contain any order staying the revocation of the certificate.

(b) As used in this section, the term sex offense shall mean any of the following:

(1) Any offense for which registration is required by Section 290 of the Penal Code or a finding that a person committed such an act.

(2) Any offense described in Section 243.4(a)–(d), 261.5, 313.1, or 647(a) or (d) of the Penal Code or a finding that a person committed such an act.

(3) Any attempt to commit any of the offenses specified in this section.

(4) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.

SEC. 99. Section 3112.4 is added to the Business and Professions Code, to read:

3112.4. (a) Except as otherwise provided, with regard to an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, under military law, or under federal law, the board shall be subject to the following requirements:

(1) The board shall deny an application by the individual for registration in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) If the individual is registered under this chapter, the board shall promptly revoke the certificate of registration of the individual in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The board shall not stay the revocation and place the certificate of registration on probation.

(3) The board shall not reinstate or reissue the individual's certificate of registration. The board shall not issue a stay of certificate of registration denial nor place the certificate of registration on probation.

(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.

(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.

(3) Any administrative adjudication proceeding under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that is fully adjudicated prior to January 1, 2008. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition against reinstating a certificate of registration to an individual who is required to register as a sex offender shall be applicable.

SEC. 100. Section 3112.5 is added to the Business and Professions Code, to read:

3112.5. (a) Notwithstanding any other provision of law making a communication between a registrant and his or her patients a privileged communication, those provisions shall not apply to investigations or proceedings conducted by the board. Members of the board, deputies, employees, agents, the office of the Attorney General, and representatives of the board shall keep in confidence during the course of investigations the names of any patients whose records are reviewed and may not disclose or reveal those names, except as is necessary during the course of an investigation, unless and until proceedings are instituted. The authority under this subdivision to examine records of patients in the office of a licensee is limited to records of patients who have complained to the board about that licensee.

(b) Notwithstanding any other provision of law, the Attorney General and his or her investigative agents, and the board and its investigators and representatives may inquire into any alleged violation of the laws under the jurisdiction of the board or any

other federal or state law, regulation, or rule relevant to the practice regulated by the board, whichever is applicable, and may inspect documents relevant to those investigations in accordance with the following procedures:

(1) Any document relevant to an investigation may be inspected, and copies may be obtained, where a patient provides written authorization.

(2) Any document relevant to the business operations of a registrant, and not involving medical records attributable to identifiable patients, may be inspected and copied where relevant to an investigation of a licensee.

(c) In all cases where documents are inspected or copies of those documents are received, their acquisition or review shall be arranged so as not to unnecessarily disrupt the medical and business operations of the registrant or of the facility where the records are kept or used.

(d) Where certified documents are lawfully requested from registrants in accordance with this section by the Attorney General or his or her agents or deputies, or investigators of any board, the documents shall be provided within 10 business days of receipt of the request, unless the registrant is unable to provide the certified documents within this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. Failure to produce requested certified documents or copies thereof, after being informed of the required deadline, shall constitute unprofessional conduct. A board may use its authority to cite and fine a registrant for any violation of this section. This remedy is in addition to any other authority of the board to sanction a licensee for a delay in producing requested records.

(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

(f) The registrant shall cooperate with the board in furnishing information or assistance as may be required, including, but not limited to, participation in an interview with investigators or representatives of the board.

(g) This section shall not apply to a licensee who does not have access to, and control over, certified medical records or other

types of documents that belong to or are controlled by a health facility or clinic.

SEC. 101. Section 3112.6 is added to the Business and Professions Code, to read:

3112.6. (a) (1) Notwithstanding any other provision of law, a registrant who fails or refuses to comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section shall be required to pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the registrant is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the certified medical records of a patient that is accompanied by that patient's written authorization for release of records to a board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing patient's certified medical records to the board within 15 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the patient's authorization. The board shall pay the reasonable costs of copying the certified medical records, but shall not be required to make that payment prior to the production of the medical records.

(b) (1) A registrant who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable

to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). The fine shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a registrant shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be punishable by a fine not to exceed five thousand dollars ($5,000), shall be reported to the State Department of Public Health, and

shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the certificate.

(d) A failure or refusal of a registrant to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her certificate.

(e) Imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code). Any civil penalties paid to, or received by, the board pursuant to this section shall be deposited into the fund administered by the board.

(f) For purposes of this section, "certified medical records" means a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

(g) For purposes of this section, a "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(h) If a board complies with Section 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a registrant who does not have access to, or control over, certified medical records or other types of documents that belong to or are controlled by a health facility or clinic.

SEC. 102. Section 3112.7 is added to the Business and Professions Code, to read:

3112.7. (a) Notwithstanding any other provision of law, any employer of a licensee shall report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any licensee in its employ within 15 business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall

be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.

(b) The information to be reported by the employer shall include the name and license number of the 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

SB 544 Bill Analysis

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 <u>currently</u> <u>exists</u> 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
DEPARTMENT 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.

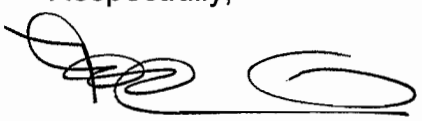
Previous Board Positions:
Business and Professions Code Section 116 provides that the Director of the Department or his or her designee may audit and review the enforcement programs of all the healing arts boards. At its February 25, 2010 meeting, the Board reviewed the proposed Consumer Protection Enforcement 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

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	July 18, 2011
TO	Dental Board Members
FROM	Donna Kantner, Manager, Licensing and Examination Unit Dental Board of California
SUBJECT	**Agenda Item 8:** Discussion and Possible Action Regarding Special Permits (Business and Professions Code Section 1640 – 1642)

Background:
Business and Professions Code, Sections 1640 – 1642, allows the Board to issue a Special Permit to practice dentistry to an individual who does not hold a California dental license if he or she has a pending contract with a California dental college as a full-time professor, an associate professor or an assistant professor.

Currently, there are two ways to qualify for a Special Permit:

1) Must be a graduate of a board-approved dental college and show proof of certification as a diplomat of a specialty board or evidence of completion of an advanced educational program in a discipline from a board-approved dental college.

2) Provide written verification from the dean of the dental school where the contract is pending that, either:

   a) the dentist's expertise or skill is in a specialty area of dental practice approved by the American Dental Association (ADA) and that the addition of this dentist to the faculty will benefit the students and the dental program, or

   b) that the addition of this general dentist to the faculty will benefit the students and the dental program.

The number of Special Permits that may be issued according to the requirements of provision 1 is limited by Section 1640.2 to "the number that may be properly administered and supervised by the board."

The number of Special Permits that may be issued according to the requirements of provision 2 is limited to five permits per dental school for dentists whose expertise is in an ADA approved specialty and five permits per dental school for general dentists.

Any changes to statutory law must be made through legislation.

Dr. Morrow has provided his written summary which is attached. He will also address this issue further at the Board meeting.

BUSINESS AND PROFESSIONS CODE
SECTIONS 1640-1642

1640. Any person meeting all the following eligibility requirements may apply for a special permit:

(a) Furnishing satisfactory evidence of having a pending contract with a California dental college approved by the board as a full-time professor, an associate professor, or an assistant professor.

(b) Furnishing satisfactory evidence of having graduated from a dental college approved by the board.

(c) Furnishing satisfactory evidence of having been certified as a diplomate of a specialty board or, in lieu thereof, establishing his or her qualifications to take a specialty board examination or furnishing satisfactory evidence of having completed an advanced educational program in a discipline from a dental college approved by the board.

(d) Furnishing satisfactory evidence of successfully completing an examination in California law and ethics developed and administered by the board.

(e) Paying a fee for applications as provided by this chapter.

1640.1. As used in this article, the following definitions shall apply:

(a) "Specialty" means an area of dental practice approved by the American Dental Association and recognized by the board.

(b) "Discipline" means an advanced dental educational program in an area of dental practice not approved as a specialty by the American Dental Association; but offered from a dental college approved by the board.

(c) "Dental college approved by the board" means a dental school or college that is approved by the Commission on Dental Accreditation of the American Dental Association, that is accredited by a body that has a reciprocal accreditation agreement with that commission, or that has been approved by the Board of Dental Examiners through its own approval process.

1640.2. (a) The board shall limit the number of special permits to practice in a discipline at a college to the number that may be properly administered and supervised by the board.

(b) The board shall allow a person who has held a special permit for at least the seven preceding years to enter into a part-time contract with a California dental college approved by the board, provided that the person notifies the board of this change and provides the board with a pending employment contract for part-time employment with a California dental college approved by the board.

(c) A holder of a special permit shall practice no more than one day per week in the school's faculty practice.

1640.3. The board may issue a special permit to a dentist who does not meet the eligibility requirements pursuant to Section **1640** if he or she provides evidence of compliance with the following requirements to the board:

(a) A dentist shall satisfy either of the following conditions:

(1) The dentist's expertise or skill is in a specialty area of dental practice approved by the American Dental Association and recognized by the board, and the board has received verification, in writing, from the dean of the dental school where a contract is

pending, that the addition of this dentist to the faculty will benefit the students and the dental program.

(2) Verification, in writing, from the dean of the dental school where a contract is pending, that the addition of this general dentist to the faculty will benefit the students and the dental program.

(b) A complete transcript of academic and clinical dental school records of the applicant is provided to the board.

(c) A legible, true copy of the dental diploma or dental degree conferred upon the applicant is provided to the board.

(d) A copy of the applicant's valid dental license is provided to the board.

(e) Satisfactory evidence of possessing a pending contract with a California dental college approved by the board as a full-time professor, associate professor, or as an assistant professor.

(f) Satisfactory evidence that the applicant's credentials were presented to the school's faculty credentialing committee or similar faculty review committee and the dean of the dental school provides written acknowledgment that the applicant is an essential addition to the school's faculty and strongly recommends to the dean that the applicant be offered an employment contract.

(g) The number of special permits issued by the board under paragraph (1) of subdivision (a) is no more than five permits per dental school. The number of special permits issued by the board under paragraph (2) of subdivision (a) is no more than five permits per dental school.

(h) The board is furnished with satisfactory evidence that the applicant has successfully completed an examination in California law and ethics developed and administered by the board.

(i) A fee for the application is paid as provided by this chapter.

1642. Every person to whom a special permit is issued shall be entitled to practice in their recognized specialty or discipline at the dental college at which he or she is employed and its affiliated institutions as approved by the board on the following terms and conditions:

(a) The special permitholder shall file a copy of his or her employment contract with the board. The contract shall contain the following provision:

That the holder understands and acknowledges that when his or her full-time or part-time employment is terminated at the dental college, his or her special permit will be automatically revoked and that he or she will voluntarily surrender the permit to the board and will no longer be eligible to practice unless or until he or she has successfully passed the required licensure examination as provided in Article 2 (commencing with Section 1625).

(b) The holder shall be employed as a full-time or part-time professor, an associate professor, or as an assistant professor at a California dental college approved by the board. "Full-time employment" as used in this section means a minimum of four days per week. "Part-time employment" as used in this section, means a maximum of three days a week.

(c) The holder shall be subject to all the provisions of this chapter applicable to licensed dentists with the exception that the special permit shall be renewed annually.

UCLA

	Permit #	Licensee	Specialty	Issued	
1	13	Hargis, Harold W.	OMS		
1	86	Pullinger, Andrew G.	Prosthodontics		
1	89	Christensen, Russell E.	OMS		
1	139	Freymiller, Earl G.	OMS		
1	158	Kinder-Haake, Susan A.	Periodontics		
1	199	Tetradis, Sotirios	Oral Maxilofacial Radiology		
1	207	Pae, Eung-Kwon	Orthodontics		
1	229	Ogawa, Takahiro	Maxillofacial Prosthetics		
1	232	Nishimura, Ichiro	Prosthodontics		
1	235	El-Ghareeb, Moustafa H.	OMS	6/21/2006	
1	237	Shah, Kumar	Prosthodontics	9/26/2006	
1	251	Mallya, Sanjay M.	OMS Radiology	12/16/2009	
12	**Total for UCLA**				

USC

	Permit #	Licensee	Specialty		
1	189	Keim, Robert G.	Orthodontics		
	~~242~~	~~Pinnick, Andrea C.~~	~~Pediatric Dentistry~~	~~3/20/2007~~	Cancelled by request
1	252	Sadan, Avishai	Prosthodontics	12/22/2009	
2	Total for USC				

UCSF

	Permit #	Licensee	Specialty
1	91	Greenspan, John S.	Oral Pathology
1	136	Bird, William F.	Dental Public Health
1	159	Ramos-Gomez, Francisco J.	Pediatric Dentistry

1	198	Loomer, Peter M.	Periodontics		
1	211	Greenspan, Deborah	Oral Medicine		
1	243	Vaderhobli, Ram M.	General Dentistry	8/16/2007	
1	245	Orellana, Maria F.	Orthodontics	10/4/2007	
1	246	Rechmann, Peter	Prosthodontics	11/29/2007	
	~~248~~	~~Klocke, Arndt~~	~~Orthodontics~~	9/5/2008	Cancelled by request
1	249	Zhan, Ling	Pediatric Dentistry	9/12/2008	
9	Total for UCSF				

UOP

Permit #	Licensee	Specialty		
1	123	Carpenter William M.	Oral Pathology	
1	156	Merrell, Phillip W.	Oral Maxiloffacial Pathology	
1	181	Boyd, Robert L.	Orthodontics	
1	227	Cho, Heon-Jae	Orthodontics	
1	234	Ng, Vania Mei Che	General Dentistry	3/21/2006
1	247	Nattestad, Anders	Oral Maxillofacial Surgey	12/20/2007
6	Total for UOP			

LLU

Permit #	Licensee	Specialty		
1	193	Lozada, Jaime L.	Implant Dentistry	
1	209	Nelson, Bonnie A.	Pediatric Dentistry	
1	220	Torres, Fidel J.	Prosthodontics	
	~~231~~	~~Garcia Gabriela E.~~	~~Orthodontics~~	~~11/8/2005~~ Cancelled by request
1	239	Jaramillo, David E.	Endodontics	11/15/2006
	~~250~~	~~Dean, Jeffrey S.~~	~~Oral & Maxi Surgery~~	5/29/2009 Cancelled by request
4	Total LLU			

REPORT TO DENTAL BOARD OF CALIFORNIA
CALIFORNIA BUSINESS AND PROFESSIONS CODE
ARTICLE 2.5: SPECIAL PERMITS

Submitted by: Steven G. Morrow, DDS, MS

August 11, 2011

On May 14, 2011, The California dental schools Deans, and/or their representatives, met to discuss concerns they have regarding special permits available to the dental schools by application to the Dental Board. I met with this group as a representative of Loma Linda University School of Dentistry and Dr. John Bettinger attended representing the Dental Board of California.

Special permits allow eligible full-time and part-time faculty who do not hold a current California dental license to participate in the schools' faculty practices. The specific language that establishes eligibility for a special permit, definition of terms, limitations on the number of permits allowed each school, and exceptions to special permit requirements are found in the Business and Professions Code Article 2.5, Sections 1640 – 1640.3. This code section is based on AB 1143 (Emmerson 2005) which became effective January 1, 2006.

Special permits are a type of Restricted Dental License that are used by dental schools in California to recruit and retain non-California licensed dentist to fill faculty positions in their Advanced Dental Education Programs and their DDS programs. Through participation in the faculty practice, the school is able to increase the dentist faculty member's financial compensation and provide the opportunity for the dentist to maintain and/or improve their clinical skills.

The ability to hire dental faculty to fill vacant positions in dental schools in the nation, and specifically in California, has reached a near crisis point. This has occurred for a number of reasons:

1. The economic slow-down resulting in a decrease in the financial support of dental education, not only in State supported institutions but in private universities as well.
2. The aging dental school faculty population and their rate of retirement.
3. The student educational debt resulting in a limited number of recent graduates' ability to pursue a career in dental education.

As a result, dental schools have been forced to rely, to an increasing degree, on hiring foreign trained dentists and dental specialists.

The primary concerns for the California dental school Deans regarding the issue of special permits discussed at this meeting were:

1. Confusion regarding the eligibility requirement for the applicant to “Furnish satisfactory evidence of having graduated from a dental college approved by the board” (Section 1640 (b)).
2. The limitation on the number of Special Permits available in the different categories. (Section 1640.2 and Section 1640.3)

Review of the current Business and Professions Code identifies the eligibility requirements for three (3) categories of Special Permits.

1. United States ADA/CODA approved trained dental specialists
2. Foreign trained dental specialists
3. General dentists

1. Section 1640. Eligibility for examination

Any person meeting all the following eligibility requirements may apply for a special permit:

(a) Furnishing satisfactory evidence of having a pending contract with a California dental college approved by the board as a full-time professor, and associate professor, or an assistant professor.

(b) Furnishing satisfactory evidence of having graduated from a dental college approved by the board.

(c) Furnishing satisfactory evidence of having been certified as a diplomate of a specialty board or, in lieu thereof, establishing his or her qualifications to take a specialty board examination or furnishing satisfactory evidence of having completed an advanced educational program in a discipline from a dental college approved by the board.

(d) Furnishing satisfactory evidence of successfully completing an examination in California law and ethics developed and administered by the board.

(e) Paying a fee for applications as provided by this chapter.

2. Section 1640.1. Definitions

As used in this article, the following definitions shall apply:

(a) “Specialty” means an area of dental practice approved by the American Dental Association and recognized by the board.

(b) “Discipline” means an advanced dental educational program in an area of dental practice not approved as a specialty by the American Dental Association; but offered from a dental college approved by the board.

(c) “Dental college approved by the board” means a dental school or college that is approved by the Commission on Dental Accreditation or the American Dental Association, that is accredited by a body that has a reciprocal accreditation agreement with that commission, or that has been approved by the Board of Dental Examiners through its own approval process.

3. **Section 1640.2. Limitation on number of permits**
   (a) The board shall limit the number of special permits to practice in a discipline at a college to the number that may be properly administered and supervised by the board.
   (b) The board shall allow a person who has held a special permit for at least the seven preceding years to enter into a part-time contract with a California dental college approved by the board. Section1642 identifies "Full-time employment" as a minimum of four days per week and "Part-time employment" as a maximum of three days per week.
   (c) A holder of a special permit shall practice no more than one day per week in the school's faculty practice.

4. **Section 1640.3. Exceptions to special permit requirements**
   The board may issue a special permit to a dentist who does not meet the eligibility requirements pursuant to Section 1640 if he or she provides evidence of compliance with the following requirements to the board:
   (a) A dentist shall satisfy either of the following conditions:
   (1) The dentists expertise or skill is in a specialty area of dental practice approved by the American Dental Association and recognized by the board, and the board has received verification, in writing, from the dean of the dental school where a contract is pending, that the addition of this dentist to the faculty will benefit the students and the dental program.
   (2) Verification, in writing, from the dean of the dental school where a contract is pending, that the addition of this general dentist to the faculty will benefit the students and the dental program.
   (b) – (f) Identifies what is required for "Verification".
   (g) The number of special permits issued by the board under paragraph (1) of subdivision (a) is no more than five permits per dental school. The number of special permits issued by the board under paragraph (2) of subdivision (a) is no more than five permits per dental school.

CALIFORNIA DENTAL SCHOOLS DEANS' REQUESTS

1. Clarification regarding the eligibility requirement to "Furnish satisfactory evidence of having graduated from a dental college approved by the board" (Section1640 (b).

   Does this eligibility requirement apply to graduation with an initial dental degree from a dental college approved by the board or does graduating with a Certificate/MS/MSD from an Advanced Dental Education specialty program at a dental college approved by the board satisfy this requirement?

2. The limitation on the number of special permits available in the different categories.

   Section 1640.2 limits the number of special permits to practice in a "discipline" at a college to the number that may be properly administered and supervised by the board. (See definition of a "discipline" above)

Has the board established this number?
If yes, what is it?
If no, is it unlimited at this time?

Section 1640.3(g) establishes the maximum number of special permits for a dentist with "expertise or skills in a specialty area of dental practice approved by the American Dental Association and recognized by the board" to five (5) per school. This section also establishes the maximum number of special permits for general dentists to a maximum of five (5) per school.

The dental schools Deans are requesting that the board raise the number of allowable special permits to ten (10) in each of these two categories to a total maximum of twenty (20) such permits per school.

UCLA School of Dentistry
Office of the Dean
53-038 Center for the Health Sciences
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Los Angeles, California 90095-1668

July 25, 2011

Dr. John Bettinger, President
Dental Board of California
Via Email

Re: Special Permit

Dear Dr. Bettinger;

I appreciate the Board placing the topic of Special Permits on the August meeting schedule. As you know, this is an issue that is of concern to the California dental schools as was evidenced during our discussion at this past CDA meeting in Anaheim in May. Dentistry is now, more than ever, a global profession with experts in different fields emerging from a multitude of countries including the United States. The responsibility of the academic institutions is to provide the best quality education, that is, grounded in science and clinical evidence, to our dental students who will be the next generation of practitioners and educators.

A compounding factor in the United States is the large number of full time open faculty positions (400+) and a paucity of qualified applicants coming from our domestic dental schools. As a result, to recruit the best candidates the pool must be expanded to include international dental graduates. There are; however, two different types of international graduates: 1) those who have completed both dental school and advanced training in a foreign country and 2) those who have completed dental school in a foreign country and received advanced training from a CODA accredited specialty program. It is the issue of difference between these two pools that has created confusion due to a lack of clarity with the language of the current law pertaining to Special Permits.

The DPA Section 1640 states "Any person meeting all the following eligibility requirements may apply for a special permit"..."(b) Furnishing satisfactory evidence of having graduated from a dental college approved by the board." Section 1640 (c) goes on to state "Furnishing satisfactory evidence of having been certified as a diplomate of a specialty board or, in lieu thereof, establishing his or her qualifications to take a specialty board examination or furnishing satisfactory evidence of having completed an advanced educational program in a discipline from a dental college approved by the board.

The language in (b) is confusing and requires interpretation. Does a person who has completed a CODA approved specialty program meet this requirement? The schools' believe that these individuals do meet the requirement. All individuals who successfully complete a CODA approved program should be viewed as competent in their field. Their certificates of training should be considered equivalent. Any other perspective would be a harsh criticism of the CODA approval process.

The simplest way to correct this confusion is to strike Section 1640(b) and re-alphabetize the remaining subsections. The criteria in 1640(a),(c), (d) and (e) are sufficient to establish that a candidate has met the training requirements.

The second issue of concern pertains to Section 1640.3(g). The total number of specialty permits allowed per school for individuals who have completed their dental training and specialty training in a non-CODA approved program should be raised from five (5) to ten (10). The justification for this request is also the paucity of US graduates seeking faculty positions and the large number of open positions that exist across the country. There is no desire to alter the number of special permits allowed for general dentists.

I also wish to re-affirm that any individual who receives a special permit shall have their practice limited to the dental school or affiliated institution to which they are employed. This is how the current law reads.

Lastly, I thank the Board for reviewing this topic and strongly encourage the Board to prioritize action on this matter.

Sincerely,

Ronald S. Mito, DDS, FDS RCSEd
Associate Dean, Clinical Dental Sciences and
Interim Associate Dean, Academic Programs and Personnel

cc: (via email)
No-Hee Park, Dean
Richard DeCuir, Executive Officer

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	July 21, 2011
TO	Legislative and Regulatory Committee, Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 9:** Update on Pending Regulatory Packages:

A. Dental Assisting Educational Programs and Courses *(California Code of Regulations Title 16, Sections 1070, 1070.1, 1070.2, 1070.6, 1070.7, 1070.8 and 1071)*:

The Board approved proposed regulatory language at its November 2009 meeting. The proposed regulatory language regarding Dental Assisting Educational Programs and Courses was noticed on the Board's website and mailed on June 4, 2010 for the 45-day public comment period. The comment period began on June 4, 2010 and ended on July 19, 2010. A regulatory hearing was held on July 19, 2010.

At its September 16, 2010 meeting, the Board reviewed the comments received during the 45-day comment period and at the regulatory hearing. The Board voted to accept modified text to be noticed for 15-day public comment. The comment period began on September 28, 2010 and ended on October 12, 2010. Comments were received from the Butte Sierra District Dental Society, the California Association of Dental Assisting Teachers, the California Dental Association, and the Dental Assisting Alliance.

At its November 4, 2010 meeting, the Board reviewed the comments received during the first 15-day comment period. The Board voted to accept a second modified text to be noticed for 15-day public comment. The comment period began on November 18, 2010 and ended on December 3, 2010. Comments were received from the Dental Assisting Alliance, the California Association of Dental Assisting Teachers, Michael W. Champeau, M.D., and Bill Barnaby Sr. & Jr. on behalf of the California Society of Anesthesiologists.

At its December 14, 2010 meeting, the Board reviewed comments received during the second 15-day comment period. The Board voted to accept a third modified text to be noticed for 15-day public comment. The comment period began on December 27, 2010 and ended on January 11, 2011. A comment was received from the Dental Assisting Alliance. The Dental Assisting Alliance requested to withdraw their comment after the close of the comment period.

At its February 25, 2011 meeting, the Board rejected the Dental Assisting Alliance's comment based on their request for withdrawal and adopted the final regulatory language as noticed in the third modified text and directed staff to complete the rulemaking process and file with the Office of Administrative Law.

Staff submitted the final rulemaking file to the Director of the Department of Consumer Affairs (Department) on May 26, 2011. A 90-day extension was granted as authorized in Business and Professions Code Section 313.1. The final rulemaking file is required to be approved by the Director of the Department, the Secretary of the State and Consumer Services Agency (Agency), and the Director of the Department of Finance (Finance). Staff has requested an expedited review and anticipates this process may take 30 to 60 days. Once the approval signatures are obtained, the rulemaking will be submitted to the Office of Administrative Law. The Office of Administrative Law will have 30 working days to review the file. Once approved, the rulemaking will be filed with the Secretary of State and will become effective 30 days later. The deadline to submit the final rulemaking to the Office of Administrative Law is September 1, 2011.

B. Minimum Standards for Infection Control *(California Code of regulations, Title 16, Section 1005)*:

At its July 26, 2010 meeting, the Board directed staff to initiate the formal rulemaking process for the Minimum Standards for Infection Control. The proposed action was published on August 27, 2010 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on August 27, 2010 and ended on October 11, 2010. A regulatory hearing was held on October 11, 2010. Comments were received from the Dental Hygiene Committee of California, the California Dental Association, the California Association of Dental Assisting Teachers, the Dental Assisting Alliance, OSHA Review Incorporated, and Dr. Earl Johnson.

At its November 4, 2010 meeting, the Board reviewed the comments received during the 45-day comment period and at the regulatory hearing. The Board voted to accept modified text to be noticed for 15-day public comment. The comment period began on November 16, 2010 and ended on December 1, 2010. Comments were received from Dr. Earl Johnson and the Dental Assisting Alliance.

At its December 14, 2010 meeting, the Board voted to reject the comments received during the 15-day public comment period and adopted the final regulatory language as noticed in the modified text. The Board directed staff to complete the rulemaking process and file the package with the Office of Administrative Law.

Staff submitted the final rulemaking package to the Office of Administrative Law on June 10, 2011. The regulatory file was approved by the Office of Administrative Law and filed with the Secretary of State on July 21, 2011. The regulation will become effective on August 20, 2011.

C. Consumer Protection Enforcement Initiative *(California Code of Regulations Title 16, Sections 1018.05 and 1020)*:

At its November 5, 2010 meeting, the Board reviewed proposed regulatory amendments to improve the Board's enforcement process in an effort to address public concern. The

Board directed staff to initiate a rulemaking to further define unprofessional conduct and to permit the Board to require the examination of an applicant who may be impaired by a physical or mental illness affecting competency.

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

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

Staff submitted the final rulemaking file to the Director of the Department on June 13, 2011. The final rulemaking file is required be approved by the Director of the Department, the Secretary of Agency, and the Director of Finance. Once the approval signatures are obtained, the rulemaking will be submitted to the Office of Administrative Law. The Office of Administrative Law will have 30 working days to review the file. Once approved, the rulemaking will be filed with the Secretary of State and will become effective 30 days later. The deadline to submit the final rulemaking to the Office of Administrative Law is February 17, 2012.

E. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines *(California Code of Regulations, Title 16, Sections 1018 and 1020.5)*:
At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to the uniform standards relating to substance abusing licensees and Disciplinary Guidelines. The Board directed staff to initiate a rulemaking.

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

The Board will discuss this regulatory file during the Full Board meeting on August 11, 2011.

F. Sponsored Free Health Care Events *(California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18)*

At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to sponsored free health care events. The Board directed staff to initiate a rulemaking. Staff is currently drafting the initial rulemaking documents and will be filing the proposed regulation with the Office of Administrative Law in the near future.

Action Requested:

No action necessary.