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MEETING NOTICE

Compliance and Enforcement Committee March 25, 2010

Department of Consumer Affairs
El Dorado Room
1625 North Market Blvd.
2nd Floor North, Room 220
Sacramento, CA 95834

Via Teleconference – 1:00 p.m.
1304 W. Center
Visalia, CA 93291

9:00 a.m. – 3:00 p.m.

- I. Introductions
- II. Presentation of the Enforcement Process
- III. Presentation of Enforcement Performance Measures
- IV. Review and Discussion of Uniform Standards Regarding Substance Abusing Healing Arts Licensees, Senate Bill 1441
- V. Review and Discussion of the Consumer Health Protection Enforcement Act, Senate Bill 1111
- VI. Future Meeting Dates
- VII. Suggestions for Future Agenda Items
- VIII. Public Comment for Items Not on the Agenda

Public Comment on items of discussion will be taken during each item. Time limitations will be determined by the Chairperson. Items will be considered in the order listed. Times are approximate and subject to change. Action may be taken on any item listed on the Agenda.

THIS AGENDA AS WELL AS BOARD MEETING MINUTES CAN BE FOUND ON THE BOARD OF BEHAVIORAL SCIENCES WEBSITE AT: www.bbs.ca.gov

NOTICE: The meeting facilities are accessible to persons with disabilities. Please make requests for accommodations to the attention of Marsha Gove at the Board of Behavioral Sciences, 1625 N. Market Boulevard, Suite S-200, Sacramento, CA 95834, or by phone at 916-574-7861, no later than one week prior to the meeting. If you have any questions, please contact the Board at (916) 574-7830.



Arnold Schwarzenegger
Governor

State of California
State and Consumer
Services Agency
Department of
Consumer Affairs

BOARD OF BEHAVIORAL SCIENCES ENFORCEMENT PROCESS

MARCH 25, 2010

The Board receives information regarding licensee or registrant misconduct

- Anyone may contact the Board if they believe a licensee or registrant has engaged in conduct that violates the Board's statutes and regulations.
- The information is received in writing or verbally from a variety of sources.
 - Consumers
 - Licensees
 - Law Enforcement
 - Other State Agencies
- The Board reviews all the information received regardless of the source.

Complaint Intake

- Board staff reviews the information and verifies that the individual is a licensee or registrant of the Board.
- The Board's enforcement database is reviewed for any prior complaints or open complaints.
- A complaint case file is opened, prepared, and assigned to an Enforcement Analyst.
- A letter is sent to the source of the information confirming receipt of the information.

Investigation Steps

- The Enforcement Analyst reviews the information to determine if the allegations are within the Board's jurisdiction.
- Due to the confidentiality laws regarding a therapeutic relationship, an investigation cannot proceed without a signed release of information from the patients involved in the therapeutic relationship.
- The source of the complaint may be contacted for names, addresses, and phone numbers of any one who can verify the events as well as any additional documentation relative to the complaint.

Investigation Steps

- A request for specific documentation and an explanation of the circumstances is sent to the individual.
- The role of the Enforcement Analyst is to obtain facts and evidence to either prove or disprove the allegations in the complaint.

Review and Assessment

Upon receipt of all the requested documentation, the Enforcement Analyst reviews the material to determine the next steps.

- Evidence exists that a violation of law has occurred.
 - ✓ Report is prepared
 - ✓ Case is referred to a Subject Matter Expert for review

- Further investigation is required.
 - ✓ Case is referred to an Investigative Analyst
 - ✓ Case requires the service of a Peace Officer, referred to Division of Investigation.

- Insufficient evidence that a violation of law occurred.

Investigation Outcomes

- **Insufficient Evidence**
 - ✓ Report is submitted and case is closed. No action is taken.
- **No Violation**
 - ✓ Report is submitted and case is closed. No action is taken.
- **Violation of law is substantiated**
 - ✓ Report is submitted. Action is determined by the nature of violation, prior enforcement actions, and threat to public safety.

Citation and Fine

The violation warrants the issuance of a citation and fine. The citation specifies the nature of the violation, instructions for compliance, and the right to request an informal conference or administrative hearing. The licensee has 30 days to respond.

- Licensee complies with the citation
- Informal Hearing – citation may be upheld, modified, or dismissed.
- Administrative Hearing – case is referred to the Attorney General.

Formal Administrative Action

A case that involves serious violations of law is referred to the Attorney General's office for formal Discipline.

- Statement of Issues – This action is pursued when the Board seeks to deny an applicant for registration or licensure.
- Accusation - This action is pursued when the Board seeks to revoke a license or registration.

Administrative Action Outcomes

Once an Accusation or Statement of Issues is served, the individual may choose to respond and seek a possible settlement prior to the hearing date.

- Default Decision – The individual fails to file a timely response to the charges.
- Stipulation – The Deputy Attorney General, on behalf of the Board, negotiates terms acceptable to the Board and the individual prior to the hearing date.
- Proposed Decision – Issued following a hearing by the Administrative Law Judge.

Adoption of Decision

All Default Decisions, Stipulations, and Proposed Decisions are sent to the Board Members for review and vote.

- Default Decisions result in denial or revocation.
- Stipulations often result in probation with specific terms and conditions the individual must comply with in order to retain or receive a license or registration.
- Proposed Decisions may include revocation or probation.

Following approval by the Board Members, the individual is notified of the decision and the effective date. If the individual does not agree with the outcome, he or she has the right to appeal the decision to Superior Court.

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To: Compliance and Enforcement
Committee Members

Date: March 12, 2010

From: Kim Madsen
Executive Officer

Telephone: (916) 574-7841

Subject: Enforcement Performance Measures

Background

Each board within the Department of Consumer Affairs (DCA) has the responsibility to ensure that licensees practice safely and the public is protected. To accomplish this mandate, each board established a process to investigate complaints regarding licensee misconduct or possible violations of law. The process involves the assistance of the Attorney General's office and often, the Division of Investigation (DOI) since some boards do not employ their own investigators.

Over the past year several news articles have been published regarding the enforcement efforts of the healing arts boards within the Department of Consumer Affairs (DCA). These articles cite that it may take an average of three years to investigate and prosecute cases of licensee misconduct. In response, DCA reviewed the existing enforcement process and found systemic problems that limit the boards' abilities to investigate and act on these cases in a timely manner. These problems range for legal and procedural challenges to inadequate resources.

In an effort to improve the enforcement process and provide boards with the resources needed for timely investigation and prosecution of cases, DCA launched the Consumer Protection Enforcement Initiative (CPEI). The changes include requesting additional staffing resources, improved IT resources and systems, as well as legislative changes. CPEI seeks to reduce the average enforcement completion timeline from an average of 36 months to between 12 and 18 months (defined as the date the board receives the complaint to the date it is closed). To monitor the progress towards this performance standard, each board is directed to submit monthly a standardized report to the Director of Compliance and Enforcement.

BBS Progress

BBS is similar to other boards in that we utilize the services of DOI for cases requiring additional investigation. Prior to 2009, all cases meeting this criterion were sent to DOI. In 2007, BBS identified the investigation phase timelines as one component for improvement and requested the addition of two Investigative Analysts through a budget change proposal. This request was approved and our current Investigative Analysts were hired in January 2009. Initially, a few cases were returned from DOI and reassigned to the Investigative Analysts. As the analysts completed these cases, additional

cases, which did not require the expertise of a peace officer, were assigned to them. BBS continues to refer cases requiring the expertise of a peace officer to DOI.

An analysis of the cases assigned to the Investigative Analysts in 2009 revealed an average of 119 days to complete the investigation phase as opposed to DOI's timeline of 497 days. Although the final resolution of the cases extended several more months, the use of the Investigative Analysts drastically reduced the investigation phase timeline.

Currently, staff is conducting a comprehensive review of the enforcement process. This includes reviewing each step in the enforcement process including procedures and data entry. The goal is to ensure that BBS investigations are conducted thoroughly and efficiently, yet meet the established performance measure. To date, staff has identified and eliminated several duplicative steps and obsolete procedures. Additionally, staff revised the method enforcement statistics were previously reported (various steps within the enforcement process) to align with the new performance measures (from the date the board receives the complaint to the date it is closed).

We anticipate completing the enforcement process review by June 30, 2010.

Attachments:

- a. ProPublica.org – “When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer”
- b. ProPublica.org – “After Nurses Investigation, Scrutiny Turns to Other Calif. Health Records”
- c. ProPublica.org – “Loose Reins on Nurses in Drug Abuse Program”
- d. Capitol Weekly – “Protecting consumers, and not careers, is a wise and critical investment”
- e. Monthly Enforcement Report to Department of Consumer Affairs



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When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer

by [Charles Ornstein](#) and [Tracy Weber](#), ProPublica, and [Maloy Moore](#), *Los Angeles Times* - July 11, 2009 12:17 am EST



California's registered nursing board can take years to act on complaints. Spencer Sullivan, pictured above, received too many painkillers after a neck surgery and wasn't adequately monitored, according to nursing board records. However, the board didn't revoke the license of the nurse held responsible until six years later. [Click to read more about Sullivan and view an audio slideshow.](#) (Liz O. Baylen / Los Angeles Times)

Nurse Owen Jay Murphy Jr. twisted the jaw of one patient until he screamed.

He picked up another one – an elderly, frail man – by the shoulders, slammed him against a mattress and barked, "I said, 'Stay in bed.' "

He ignored the alarms on vital-sign monitors in the emergency room, shouted at co-workers and once hurled a thirsty patient's water jug against the wall, yelling, "How do you like your water now?" according to state records.

Murphy's fellow nurses at Kaiser Permanente Riverside Medical Center finally pleaded with their bosses for help. "They were afraid of him," a hospital spokesman said.

Under pressure, Murphy resigned in May 2005. Within days, Kaiser alerted [California's Board of Registered Nursing](#): This nurse is dangerous.

But the board didn't stop Murphy from working elsewhere, nor did it take steps over the next two years to warn potential employers of the complaints against him. In the meantime, Murphy was accused of assaulting patients at two nearby hospitals, leading to convictions for battery and inflicting pain, board and court records show.

Our Complete Coverage



The *Los Angeles Times* and ProPublica have conducted a joint investigation into the failed oversight of California's health professionals. In July 2009, we reported that the Board of Registered Nursing took more than three years, on average, to investigate and discipline errant nurses. It failed to act against nurses whose misconduct already had been thoroughly documented and sanctioned by others. And the board gave probation to hundreds of nurses – ordering monitoring and work restrictions – then failed to crack down as many landed in trouble again and again. [Read our complete coverage here.](#)

Ask the reporters about the series: Email QandA@propublica.org

Database



[California Sanctioned Nurse Database](#) - The *Los Angeles Times* and ProPublica compiled a database of nearly 2,400 California nurses who have been sanctioned since 2002. Search the records of nurses who have faced disciplinary proceedings and the circumstances of allegations against them.

Multimedia



Discipline delayed
From 1995 to 2002, at least five employers complained to CA's Board of Registered Nursing about Carolyn Fay Thomas.
Her license wasn't revoked until August 2005.
Click the graphic to follow Thomas's case

[Follow Thomas's case](#)

Who We Are

ProPublica is an independent, non-profit newsroom that produces investigative journalism in the public interest. We strive to foster change through exposing exploitation of the weak by the strong and the failures of those with power to vindicate the trust placed in them.

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Even Murphy, who has since taken classes to curb his anger, was surprised the board didn't step in earlier.



California takes far longer to discipline registered nurses than many other large states, according to a review by the Los Angeles Times and ProPublica. [Click graphic to see the full details.](#)

found.

It's a high-stakes gamble that no one will be hurt as nurses with histories of drug abuse, negligence, violence and incompetence continue to provide care across the state. While the inquiries drag on, many nurses maintain spotless records. New employers and patients have no way of knowing the risks.

Reporters examined the case of every nurse who faced disciplinary action from 2002 to 2008 – **more than 2,000 cases in all** – as well as hundreds of pages of court, personnel and regulatory reports. They interviewed scores of nurses, patients, families, hospital officials, regulators and experts.

Among the findings:

- * The board took more than three years, on average, to investigate and discipline errant nurses, according to its own statistics. In at least six other large states, the process typically takes a year or less.

"It's really discouraging that when you do report people . . . they don't take action," said Joan Jessop, a retired chief nursing officer in Los Angeles who filed multiple complaints with the board during her 43-year career. "What is so frightening to me is that these people will go on and do it to somebody else."

- * The board failed to act against nurses whose misconduct already had been thoroughly documented and sanctioned by others. Reporters identified more than 120 nurses who were suspended or fired by employers, disciplined by another California licensing board or restricted from practice by other states – yet have blemish-free records with the nursing board.

- * The board gave probation to hundreds of nurses – ordering monitoring and work restrictions – then failed to crack down as many landed in trouble again and again. One nurse given probation in 2005 missed 38 drug screens, tested positive for alcohol five times and was fired from a job before the board revoked his probation three years later.

- * The board failed to use its authority to immediately stop potentially

"The nursing board is there to protect the public from me," he said in an interview.

The board charged with overseeing California's 350,000 registered nurses often takes years to act on complaints of egregious misconduct, leaving nurses accused of wrongdoing free to practice without restrictions, our joint investigation investigation with The Times



A public risk

Joseph Kinney was allowed by the California Board of Registered Nursing to continue practicing even after he was labeled a public safety threat.

Click the graphic to follow Kinney's case.

[Follow Kinney's case](#)



One step ahead

Registered nurse Andrew Fernando Reed was accused of stealing drugs while working for a series of staffing agencies. But that didn't stop him from getting new jobs.

Click the graphic to follow Reed's Case

[Follow Reed's case](#)



Discipline in slow motion

It took eight years for six states to sanction nurse Craig Smart. California was the slowest to act, revoking his license in 2008.

Click the graphic to follow Smart's Case

[Follow Smart's case](#)



Chart: California takes far longer to discipline registered nurses than many other large states, according to a review by the Los Angeles Times and ProPublica. [Click graphic to see the full details.](#)

Interactive Chart: [About the Board](#) - The California Board of Registered Nursing oversees the education, licensure, practice standards and discipline of the state's 350,000 nurses.

Profiles

dangerous nurses from practicing. It obtained emergency suspensions of nurses' licenses just 29 times from 2002 to 2007. In contrast, Florida's nursing regulators, who oversee 40% fewer nurses, take such action more than 70 times each year.

In interviews last week, the board's leaders and other state officials defended its record. "We take what we do – protecting the public – very, very seriously," said Executive Officer Ruth Ann Terry.

Terry, at the helm for nearly 16 years and on staff for 25, acknowledged that the pace of the disciplinary process has "always been unacceptable" and said the system was being streamlined. But she blamed other parts of the state bureaucracy for delays and was vague about what changes would be made.

Later, the state Department of Consumer Affairs, which oversees the board, **sent reporters a three-page list of "process improvements."** Many were mundane or incremental adjustments – such as revising disciplinary guidelines or planning expert witness training. Others seemed more directly aimed at reducing delays: adding staff, meeting with investigators about stalled cases and using computer systems to better track complaints.

Patricia Harris, acting chief deputy director of the department, stood behind the board. "I think they do a good job," she said.

It's impossible to measure the number of nurses whose conduct endangers patients, but it is presumed to be a small fraction. The board disciplines several hundred a year.

Even a small number of troubled nurses can have wide impact, however. Registered nurses are required to perform or oversee complex treatment, and each can see dozens of patients a week.

Patients generally don't have a choice in which nurse they get. Most trust that, at minimum, the government wouldn't allow a nurse with known problems at their bedside.

In California, the board's vigilance is especially important. The state has among the fewest registered nurses per capita of any state, with an estimated 654 working nurses for every 100,000 residents, compared with 836 nationwide.

Putting even greater strain on the nursing supply is a unique state law that limits how many patients each hospital nurse can treat at one time.

With demand outstripping supply, nurses have readily jumped from one hospital to another, and employers have relied heavily on the board to screen out poor performers.

Despite its critical mission, the board faces little outside scrutiny or pressure to change its ways. Public board meetings, held five times a year, are filled with praise for staffers' efforts. During five meetings attended by reporters since November 2007, Terry never focused on the delays in discipline.



[Spencer Sullivan](#) - In the prime of his life, Spencer Sullivan was rendered a quadriplegic. It took the nursing board more than six years later to revoke the license of a nurse involved in his care.

[Read more | LA Times Audio Slideshow](#)



[Caitlin Greenwell](#) - Caitlin Greenwell's family alleges that she suffers from cerebral palsy because nurses neglected to monitor her during her birth. [LA Times Audio Slideshow](#)



[Dr. Iraj Zandi](#) – During a surgery, Dr. Iraj Zandi discovered that a nurse had stolen painkiller drugs intended for his patient. He found out later that the nurse had been accused of pilfering drugs from a previous employer. [Read more...](#)



[Veronica Glaubach](#) – Veronica Glaubach's nurses missed crucial signs of a life-threatening complication during and after childbirth, her family alleged. She died. The nursing board absolved the nurses. [Read more...](#)

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Susanne Phillips, president of the California Board of Registered Nursing, at a June 2008 board meeting. [Click to view biographies of the board members.](#)

And **board members** – including both nurses and public appointees – never publicly challenged staffers or urged quicker action even though they review every disciplinary action. (Board President Susanne Phillips said such questions are often raised with staff privately.)

While the board tarries, nurses like Owen Jay Murphy Jr. keep working.

In 2006, more than a year after Kaiser warned the board about him, Murphy was employed at Riverside Community Hospital. There, according to a criminal investigator's affidavit, he forcibly grabbed the face of a patient whose arms were tied down.

"I was helpless," said Christy Ledebur, now 50. "Why would they have someone like that working in an emergency room?"

Ten days later, Murphy punched and elbowed another restrained patient in the face, the investigator's statement said.

"I don't even recall the first two hits," said Murphy, 41, adding that his stress and anger at the time clouded his memory. "They said I hit 'em three times."

Riverside Community fired him in July 2006 and immediately alerted the nursing board, a hospital official said. He later pleaded no contest to misdemeanor charges in both incidents.

A month later, a patient at Arrowhead Regional Medical Center in Colton complained that Murphy had put her in a headlock and shoved her against the wall, leaving clumps of hair on the bed and floor, according to hospital officials and board records.

The board took its first public action in June 2007, **filing a formal accusation detailing the administrative charges against Murphy.**

The former Army medic said in an interview that he had been provoked in some cases by aggressive or mentally impaired patients. But he said he was a good nurse and confident that court-ordered anger management classes had taught him self-control.

Still awaiting his first board hearing, he works in the emergency room of Parkview Community Hospital in Riverside with an unrestricted license.

Racking up accusations

The Times and ProPublica found more than **60 nurses disciplined since 2002** who – like Murphy – were accused of committing serious misconduct or mistakes in at least three health facilities before the board took action.

At least five employers reported Los Angeles



From 1995 to 2002, California's nursing board received complaints about Carolyn Fay Thomas. But the board didn't revoke her license until August 2005. Click to see an interactive graphic. (Liz O. Baylen / Los Angeles Times)

nurse **Carolyn Fay Thomas** to the board for allegedly making medication errors and falsifying charts to hide her drug thefts.

And **John Michael Jones** racked up complaints from at least three hospitals for stealing and using drugs during work. Yet the board waited five years to revoke his license, even after he allegedly dozed off while performing CPR on a dying patient in 2002.

"I was high some of the times that I was working. Yes, I was," Jones, who denies falling asleep during CPR, said in an interview.

Several hospital administrators expressed shock when reporters told them that nurses they had turned in for dangerous failings went on to work at other facilities. No one tracks these nurses, who typically aren't required to tell the board where – or even if – they are working.

"There's got to be a better system than now to protect our patients and their safety," said Deborah Hankins, chief nursing officer at Bakersfield's San Joaquin Community Hospital, one of the hospitals that complained about Jones.

As it stands, complaints often take a circuitous route through several clogged bureaucracies: from the nursing board for initial assessment to the Department of Consumer Affairs for investigation, to the California attorney general's office for case filing and the state Office of Administrative Hearings for trial. Then the case goes back to the board for a final decision.

Other California health licensing boards are also hampered by delays – but the registered nursing board stands out because of the sheer volume of licensees it regulates.

The biggest bottleneck occurs at the investigation stage, as Consumer Affairs staffers struggle to handle complaints against nurses as well as those against cosmetologists, acupuncturists and others. The nursing board must share a pool of fewer than 40 field investigators with up to 25 other licensing boards and bureaus. Some investigators handle up to 100 cases at a time.

All told, cases closed by the nursing board in fiscal 2008 took an average of 1,254 days. That pace surprised officials at other states' boards.

"I don't think it's ever to anybody's advantage to have a case open for three years," said Valerie Smith, associate director of Arizona's board, which typically takes 6 1/2 months from complaint to resolution.

Nursing boards nationwide vary widely in how they investigate and discipline nurses. But many do it faster.

Officials from Arizona, Texas and Ohio say they handle almost everything within their own agencies, exercising tight control and questioning cases that take too long.

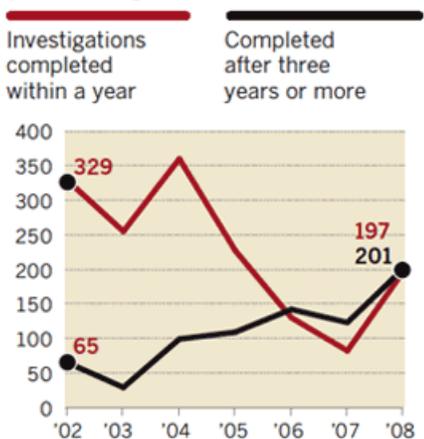
"Where there's the greatest risk, we want to take the fastest action," said Betsy Houchen, head of Ohio's board, which requires 95% of the most serious complaints to be investigated within five working days.

Boards with the fairest and quickest outcomes hire their own investigators, usually nurses themselves, as well as their own attorneys, according to a 2004 trade group report.

Terry could ask the state Legislature for broader authority or permission to hire her own investigators, but she said she has no plans to. Rather, she said, she intends to adhere to the "process that the state of California has set up in terms of protecting the public."

Long investigations

Many disciplinary cases against California registered nurses bog down in the investigative stage. More investigations are taking three years or longer, and that doesn't include the time it takes to assess complaints initially or pursue charges later.



Note: Data for fiscal years
Source: California Board of Registered Nursing
Los Angeles Times

She said her staff had recently begun working with Consumer Affairs investigators to prioritize and expedite the handling of complaints.

It's not a new goal. In a 2002 report to the Legislature, the board said that "there has been a steady and unacceptable increase" in length of disciplinary cases and called for "strategies to expedite cases."

Current and former state attorneys say funding has been an issue – at times they've been asked to suspend work on nursing board cases to save money. But Phillips said the board, which is funded by licensing fees paid by nurses, has enough money. It hasn't raised its fees in 18 years.

There is no legal pressure for the board to act faster. Unlike with disciplinary cases against doctors, there's no statute of limitations on nurses. The delays make the pursuit of cases more difficult: Witnesses die. Records are purged. And former co-workers cannot be found.

Even nurses targeted by the board are frustrated by the slow pace. Kimberly Ann Garza **received three years' probation in 2008** – 6½ years after her bosses at a Central Valley hospital complained that she had failed to account for her patients' drugs. At one point, the investigator went on medical leave and Garza's file sat for 11 months before a colleague took it over.

"If I'm such a danger and I'm such a liability, why were they not on top of this?" said Garza, who denied she stole drugs.

A girl questions why

Caitlin Greenwell grinned slyly as she sat before a special computer at her family's ranch home in Lafayette, about 10 miles east of Oakland. Her eyes darted around a keyboard on her screen, as a sensor tracked her gaze and allowed her to spell out words.

"Let's test my mom," she typed, then looked up with a devilish smile. "We will test my mom on math."

Julia Greenwell laughed. "In so many ways, she's typical," she said.



Steven Greenwell transfers his daughter Caitlin from her bike to her chair. Caitlin, who is confined to a wheelchair, needs aid for everything she does. (Liz O. Baylen/Los Angeles Times)

But the 9-year-old has begun questioning why she is trapped in a wheelchair, unable to control her limbs or speak, said her father, Steven. Caitlin, he said, is "very aware that things didn't go right and some were due to people not doing their jobs."

Like many aggrieved patients and their families, the Greenwells say they feel doubly victimized, first by nurses and then by the board

itself. Steven Greenwell said he won't rest until the board disciplines Candyce Warren, the nurse he holds primarily responsible for Caitlin's injuries at birth.

In October 1999, Warren and the trainee she was overseeing missed crucial signs during Julia Greenwell's labor that the baby's condition was deteriorating, according to allegations in a 2000 lawsuit by the Greenwells against John Muir Medical Center in Walnut Creek.

Caitlin was deprived of oxygen and as a result has cerebral palsy, according to the suit, settled in 2003. A doctor paid a separate settlement.

Attorneys for the Greenwells said that Warren was responsible for the trainee, who had little experience reading fetal monitoring strips, and that both nurses tried to cover up their mistakes by altering the medical record.

Steven Greenwell lodged a complaint with the nursing board in June 2003 – waiting, as his attorney advised, until after the civil case was resolved. The board filed an accusation a year or so later. Then the case disappeared into the state's bureaucracy.

There was no word on the matter until 2008, when the board **amended the charges against Warren** to fault her handling of a different baby's distress back in 2002. That child was stillborn.

Still there was no resolution for the Greenwells and no explanation for the delays. "I kept calling the nursing board and getting nothing," Steven Greenwell said.

Greenwell said he also spent hours on the phone imploring a deputy attorney general to see the case through – only to learn recently that she had left her job.

Warren, who still works at John Muir, feels wronged by the board as well. She disputes the allegations and wants to clear her name but wouldn't discuss specifics while the case is pending. At least five hearings have been set, then put off, she said.

"What they are doing is torturing us," she said. "It's not right."

Multiple alleged lapses

In 2005, Los Angeles County officials fired Abbie Dickerson, a nurse at the publicly owned Olive View-UCLA Medical Center in Sylmar.

She had connected a patient's feeding tube so it leaked into a surgical wound, according to her Sept. 7 termination letter.

It wasn't Dickerson's first alleged lapse. She'd been written up four times for medication errors, **according to the letter**, which is on file with the county Civil Service Commission.

"Your unsatisfactory job performance and medical errors are no longer tolerable," the letter said. Dickerson's appeal to the commission was thrown out because she failed to show up for a hearing. She declined to comment.

California nursing regulators either didn't know about the allegations or didn't do anything about them – they wouldn't say. Anyone looking Dickerson up on the **board's website would find a clean record**. She is free to work anywhere in the state.

Hers is one of the 120 cases in which the board hasn't acted despite sanctions imposed by other agencies or employers that were based on clear evidence. Reporters easily found the cases through public records, and nothing prevents the board from getting the same information and acting on it.

Cases like these "should be dealt with immediately," said Agoura Hills nurse Tricia West, an authority on healthcare quality who has been an expert witness both for the board and for nurses accused of wrongdoing.

Even when a registered nurse loses a license with another of California's professional boards, the nursing board does not always act promptly.

In more than a dozen cases, individuals were able to care for patients as registered nurses after they had been severely sanctioned – or even had their license revoked – by the Board of Vocational Nursing and Psychiatric Technicians.

Both boards use the same pool of investigators and fall under the Department of Consumer Affairs. But the department has no central database that can be searched for all the licenses belonging to an individual.

Lynn Teehee lost her LVN license in 2006 following allegations that she had improperly inserted a feeding tube into a patient, then ignored his cries of pain as his abdomen was flooded. The man died two days later of septic shock, records show. Her license was revoked after she failed to respond to the allegations.

The registered nursing board filed its charges two years after the LVN board acted – and **later put Teehee on probation**.

Percy Randall Wade surrendered his vocational nursing license in 2003 after being accused of failing to account for missing narcotics. Then, while working under his registered nursing license, he billed San Quentin State Prison \$161,000 for work he didn't do. He was convicted of felony grand theft in 2006.

A year and a half later, the registered nursing board filed an accusation against him, citing both incidents. He was given four years' probation in March.

The problem extends beyond the vocational nursing board. Dorothy Wilson (also known as Dorothy Bauer) is licensed as both a registered nurse anesthetist and a podiatrist. In 1999, the California Board of Podiatric Medicine put her on five years' probation for repeated acts of negligence.

The following year, as a nurse handling anesthesia during a breast enlargement operation, Wilson did not notice that the patient had stopped breathing, according to filings in a subsequent malpractice suit against Wilson and the surgeon.



Mary Lopez, then 32, suffered brain damage after a nurse handling her anesthesia didn't realize she had stopped breathing. A judge found the nurse, Dorothy Wilson, at fault. Lopez had to relearn how to walk. (Liz O Baylen/Los Angeles Times)

Mary Lopez, then 32, was deprived of oxygen, went into a coma and suffered brain damage, according to the pleadings. Lopez's attorney filed a complaint with the nursing board in April 2002, alleging that Wilson had over-sedated Lopez, then altered records to cover up the error.

A judge found Wilson at fault and ordered her in August 2002 to pay Lopez \$779,000, although the case was settled for a lower, undisclosed amount on appeal, said

Wilson's attorney, Michael Khouri.

The nursing board did not file an accusation against Wilson until December 2007. Wilson's lawyer said in court papers that any injury to Lopez resulted from wrongdoing by the surgeon, not his client. (The surgeon was dropped from the case.)

As for Lopez, she had to relearn her ABCs, her numbers, even how to walk. A clerical worker, she requires notes to remind her each day how to do her job and when to pick up her children.

"I'm not 100% who I was," she said. "She took that away from me."

Data not demanded

The nursing board says it can't act on cases it doesn't know about. But it's not set up to find out what it needs to know, The Times and ProPublica found.

Most states require hospitals to report nurses who have been fired or suspended for harming a patient or other serious misconduct. So, for that matter, does California's vocational nursing board.

Not the registered nursing board.

Heidi Goodman, the board's assistant executive officer, told The Times in 2007 that the board could be overwhelmed if such reports were mandated. "We have to work within existing resources," she said. "You get the flood. What are you going to do about it?"

The board also largely shuts itself off from information about nurses licensed in California who get in trouble elsewhere.

It is not part of a national compact of 23 state nursing boards that share information about nurses who are under investigation or have been disciplined. And unlike 35 states, California does not put the names of all its registered

nurses into an industry database. So if a California-licensed nurse gets in trouble in another state, that state may not know to notify California.



See the Los Angeles Times and ProPublica database of more than 2,000 sanctioned nurses

Terry said last week that the board would consider requiring California hospitals to report errant nurses – a proposal that has come up before but never gained traction. She also said the board wants to arrange a one-time computer sweep of other states' actions to determine which of them involve California nurses.

Until recently, the state did not even ask nurses renewing their licenses whether they had been disciplined elsewhere or convicted of crimes. It began doing so only after The Times and ProPublica highlighted the loopholes last fall.

This spotty oversight has left some nurses suspended or barred from practice in other states free to care for patients in California.

One of those nurses, Sandra Corrine Taylor, had her license revoked by Oklahoma and Texas. A third state, Idaho, took away her license as a lesser-skilled nurse.

Among her alleged offenses: verbal and physical abuse of nursing home patients, medication errors and lying about her academic credentials, according to records from the other state boards. Taylor could not be reached.

Perhaps the most telling sign of dysfunction is when other states act against nurses for crimes and misdeeds committed *in California* before California's own board does. Often it appeared they simply had better information and acted on it more quickly.

David Miranda was fired by a Pasadena hospital in 2003 for testing positive for drugs on the job, then convicted in Los Angeles in 2005 of illegal gun possession. Citing those incidents, Arizona's nursing board denied him a license in 2006.

Based in part on Arizona's action, California's board gave Miranda probation in November 2007. Just last month the board moved to pull his license after he failed two drug tests.

Given a second chance

More than half the nurses who respond to allegations from the board are handed a second chance. Each year, California places at least 110 nurses on probation, warning that if they get in trouble again, their licenses may be yanked.

In reality, such action seldom happens quickly, if at all, according to a

review of hundreds of nurse disciplinary records.

Just five board monitors oversee about 470 nurses on probation. Often nurses must undergo physical and mental exams, take drug tests, submit to workplace monitoring and attend rehabilitation or support groups.

But when they don't meet some – or any – of those requirements, years often pass before the board tries to revoke their probation.

At times the punishment for violating probation is more probation.

One nurse was put on three years' probation in 1996 for stealing drugs from a Sacramento hospital. After she ignored numerous requirements, her probation was extended three more years in 1999, according to board documents. Finally in 2003, after she relapsed, skipped drug tests, was convicted of possessing codeine and Valium without a prescription, got a job without permission and missed support group meetings, her license was revoked.

But last year, the board found the nurse had "demonstrated sufficient rehabilitation" and gave her license back – with probation.

Carolyn Claeys, now 61, was put on probation in July 2005. The home healthcare nurse had showed up for work drunk and had stolen drugs from a former patient's house, according to her board disciplinary record.

At the time, Claeys also had three criminal convictions: two for drunk driving and one for petty theft.

Nursing board documents describe what happened next:

Less than four months into her nursing board probation, Claeys was convicted of a DUI. Four months after that, she was fired from a nursing home for stealing drugs. She tested positive for drugs three times between November 2005 and March 2006 and missed 12 required drug tests.

Any of these violations would have been grounds for the board to revoke her probation. But the board took no action – at least none that could be found in public records.



Judy Robins holds a portrait of her sister Dorothy 'Jeanie' Rising, who died in July 2006 of cancer. One of Rising's caregivers, Carolyn Claeys, was found passed out, high on drugs, in Rising's apartment a day after she died. Claeys admitted to authorities that she had stolen Rising's painkillers and injected them. (Liz O. Baylen/Los Angeles Times)

In July 2006, Claeys was found passed out, high on drugs, in the Santa Cruz apartment of Dorothy "Jeanie" Rising, who had died of cancer the previous day. Claeys, one of her caregivers, admitted to authorities that she'd stolen Rising's painkillers and injected them.

Five months later, the board filed a **petition to revoke Claeys' probation**. She didn't contest the charges, and her license was later revoked.

In an interview, Claeys acknowledged that she was "an impaired nurse." But she said she'd waited until Rising was dead to steal the drugs.

"It wasn't that horrific," she said, "as opposed to if I had been sitting

right there when I was there with her: 'Here, one for you, one for me.' "

Terry said that adding probation staff should help. "You won't find that happening anymore," she said of such cases.

As for other improvements, she cautioned that they would take time.

"It's not going to happen overnight," Terry said.

See our database of sanctioned nurses

Doug Smith, The Times' director of database reporting, contributed to this report.

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Write to Tracy Weber at Tracy.Weber@propublica.org .

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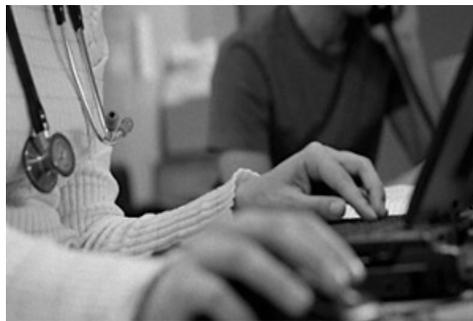
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After Nurses Investigation, Scrutiny Turns to Other Calif. Health Boards

by [Alexandra Andrews](#), ProPublica - July 22, 2009 1:55 pm EST

Earlier this month, ProPublica and the *Los Angeles Times* published an investigation detailing the **failure of the California Board of Registered Nursing to investigate and discipline nurses** accused of misconduct in a timely manner. An examination of all disciplinary cases from 2002 to 2008 found that the board took an **average of more than three years** to investigate and close them — while the nurses accused of wrongdoing continued to practice without restriction. The day after the story was published, Gov. Arnold Schwarzenegger **replaced most members of the board**, and its longtime **executive officer resigned** the day after that.



Flickr Images

This investigation was co-published with the **Los Angeles Times** and also appeared in that newspaper throughout 2008 and 2009.

- 7/14/2009: [Nursing Board Executive Officer Resigns](#)
- 7/13/2009: [California Gov. Schwarzenegger Replaces Most of Nursing Board](#)

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The fallout has continued. There have been a **slew** of follow-up **editorials** and articles in California newspapers. One, in the *Los Angeles Times*, said of the governor's response: "This time, he acted to protect patients, but where was the gubernatorial outrage when the state Board of Chiropractic Examiners, which included several of Schwarzenegger's friends, was **accused in a state audit of similar failures** to put consumers first?"

Another, in the *San Francisco Chronicle*, suggested that "Schwarzenegger shares a measure of blame too: his imposed work furloughs will slow investigations, and his administration should have been on the problem earlier."

The furloughs — aimed at mitigating the state budget crisis — wipe out three workdays a month, exacerbating the delays. Liz Figueroa, a former state senator who once headed the Business, Professions and Economic Development Committee, **told the *Ventura County Star*** that the nursing board and others ought to be exempt from the furloughs because they are funded through the fees they charge professionals to be licensed, rather than the state's general fund.

Figueroa also told the *Star* that the problems uncovered at the nursing board are entrenched in all the state boards that regulate health care professionals, which cover everyone from acupuncturists to podiatrists. State Sen. Gloria Negrete McLeod stressed that some boards "self-regulate very, very well," but according to the *Star*, they may not escape a major overhaul of the system. Schwarzenegger's nursing board shuffle, the paper reports, may be just the first in a series of "sweeping changes" to all health care boards.

Search the Sanctions

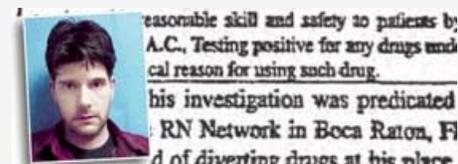


California Sanctioned Nurse Database - The *Los Angeles Times* and ProPublica compiled a database of nearly 2,400 California nurses who have been sanctioned since 2002. [Search by type of punishment, date of action, and nurse's name.](#)

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Interactive Graphic: At least five employers complained to the California Board of Registered Nursing about Carolyn Fay Thomas. The board did not revoke her license until August 2005. [Follow Thomas' case](#) (*Los Angeles Times*)



Interactive Graphic: Joseph Kinney's problems

"Incremental improvements to a broken system is not going to work," said Fred Aguilar, secretary of the California State and Consumer Services Agency. "We have to put in place a new system."

Meanwhile, *The Record-Searchlight* ran a **story** on Saturday about Janet Lee Jones, a California nurse who has faced charges including battery, child endangerment, selling methamphetamine, possessing pain pills without a prescription and driving drunk. Yet you can still find **her active nursing license** — albeit with restrictions — in **our database** of the more than 2,000 nurses who faced disciplinary action between 2002 and 2008. The nursing board opened its second investigation of Jones in 2004 but didn't officially sanction her until 2008, when it put her on probation. As the ProPublica/*Los Angeles Times* investigation found, "The board gave probation to hundreds of nurses — ordering monitoring and work restrictions — then failed to crack down as many landed in trouble again and again."

Write to Alexandra Andrews at alexandra.andrews@propublica.org .

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Tags: Arnold Schwarzenegger, California, Nurses, Nursing Board

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with substance abuse continued well after he entered California's drug diversion program in May 2005. [Follow Kinney's case](#) (*Los Angeles Times*)



Chart: California takes far longer to discipline registered nurses than many other large states, according to a review by the Los Angeles Times and ProPublica. Click the [graphic](#) to see the full details. (*Los Angeles Times*)



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Loose Reins on Nurses in Drug Abuse Program

by [Tracy Weber](#) and [Charles Ornstein](#), ProPublica - July 25, 2009 12:31 am EST



Anette Ekelius was able to covertly get jobs at hospitals--and steal drugs--while in the California's program for substance abusing nurses. Center-right: Carol Stanford, who has directed the board's diversion program since 2006, presents a painting done by a program graduate to Ruth Ann Terry, who was executive officer of the Board of Registered Nursing at the time this photo was taken in June 2009. Terry resigned after a ProPublica and Los Angeles Times investigation revealed flaws in the nursing board's oversight (Liz O. Baylen / Los Angeles Times)

The morning of her second day at Starpoint Surgery Center in Studio City, nurse Melony Currier was found in the parking lot, passed out in her car.

Once roused, she was escorted to a drug-testing facility to provide a urine sample. In the restroom, she injected an anesthetic she had stolen from the surgery center, according to state records and a Starpoint official.

Currier, a participant in the state's confidential recovery program for impaired nurses, had failed repeatedly -- and spectacularly -- at rehabilitation, the records show.

Over 4 1/2 years, she'd been discovered high in her car at a Hollywood hospital, stolen anesthetics at a San Gabriel Valley hospital, been convicted of burglary after taking more drugs from the same hospital and flunked a drug test.

Yet it wasn't until Currier shot up at the drug-testing facility in September 2006 that she was kicked out of the recovery program. Though her evaluators labeled her a "public risk," the California Board of Registered Nursing didn't impose discipline until 1 1/2 years later, leaving her free her to work without restriction in the interim, the documents show.

As the state begins overhauling regulation of

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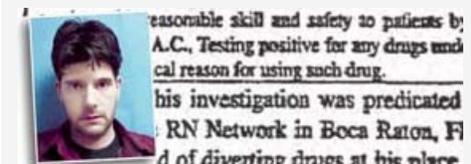


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Melony Currier was convicted of stealing drugs from the health facilities she worked at.

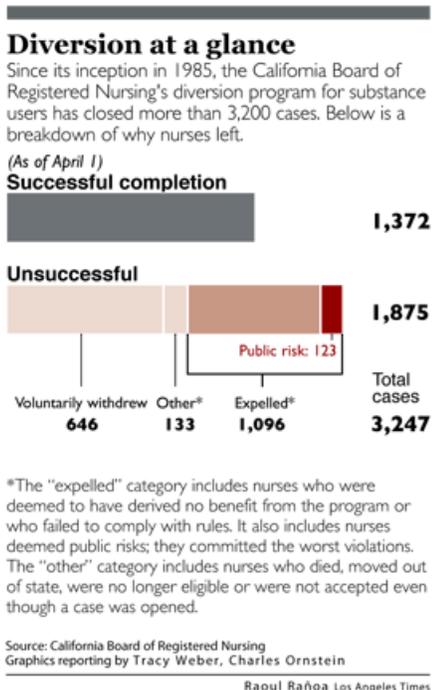
California's 350,000 registered nurses, one of the board's most touted programs stands out as seriously troubled: drug diversion.

For years, nursing board officials have described diversion as a haven where good nurses can kick bad habits -- without losing their licenses or their reputations.

But an investigation by ProPublica and the *Los Angeles Times* found participants who practiced while intoxicated, stole drugs from the bedridden and falsified records to cover their tracks.

Since its inception in 1985, more than half the nurses who have entered the program haven't completed it. Some who fail at diversion are deemed so incorrigible that the board labels them "public safety threats" (sometimes referred to as "public risks").

Based on a review of all nurses who faced disciplinary action since 2002, The Times and ProPublica **identified more than 80 such nurses**.



Dire as they sound, the labels do not trigger immediate action or public disclosure. Some nurses that the board considers dangerous continue to treat patients.

"These healthcare professionals may be in the operating room. They may be serving you when you're sick," said George A. Kenna, an addiction researcher at Brown University. "You just don't want that sort of person who's impaired" at the bedside.

Earlier this month, Gov. Arnold Schwarzenegger replaced most of the nursing board and demanded wholesale

reform after The Times and ProPublica reported that it took more than three years on average to investigate and discipline nurses. The newly appointed board meets for the first time Sunday and Monday.

Confronted with reporters' findings on the diversion program this week, State and Consumer Services Secretary Fred Aguiar answered nearly every question by saying the program was part of a "broken system." Aguiar, whose agency oversees professional licensing, promised it would

with substance abuse continued well after he entered California's drug diversion program in May 2005. [Follow Kinney's case](#) (*Los Angeles Times*)



Chart: California takes far longer to discipline registered nurses than many other large states, according to a review by the Los Angeles Times and ProPublica. Click the [graphic](#) to see the full details. (*Los Angeles Times*)



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be on the new board's agenda.

In a separate interview, Carol Stanford, who has directed the diversion program since 2006, vigorously defended it. She said reporters were focusing too heavily on nurses who failed and not enough on those "saved" by diversion.

"You can pick apart any program," she said. "But what about the good? What about the other side of that story?"

Stanford said the program, which nearly 1,400 nurses have completed since 1985, had a graduation rate of 59% last year.

"Of course, nothing's perfect," she said. "We're working on whatever issues might be going on."

Diversion, embraced in various forms by many regulators, is intended to protect both professionals and the public.

Nurses enroll voluntarily, sometimes after a complaint, sometimes before they land in trouble. They agree to a host of conditions, such as submitting to random drug tests, seeking treatment and pledging not to work without permission.



See the Los Angeles Times and ProPublica database of more than 2,000 sanctioned nurses

In return, the board suspends the disciplinary process, keeping secret the nurses' participation in the program. With an annual diversion budget of nearly \$3 million, it relies on an outside contractor to run the program day to day.

Because the program is confidential, it is impossible to know how many enrollees relapse or harm patients. But 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 haven't upheld their end of the bargain. And oversight is broadly lacking.

Nurses must promise they won't work until they're sober, yet the board doesn't confiscate their licenses, nor does it ensure that addicts have kept their word.

Some covertly get jobs and steal drugs. The board typically doesn't find out until the nurse gets in trouble again.

Even after the program expels nurses and labels them public safety threats, the board takes a median 15 months to file a public accusation -- the first warning to potential employers and patients of a nurse's troubles. It takes 10 more months to impose discipline, based on the Times/ProPublica review of disciplinary records filed since 2002.

Labor and delivery nurse Tiffany Fahrni, who originally enrolled in the program after stealing and using painkillers, said she was kicked out and labeled a "public risk" in December 2005 because she had worked without permission. But the board didn't file an accusation against her until January 2009.

During that time Fahrni logged at least two

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After being kicked out of the diversion program, Tiffany Fahrni logged at least two drug-related arrests before the board filed an accusation against her.

arrests on drug-related charges, though she says she did not work as a nurse.

"They terminate you. They say you're a danger to public society . . . then it takes three more years for them to do anything," she said.

The nursing board "should have been all over me like a hawk," Fahrni said. "An addict -- you got to watch them like a baby."

Julianne D'Angelo Fellmeth, administrative director of the Center for Public Interest Law at the University of San Diego, said every "public risk" case should be pursued within five days.

Nurses "treat how many dozens of patients?" she said. With such delays, "the chance for harm to a patient is exponentially multiplied."

Drug convictions

In retrospect, Melony Currier may not have been a good candidate for diversion.

She first landed in trouble on Nov. 8, 2001, when she was arrested for stealing Demerol from Providence St. Joseph Medical Center in Burbank. (She later told board investigators that she'd stolen drugs every day for months.)

Nearly two weeks after her arrest, while working at Planned Parenthood in Van Nuys, she was found collapsed in the bathroom, injecting herself with the general anesthetic propofol. Two days after that, she returned to Providence St. Joseph and stole more of the drug, board documents say.

She was later convicted of misdemeanor theft in the Van Nuys case and petty theft and drug possession in the Burbank case.

Currier, then known by the last name Dietrich, was allowed into diversion in February 2002. The program bars nurses who have been convicted of selling drugs or who have caused patient harm or death. Also rejected are those previously disciplined by the board for drug use or mental illness, and those previously kicked out of any diversion program.

None of this applied to Currier. When the program finally expelled her in 2006 -- after the five relapses -- her case entered the clogged pipeline of ordinary complaints. There it was investigated outside public view.

A month after Currier was ejected, according to board documents, she went to Providence St. Joseph, where she'd been arrested five years earlier. Posing as an employee, she said she'd come to collect drugs for outpatient surgery.

When questioned, she "fled," board records say, driving 10 miles to

Verdugo Hills Hospital in Glendale. Again posing as an employee, she stole two cases of propofol, according to court and board records.

Two days later, on Oct. 18, 2006, Currier was arrested when she returned to Verdugo Hills for more.

The board filed a public accusation against Currier in March 2007-- nearly 5 1/2 years after the agency first learned of her drug problems.

When the board settled the case in 2008, Currier's license was suspended for a year and she was put on probation. As part of the settlement, she admitted the allegations.

Currier is now free to practice with restrictions. She has declined to comment on her case.

Asked about delays in cases like this, in which a nurse has been deemed a public risk, diversion manager Stanford said: "That nurse still has due process. . . . You cannot go after a registered nurse in this state for falling out of treatment."

In some other states -- Arizona, Texas, North Carolina and Ohio, for instance -- nurses are booted from diversion much more quickly and disciplined sooner, according to interviews with regulators there.

"You can't stay in the program after one relapse, even one," said Julia George, executive director of the North Carolina Board of Nursing.

Leonard LaBella, Verdugo Hills Hospital's chief executive, said he was dumbfounded that the California board had not moved against Currier sooner.

"They might be overwhelmed," he said. "But this one, I think, might have floated to the top."

Risky honor system

At the moment, the main person responsible for protecting the public from a drug-addicted nurse in California is the drug-addicted nurse. It's a risky honor system.

Anette Ekelius, who landed in diversion for allegedly stealing drugs in April 2001, said she knew the rules -- she couldn't work without the board's permission. She also knew there was nothing to stop her. "I thought, 'This is good,' " she recalled. " 'I need to work. I need to pay my bills.' "

Ekelius got an unauthorized job as a temporary nurse at Torrance Memorial Medical Center that September, according to court records. She later pleaded guilty to stealing Demerol on her first -- also her last -- day. The hospital reported her to the board, but she remained in diversion.

Months later she took another job without permission, she said in an interview. At Corona Regional Medical Center, she appeared high and was accused of leaving a critically ill patient unattended, board records say.

Two days later, in February 2002, she was kicked out of diversion. She got another job and stole drugs before the board filed an accusation

against her. **Her license was revoked in August 2004.**

"I was a good nurse, but not when I was using, obviously," said Ekelius, who said she is now sober.

Diversion manager Stanford said she doubted there were more than a handful of such cases but conceded she has no way of knowing for sure.

Doctors program

California regulators well know that diversion programs can fall dangerously short.

In recent years, audits of the state medical board's program found that relapsing doctors weren't always removed from practice, surprise drug tests often weren't surprises and designated monitors sometimes left doctors unwatched.

The medical board closed the 27-year-old program last year.

At legislative hearings on the matter, nursing board officials insisted that their program did not have the same problems and was "very successful."

But the board often defines success as completing the program. By that measure, it has lagged behind the medical board. Historically, about three-fourths of doctors who entered diversion finished it.

And the nursing board does not track nurses once they complete the program. Scott Bertrand, a Claremont nurse anesthetist, relapsed three months after graduating. In August 2005, he was caught injecting himself during a surgery with the painkiller fentanyl, which was intended for the patient. Afterward he admitted using opiates every workday for 10 to 12 weeks, according to his **board disciplinary record**.

Given a second chance at diversion, he was kicked out, according to his board record. Last year the board suspended his ability to work as a nurse anesthetist for one year and put him on **probation**.

Reached twice by telephone, Bertrand said he was busy and never called back.

The board almost certainly misses other cases like Bertrand's, addiction experts said.

"I'd want to know what their relapse rate is," said Dean Dabney, a criminal justice expert at Georgia State University, who has written about impaired practitioners. "That's your true indicator."

In this week's interview, Stanford initially stuck to her overall assessment of her diversion program as "a success."

Pressed on the flaws identified by reporters, however, she said officials were taking steps to "tighten it up."

One change in process, she said, is a requirement similar to that in New York -- in which new enrollees in diversion inactivate their licenses. Another would allow the state to investigate complaints even while nurses are in diversion, as the state of Washington does. A third would expedite legal action on cases in which nurses are considered "public safety threats."

"You're raking me over the coals," Stanford said to reporters. "I'm trying to work with the program to enhance it."

A fatal overdose

Chad Matheny's newspaper obituary said he died unexpectedly at his Cathedral City home May 19, 2008.



Chad Matheny died after a long struggle with drug addiction. His mother accuses the nursing board of doing nothing to restrict his ability to work.

Just 32, Matheny was described as a loving husband and father, a musician and singer, a dedicated nurse and caregiver. Left unsaid: Matheny's death came after a years-long battle with drugs.

It was a fight the nursing board knew he was losing.

An autopsy found that he had died of an accidental overdose: of powerful painkillers, antidepressants and anti-anxiety drugs. Some of the drugs appeared to have been obtained by phoning prescriptions in under the name of the physician he worked for, the autopsy report said.

Matheny had been booted from the diversion program two years earlier, and the board had labeled him a public threat, saying he had a "complete lack of insight into addiction." But, with **disciplinary proceedings pending**, he could still work -- and score drugs. He died in bed, beside his wife.

Matheny's mother, Gaytha Minor, said the nursing board failed her son. But she is a veteran nurse herself -- and what most angers her is that the board didn't step in to protect the public.

"How many patients suffered because of my son?"

Maloy Moore, of the Los Angeles Times, contributed to this story

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CAPITOL WEEKLY

THE NEWSPAPER OF CALIFORNIA GOVERNMENT AND POLITICS

Protecting consumers, and not careers, is a wise and critical investment

By Brian Stiger | 01/21/10 12:00 AM PST

In today's sluggish economy, we don't have to hold an MBA in finance to understand that an intelligent investment yields predictable, measureable returns. The way we govern must reflect this belief because we are entrusted with the responsibility of serving the public and, in our case, safeguarding their wellbeing. We have to know when an investment is smart and what it will be worth in the future.

I oversee the Department of Consumer Affairs (DCA), which is the umbrella agency that oversees, among other entities, 19 healing arts boards that protect and serve the state's consumers. These boards regulate licensees from doctors and nurses to physical therapists and optometrists, most of whom provide outstanding care to Californians and are some of our nation's best health care practitioners.

That said, when a licensee *does* violate the laws governing his or her profession, enforcement action is essential to protect the public. Regrettably, the antiquated enforcement infrastructure of some of the healing arts boards has been inadequate to ensure a prompt investigation and resolution of consumer complaints. As a result, consumer safety has been significantly jeopardized; and this is simply unacceptable. We must reinvest in the state's ability to weed out bad actors from professions and equip healing arts board with the resources to ensure a productive return.

It is my department's mission to protect consumers, not careers; to shield patients from harmful caregivers, not shield a licensee from discipline through an inefficient, unwieldy, and excessive enforcement process. From where I sit, it's no longer acceptable for incarcerated nurses to hold licenses with clear disciplinary records; it's no longer acceptable for physicians with multiple DUI convictions to practice with clean licenses while the state dithers on a 3+ year investigation; and it is certainly no longer acceptable to allow investigations to languish for months over the inability to efficiently solicit records. For years, many boards have been hamstrung by statutory and regulatory mandates that have fallen far short of safeguarding consumers – until now.

In response to the *systemic* problems limiting the boards' abilities to act quickly on licensee violations, DCA is investing approximately \$27 million over a two-year period to launch the Consumer Protection Enforcement Initiative, which overhauls licensing enforcement through a *systematic* approach targeting administrative improvements, staffing and IT resources, and critical legislative changes.

Once fully implemented, DCA anticipates the healing arts boards will dramatically slash the

average enforcement completion timeframe from an excessive 36 months to between 12 and 18 months. Consumers deserve a better, more efficient response to their concerns; licensees are entitled to swift investigations and resolutions; and I demand a better enforcement process than what is currently in place.

DCA's boards are specially funded, which means our funds come strictly from professional licensing fees. Health professionals' fees already fund the licensing, regulations and enforcement of their profession. These fees are simply going to be reinvested in ensuring that the integrity of each licensing profession is upheld, that a higher standard of enforcement performance is established, and that Californians yield the dividends of strengthened consumer safeguards.

This initiative is an imperative investment for Californians, with measurable returns and undeniable gains in increased accountability, transparency, and efficiency from the state's healing arts boards.

DCA is committed to making certain that the consumer protection to which it remains dedicated is fully functional. The Consumer Protection Enforcement Initiative is undeniably a "wise investment" in comprehensive enforcement reform and ensures we fulfill our consumer protection mission.

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To: Compliance and Enforcement
Committee Members

Date: March 12, 2010

From: Kim Madsen
Executive Officer

Telephone: (916) 574-7841

Subject: Uniform Standards Regarding Substance Abusing Healing Arts Licensees,
Senate Bill 1441

Background

Senate Bill 1441, signed by the Governor on September 28, 2008, established the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (DCA). This committee is comprised of the Executive Officers of the healing arts boards within DCA, and a designee of the State Department of Alcohol Drug Programs. The bill required the committee to develop, by January 1, 2010, uniform and specific standards in specific areas that each healing arts board would be required to follow when addressing the issue of a substance abusing licensee and ensuring public protection. Further, the SACC was subject to the Bagley-Keene Open Meeting Act.

Development Process

The SACC held its first meeting in March 2009 to initiate the process of developing the standards for sixteen (16) areas. The SACC determined that the most efficient way to meet the time lines established in Senate Bill 1441 was to create a smaller working group to develop the standards.

The working group is comprised of individuals within DCA who have the expertise in the areas of diversion, probation, and enforcement. The working group is charged with developing draft standards that can be applied to both licensees in diversion programs and licensees on probation. The proposed standards are drafted and presented at a public meeting to solicit public comment. Following this meeting, the working group reviews the public comments and prepares the proposed standards to present to the SACC.

In December 2009, the working group completed their work and the uniform standards were submitted to DCA Director Brian Stiger.

Steps to Implementation

Each board was directed to consult with their legal counsel and review their current statutes, regulations, and disciplinary guidelines to identify which standards may be implemented immediately as well as identify any legislative changes required for implementation. BBS staff met with legal counsel and determined that some changes to the current disciplinary guidelines will be necessary.

To address the legislative changes, DCA is in the process of proposing language needed to implement these standards. It is anticipated that the proposed language will be introduced in a bill. To date, BBS has not received information regarding a bill number for this proposal.

Current Status

BBS determined that some changes to our current disciplinary guidelines will be required to fully implement the uniform standards. However, we are in the process of revising the disciplinary guidelines to incorporate our new licensing profession, Licensing Professional Clinical Counselors (LPCC). Until this current regulatory package is complete, BBS is unable to propose any additional changes to its disciplinary guidelines.

Attachments:

- a. ProPublica.org – “California Adopts Stricter Rules for Drug Abusers in the Health Industry”
- b. Department of Consumer Affairs – “Uniform Standards Regarding Substance-Abusing Healing Arts Licensees”



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California Adopts Stricter Rules for Drug Abusers in the Health Industry

by [Charles Ornstein](#) and [Tracy Weber](#), ProPublica - November 20, 2009 8:47 am EST



A public health nurse in Encino, Calif., preparing a dose of H1N1 vaccine in October. The state said it will impose new standards on health professionals abusing drugs by scrutinizing those in treatment and removing from practice anyone who relapses. (Mark Boster/AFP/Getty Images)

In a major shift, California will impose **tough new standards** (PDF) on drug-abusing health professionals, strictly scrutinizing those in treatment and immediately removing from practice anyone who relapses.

"The bottom line is we're in the business of protecting consumers," said Brian Stiger, director of the state Department of Consumer Affairs, which announced the rules Thursday. "We're not in the business of rehabilitation."

The rules will require nurses, dentists and other health workers in state-

run recovery programs to take at least 104 drug tests in their first year -- more than double any current requirement.

Health professionals will be automatically pulled from practice, at least temporarily, after a single positive result. And any restrictions to their licenses will be listed on public Web sites, easing the long-standing confidentiality protections that have shielded participants and kept their patients in the dark.

The changes appear to address problems raised in a July **investigation** by *The Los Angeles Times* and ProPublica, which detailed how registered nurses were able to treat patients without permission and steal drugs while participating in the confidential recovery program known as diversion.

Even when the state Board of Registered Nursing kicked those nurses out, labeling them "public safety risks," it took a median 15 months to file public accusations, the investigation found.

The standards were drafted by a committee created by the Legislature last year after repeated audits revealed that the recovery program for doctors poorly monitored participants and failed to terminate those who relapsed. The Medical Board of California shut down that program on

Our Complete Coverage



The *Los Angeles Times* and ProPublica have conducted a joint investigation into the failed oversight of California's health professionals. In July 2009, we reported that the Board of Registered Nursing took more than three years, on average, to investigate and discipline errant nurses. It failed to act against nurses whose misconduct already had been thoroughly documented and sanctioned by others. And the board gave probation to hundreds of nurses -- ordering monitoring and work restrictions -- then failed to crack down as many landed in trouble again and again. Read our [complete coverage here](#).

Ask the reporters about the series: Email QandA@propublica.org

Database



[California Sanctioned Nurse Database](#) - The *Los Angeles Times* and ProPublica compiled a database of nearly 2,400 California nurses who have been sanctioned since 2002. Search the records of nurses who have faced disciplinary proceedings and the circumstances of allegations against them.

Multimedia



Discipline delayed
From 1995 to 2002, at least five employers complained to CA's Board of Registered Nursing about Carolyn Fay Thomas.
Her license wasn't revoked until August 2005.
Click the graphic to follow Thomas's case

[Follow Thomas's case](#)

June 30, 2008.

Until now, each of the state's 21 health licensing agencies determined its own policies for dealing with professionals who had substance abuse problems.

The new rules would apply directly to the seven boards that operate diversion programs, in which licensees avoid discipline by agreeing to drug tests, support group meetings and heightened monitoring.

More than 300 people entered those programs in fiscal 2008; many more have been enrolled on a long-term basis.

But the rules also would apply more broadly, even to the medical board and other agencies without diversion programs, if a licensee has been placed on probation for a substance abuse problem.

Julianne D'Angelo Fellmeth, who audited the medical board's program, said the changes address gaping holes in the oversight of potentially dangerous caregivers.

"The state is finally taking responsibility for protecting the public," said D'Angelo Fellmeth, administrative director of the Center for Public Interest Law at the University of San Diego. "The state not only is taking control, but instituting pretty strict and strong standards."

But Ellen Brickman, president of the National Organization of Alternative Programs and director of Statewide Peer Assistance for Nurses in New York, said she was concerned that the new rules would keep addicted health professionals from seeking help, driving the problem underground.

"I'm listening to this and I'm cringing," she said. "I'm not optimistic that this is going to work the way they want it to. It won't keep people from abusing substances. It will keep them out of the system, where they'll be sicker before anybody can do anything about it."

Diversion programs, used in many states, were designed to encourage health workers to fight their addictions in a safe environment without ruining their careers.

D'Angelo Fellmeth said those who want to pursue confidential treatment still can enter private programs. Many turn to state-run programs, she said, only to avoid discipline -- because they are on the verge of being turned in by their employers or have been arrested in or convicted of drug- or alcohol-related offenses.

Among the new standards:

- Licensees suspected of drug abuse must undergo a clinical evaluation at their own expense to determine whether they can still practice safely. During this process, their licenses will be placed on inactive status, meaning they cannot work, and they must submit to drug tests twice a week. They can't return to work until they have at least one month of negative test results.
- During the first year of participation, a professional will be randomly tested at least 104 times. After that, it drops to at least 50 times annually. Current programs require testing only 12 to 52 times, Stiger



A public risk

Joseph Kinney was allowed by the California Board of Registered Nursing to continue practicing even after he was labeled a public safety threat.

Click the graphic to follow Kinney's case.

[Follow Kinney's case](#)



One step ahead

Registered nurse Andrew Fernando Reed was accused of stealing drugs while working for a series of staffing agencies. But that didn't stop him from getting new jobs.

Click the graphic to follow Reed's Case

[Follow Reed's case](#)



Discipline in slow motion

It took eight years for six states to sanction nurse Craig Smart. California was the slowest to act, revoking his license in 2008.

Click the graphic to follow Smart's Case

[Follow Smart's case](#)



Chart: California takes far longer to discipline registered nurses than many other large states, according to a review by the Los Angeles Times and ProPublica. Click [graphic](#) to see the full details.

Interactive Chart: [About the Board](#) - The California Board of Registered Nursing oversees the education, licensure, practice standards and discipline of the state's 350,000 nurses.

Profiles

said.

- For the first time, the public will be able to review any restrictions placed on a health professional. Boards won't be allowed to directly say that someone is in substance abuse treatment, but they must publicly disclose that a person has an inactive license or is subject to increased supervision or limited work hours.

If someone is kicked out of the program, disciplinary proceedings will begin immediately, Stiger said. "If you have a major violation," such as use of a banned substance, "thou shalt not practice," he said.

Some states have gone even further than California. North Carolina, for instance, immediately suspends the licenses of nurses for a minimum of one year after a single relapse.

In California, all boards will be required to provide detailed information on their performance to the Legislature and the Department of Consumer Affairs.

The committee that drafted the new rules is calling for each program to successfully graduate every participant, but Stiger said officials haven't determined the consequences if they don't.

Last year, the nursing board's program had a 59 percent graduation rate.

The new standards are part of a broader effort to revamp the disciplinary process for health professionals in the state, speeding it up and prioritizing the most serious cases. To that end, Stiger appointed Paul Riches to a new post of deputy director for enforcement and compliance. Riches was previously executive officer of the Board of Behavioral Sciences.

The timetable for the new standards has not been finalized. The standards are due to the Legislature by Jan. 1, and boards will be asked to implement them afterward. Lawyers are still reviewing whether certain rules will require formal approval by the Legislature, Stiger said.

If these diversion programs cannot prove their worth soon, they could be eliminated, according to proposals under consideration.

"Quite frankly, we don't run them very well," Stiger said. "What we do well is enforce the law and that's where we need to be."

For more on the California Board of Registered Nursing, [go to "When Caregivers Harm."](#)

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[Spencer Sullivan](#) - In the prime of his life, Spencer Sullivan was rendered a quadriplegic. It took the nursing board more than six years later to revoke the license of a nurse involved in his care.

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[Caitlin Greenwell](#) - Caitlin Greenwell's family alleges that she suffers from cerebral palsy because nurses neglected to monitor her during her birth. [LA Times Audio Slideshow](#)



[Dr. Iraj Zandi](#) - During a surgery, Dr. Iraj Zandi discovered that a nurse had stolen painkiller drugs intended for his patient. He found out later that the nurse had been accused of pilfering drugs from a previous employer. [Read more...](#)



[Veronica Glaubach](#) - Veronica Glaubach's nurses missed crucial signs of a life-threatening complication during and after childbirth, her family alleged. She died. The nursing board absolved the nurses. [Read more...](#)

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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
December 2009 (Corrected Version)
Corrections shown in red



Substance Abuse Coordination Committee

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Director, Department of Consumer Affairs

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CA Department of Alcohol & Drug Programs

Janelle Wedge
Acupuncture Board

Paul Riches
Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

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Joanne Allen
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Heather Martin
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Board of Optometry

Donald Krpan, D.O.
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Physician Assistant Committee

Jim Rathlesberger
Board of Podiatric Medicine

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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

Any licensee in a board diversion program or whose license is on probation, who the board has reasonable suspicion has a substance abuse problem shall be required to undergo a clinical diagnostic evaluation at the licensee's expense. The following standards apply to the clinical diagnostic evaluation.

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
 - holds a valid, unrestricted license 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. His or her license shall be placed on inactive status 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 one (1) month 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, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

#4 Uniform Standard

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

1. 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**.
2. Drug testing may be required on any day, including weekends and holidays.
3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact to determine if drug testing is required.
5. Licensees shall be 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 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.

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.

#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 in the last five (5) years.
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.
3. The worksite monitor 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, the board shall:

1. Place the licensee's license on inactive status; and
2. Immediately contact the licensee and instruct the licensee to leave work; and
3. 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 should reactivate the license.

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. Inactivation of the license.
 - a) the license is put on inactive status, and
 - b) the licensee must undergo a new clinical diagnostic evaluation, and
 - c) the licensee must test clean for at least a month of continuous drug testing before being allowed to go back to work. (~~and~~)

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:

Specimen Collectors:

- a) 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) 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) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- d) 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) 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) 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) 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) 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) Must undergo training as specified in Uniform Standard #4 (6).

Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- a) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- b) must be licensed or certified by the state or other nationally certified organization;
- c) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;
- d) shall report any unexcused absence within 24 hours to the board, and,
- e) 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.

Work Site Monitors:

1. The worksite monitor must meet the following qualifications:
 - a) 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) The monitor's licensure 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.
 - c) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

- d) 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.

Treatment Providers

1. Treatment facility staff and services must have:
 - a) Licensure and/or accreditation by appropriate regulatory agencies;
 - b) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
 - c) Professional staff who are competent and experienced members of the clinical staff;

- d) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
 - e) Means to provide treatment/progress documentation to the provider.
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) 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) 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) 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.

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To: Enforcement and Compliance Committee

Date: March 22, 2010

From: Tracy Rhine
Assistant Executive Officer

Telephone: (916) 574-7847

Subject: **Senate Bill 1111 (Negrete McLeod)**

Attached for Committee review is an analysis of SB 1111 that establishes the Consumer Health Protection Enforcement Act. This legislation is sponsored by the Department of Consumer Affairs (DCA) and is intend to address deficiencies in the enforcement processes of healing arts boards within DCA.

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 1111 **VERSION:** INTRODUCED FEBRUARY 17, 2010

AUTHOR: NEGRETE MCLEOD **SPONSOR:** DEPARTMENT OF CONSUMER
AFFAIRS

RECOMMENDED POSITION: SUPPORT

SUBJECT: HEALTH CARE ENFORCEMENT REFORM ACT

Existing Law:

- 1) Requires the Board of Behavioral Sciences (Board) to disclose information on its web site relevant to an individual's license status and address of record. (Business and Professions Code Section 27)
- 2) Allows the Director (Director) of the Department of Consumer Affairs (DCA) to audit and review inquires or complaints regarding licensees, dismissals of disciplinary cases, investigations and discipline short of formal accusation by the Medical Board of California and the California Board of Podiatric Medicine. (BPC Section 116)
- 3) Allows an Administrative Law Judge (ALJ) to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. (BPC 125.3)
- 4) Allows the Board to issue a licensee a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the Board and allows the licensee to contest the finding of violation and assessment of fine at a hearing conducted in accordance to the Administrative Procedures Act (APA). (BPC 125.9)
- 5) Specifies that the director may employ such investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law and that it is the intent of the Legislature that inspectors used by the Board shall not be required to be employees of the Division of Investigation, but may be either employees, or under contract to the Board. (BPC 155)
- 6) Prohibits the Board from entering into a settlement with a licensee or applicant before the Board has issued an accusation or statement of issues. (Government Code Section 11415.60)
- 7) Prohibits a physician and surgeon from including in a civil dispute settlement an agreement which would prohibit a person from contacting, cooperating with, or filing a complaint with the Medical Board based on any action arising from his or her practice. (BPC 2220.7)
- 8) Requires the Medical Board to submit an annual report to the legislature relating to enforcement activity of the Board. (BPC 2312)

This Bill:

- 1) Establish the Consumer Health Protection Enforcement Act with the specified intent to provide the healing arts boards within DCA with 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.
- 2) Requires the Board to post on its web site discipline of a licensee by another board of another jurisdiction, civil judgments against a licensee and any felony conviction of a licensee reported to the Board. (BPC 720.28)
- 3) Allows the Director to audit and review inquires or complaints regarding licensees, dismissals of disciplinary cases, investigations and discipline short of formal accusation by the Board. (BPC 116)
- 4) Allows an ALJ to direct a licensee found to have committed a violation of the licensing act to pay a sum not to exceed the *actual* costs of investigation and enforcement of the case and to pay the Board's actual cost of monitoring while on probation. (BPC 125.3)
- 5) Allows the Board to contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person that owes the Board money. (BPC 125.4)
- 6) Allows the Board to conduct a citation appeal hearing with its Executive Officer and two board members, instead of requiring the appeal to proceed through the APA process. (BPC 125.9)
- 7) Specifies that the Board may contract with either the Medical Board or with the Department of Justice to provide investigative services as determined necessary by the Board's executive officer. (BPC 155)
- 8) Establishes the Health Quality Enforcement Unit within the Division of Investigations, with the primary purpose of investigating complaints against licensees and applicants within the jurisdiction of the healing arts boards. (BPC 159.5)
- 9) Allows the executive officer of the Board 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. (BPC 720.2)
- 10) Allows the executive officer of the board to adopt a proposed settlement agreement when are administrative action to revoke a license has been filed by the board and the licensee has agreed to surrender his or her license. (BPC 720.2)
- 11) Authorizes the Board to enter into a settlement with a licensee prior to the board's issuance of an accusation or statement of issues against the licensee or applicant and prohibits that licensee from petitioning for modification of the terms of that settlement. (BPC 721.4)
- 12) Allows the Director to issue a temporary order that a licensee cease all practice when evidence that the licensee's conduct poses an imminent risk of serious harm to the public health, safety, or welfare or that the licensee has failed to comply with a request to inspect records. (BPC 720.6(a))

- 13) Requires the Board's executive officer, to the extent practicable, to provide notice to a licensee subject to a temporary cease practice order, at least 24 hours prior to the hearing. (BPC 720.6(b)(1))
- 14) Specifies that a temporary cease to practice order issued pursuant to this bill, will remain in effect up to 120 days. (BPC 720.6(b)(2))
- 15) Requires the executive officer to, upon receipt of new information relevant to a cease practice order, provide that information to the Director for review. (BPC 720.3(e))
- 16) Provides for the automatic suspension of a license during the time that a licensee is incarcerated after the conviction of a felony and provides that the Board shall suspend the license until the time for appeal has elapsed if, upon review by an ALJ, the conviction was substantially related to the qualifications, functions or duties of the licensee. (BPC 720.8)
- 17) Specifies that a conviction of a charge of violating any state or federal statute or regulation relating to controlled substances or dangerous drugs is conclusively presumed to be substantially related to the qualifications, functions, or duties of the licensee and no hearing on the automatic suspension will be held. (720.8(c))
- 18) Prohibits a licensee from including in a civil dispute settlement an agreement which would prohibit a person from contacting, cooperating with, or filing a complaint with the Board based on any action arising from his or her practice. (BPC 720.14)
- 19) Authorizes the Attorney General to inquire into any alleged violation of the Board's licensing law and to inspect records relevant to complaints received by the Board. (BPC 720.16)
- 20) Provides that a licensee must comply with a request for the certified records of a patient within 10 days of receipt of that request or be subject to a civil penalty of \$1,000 a day. (BPC 720.18)
- 21) Requires a state agency, upon receiving a request from the Board, to provide all records in the custody of an agency and requires state agencies to notify the Board of an investigation the agency is conducting involving a Board licensee. (BPC 720.20)
- 22) 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 the Board to provide records requested prior to receiving payment from the Board. (BPC 720.22)
- 23) Requires an employer of a Board licensee to report to the Board the suspension or termination for cause of any Board licensee. (BPC 720.24)
- 24) Requires the Board to report annually to DCA and the Legislature information relating to enforcement activity, including, consumer calls received by the Board, total number of complaint forms received by the Board, the total number of convictions reported to the Board, and the total number of licensees on probation. (BPC 720.26)
- 25) Requires the Attorney General's office to serve an accusation within 60 calendar days after the receipt of a request from the Board.(BPC 720.30)
- 26) Requires the Attorney General's office to serve a default decision within five days following the time period allowed for the filing of a Notice of Defense and to set a hearing within three days of receiving a Notice of Defense, unless otherwise instructed by the Board. (BPC 720.30)

- 27) Requires the Board to check the National Practitioner Data Bank for previous disciplinary action in another state against a licensee or applicant prior to granting or renewing a license. (BPC 720.35)
- 28) Makes the violation of any state or federal statute or regulation relating to dangerous drugs or controlled substances unprofessional conduct. (BPC 734 and 735)
- 29) Makes failure to furnish information in a timely manner to the Board and to cooperate in any disciplinary investigation unprofessional conduct. (BPC 737)
- 30) Requires Board licensees to report to the Board any arrest, indictment, conviction or disciplinary action taken against a licensee by another licensing entity of this state or another state. (BPC 802.1)
- 31) Requires the district attorney, city attorney, or other prosecuting agency to notify the Board and the clerk of the court of any filings against a licensee of the Board charging a felony. (BPC 803.5)
- 32) Requires the Department of Justice to submit notice of subsequent arrests, convictions or other updates to the Board with 30 days. (BPC 803.7)
- 33) Allows DCA to annually establish a maximum fee amount for the Board, adjusted consistent with the California Consumer Price Index. (BPC 870)
- 34) Specifies that it is a public offense, punishable by a fine not to exceed \$100,000 or imprisonment, to engage in any practice without a current and valid license. (BPC 880)
- 35) Allows the Board to use the Department of Justice Health Quality Enforcement Section to provide investigative activities. (Government Code Section 12529)

Comment:

1) **Author's Intent.** This bill was introduced as part of DCA's Consumer Protection Enforcement Initiative (CPEI). A number of DCA recommendations require statutory changes in order to provide authority for the Boards under DCA to move forward with recommendations.

2) **Support and Opposition.**

Support:

None on File

Opposition:

None on File

Introduced by Senator Negrete McLeodFebruary 17, 2010

An act to amend Sections 27, 116, 125.9, 155, 159.5, 160, 726, 802.1 803, 803.5, 803.6, and 2715 of, to amend and repeal Section 125.3 of, to add Sections 125.4, 734, 735, 736, 737, 803.7, 1699.2, 2372, 2669.2, 2770.18, 3534.12, 4375, and 4873.2 to, to add Article 10.1 (commencing with Section 720), Article 15 (commencing with Section 870), and Article 16 (commencing with Section 880) to Chapter 1 of Division 2 of, and to repeal Article 4.7 (commencing with Section 1695) of Chapter 4 of, Article 15 (commencing with Section 2360) of Chapter 5 of, Article 5.5 (commencing with Section 2662) of Chapter 5.7 of, Article 3.1 (commencing with Section 2770) of Chapter 6 of, Article 6.5 (commencing with Section 3534) of Chapter 7.7 of, Article 21 (commencing with Section 4360) of Chapter 9 of, and Article 3.5 (commencing with Section 4860) of Chapter 11 of Division 2 of, the Business and Professions Code, to amend Sections 12529, 12529.5, 12529.6, and 12529.7 of the Government Code, and to amend Section 830.3 of the Penal Code, relating to regulatory boards, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1111, as introduced, Negrete McLeod. Regulatory boards.

Existing law provides for the regulation of healing arts licensees by various boards within the Department of Consumer Affairs. The department is under the control of the Director of Consumer Affairs.

(1) Existing law requires certain boards within the department to disclose on the Internet information on their respective licensees.

This bill would additionally require specified healing arts boards to disclose on the Internet information on their respective licensees, as

specified. The bill would also declare the intent of the Legislature that the department establish an information technology system to create and update healing arts license information and track enforcement cases pertaining to these licensees.

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 an administrative law judge to order a licensee in a disciplinary proceeding to pay, upon request of the licensing authority, a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

This bill would instead authorize any entity within the department or the administrative law judge to order a licensee or applicant in any penalty or disciplinary hearing to pay a sum not to exceed the actual costs of the investigation, prosecution, and enforcement of the case within 30 days of the effective date of an order to pay costs. The bill would also authorize any entity within the department to request that the administrative law judge charge a licensee on probation the costs of the monitoring of his or her probation, and would prohibit relicensure if those costs are not paid. The bill would authorize any board within the department to contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts, and would authorize the release of personal information, including the birth date, telephone number, and social security number of the person who owes that money to the board.

Existing law provides for the regulation of citation or administrative fine assessments issued pursuant to a citation. Hearings to contest citations or administrative fine assessments are conducted pursuant to a formal adjudication process.

This bill would authorize healing arts boards to proceed pursuant to an alternative adjudication process, 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, would require those licensees to submit a written report, and would further require a report upon the arrest of the licensee or when disciplinary action is taken against a licensee by another healing arts board or by a healing arts board of another state.

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 licentiate.

This bill would instead make those provisions applicable to any described healing arts board. By imposing additional duties on these local agencies, the bill would impose a state-mandated local program.

(2) Under existing law, healing arts licensees are regulated by various healing arts boards and 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 healing arts board to appoint an executive officer or an executive director to, among other things, perform duties delegated by the board.

This bill would authorize the executive officer or the executive director of specified healing arts licensing boards, 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, appear at the hearing, or has agreed to surrender his or her license, to adopt a proposed default decision or a proposed settlement agreement. The bill would also authorize a healing arts board to enter into a settlement with a licensee or applicant prior to the issuance of an accusation or statement of issues against the licensee or applicant.

Upon receipt of evidence that a licensee of a healing arts board has engaged in conduct that poses an imminent risk of harm to the public

health, safety, or welfare, or has failed to comply with a request to inspect or copy records, the bill would authorize the executive officer of the healing arts board to petition the director or his or her designee to issue a temporary order that the licensee cease all practice and activities under his or her license. The bill would require the executive officer to provide notice to the licensee of the hearing at least one hour prior to the hearing and would provide a mechanism for the presentation of evidence and oral or written arguments. The bill would allow for the permanent revocation of the license if the director makes a determination that the action is necessary to protect the public health, safety, or welfare.

The bill would also provide that the license of a licensee 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 licensee.

The bill would also prohibit a licensee of healing arts boards from including certain provisions in an agreement to settle a civil dispute arising from his or her practice, as specified. The bill would make a licensee or a health care facility that fails to comply with a patient's medical record request, as specified, within 10 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 authorize the Attorney General and his or her investigative agents and the 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. The bill would also set forth procedures related to the inspection of patient records and patient confidentiality. The bill would require cooperation between state agencies and healing arts boards when investigating a licensee, and would require a state agency to provide to the board all 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 records to a healing arts board 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 require the healing arts boards to report annually, by October 1, to the department 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. The bill would require the healing arts boards to search specified national databases prior to licensure of an applicant or licensee who holds a license in another state, and would authorize a healing arts board to charge a fee for the cost of conducting the search.

The bill would authorize the healing arts boards to refuse to issue a license to an applicant if the applicant appears to be unable to practice safely due to mental illness or chemical dependency, subject to specified procedural requirements and medical examinations. The bill would also authorize the healing arts boards to issue limited licenses to practice to an applicant with a disability, as specified.

(3) This bill would make it a crime to violate any of the provisions of (2) above; to engage in the practice of healing arts without a current and valid license, except as specified; to fraudulently buy, sell, or obtain a license to practice healing arts; or to represent oneself as engaging or authorized to engage in healing arts if he or she is not authorized to do so. By creating new crimes, the bill would impose a state-mandated local program.

This 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.

(4) Existing law requires regulatory fees to be deposited into special funds within the Professions and Vocations Fund, and certain of those special funds are continuously appropriated for those purposes. Those funds are created, and those fees are set, by the Legislature by statute or, if specified, by administrative regulation.

This bill would authorize the Department of Consumer Affairs to adjust those healing arts regulatory fees consistent with the California Consumer Price Index. By adding a new source of revenue for deposit into certain continuously appropriated funds, the bill would make an appropriation.

(5) 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 Medical Board of California or provided by the Department of Justice. The bill would also provide within the Division of Investigation the Health Quality Enforcement Unit to provide investigative services for healing arts proceedings.

Existing law provides that the chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California have the authority of peace officers.

This bill would include within that provision investigators of the Board of Registered Nursing and would also provide that investigators employed by the Medical Board of California, the Dental Board of California, and the Board of Registered Nursing are not required to be employed by the division. The bill would also authorize the Board of Registered Nursing to employ nurse consultants and other personnel as it deems necessary.

(6) Existing law establishes diversion and recovery programs to identify and rehabilitate dentists, osteopathic physicians and surgeons, physical therapists and physical therapy assistants, registered nurses, physician assistants, pharmacists and intern pharmacists, and veterinarians and registered veterinary technicians whose competency may be impaired due to, among other things, alcohol and drug abuse.

This bill would make the provisions establishing these diversion programs inoperative on January 1, 2013.

(7) Existing law provides 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 Podiatric Medicine, and the Board of Psychology.

This bill would require the Health Quality Enforcement Section to provide investigative and prosecutorial services to any healing arts board, as defined, upon request by the executive officer of the board. The bill would also require the Attorney General to assign attorneys employed by the office of the Attorney General to work on location at the Health Quality Enforcement Unit of the Division of Investigation of the Department of Consumer Affairs, as specified.

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

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Consumer Health Protection Enforcement Act.
- 3 SEC. 2. (a) The Legislature finds and declares the following:
- 4 (1) In recent years, it has been reported that many of the healing
- 5 arts boards within the Department of Consumer Affairs take, on
- 6 average, more than three years to investigate and prosecute
- 7 violations of law, a timeframe that does not adequately protect
- 8 consumers.
- 9 (2) The excessive amount of time that it takes healing arts boards
- 10 to investigate and prosecute licensed professionals who have

1 violated the law has been caused, in part, by legal and procedural
2 impediments to the enforcement programs.

3 (3) Both consumers and licensees have an interest in the quick
4 resolution of complaints and disciplinary actions. Consumers need
5 prompt action against licensees who do not comply with
6 professional standards, and licensees have an interest in timely
7 review of consumer complaints to keep the trust of their patients.

8 (b) It is the intent of the Legislature that the changes made by
9 this act will improve efficiency and increase accountability within
10 the healing arts boards of the Department of Consumer Affairs,
11 and will remain consistent with the long-held paramount goal of
12 consumer protection.

13 (c) It is further the intent of the Legislature that the changes
14 made by this act will provide the healing arts boards within the
15 Department of Consumer Affairs with the regulatory tools and
16 authorities necessary to reduce the average timeframe for
17 investigating and prosecuting violations of law by healing arts
18 practitioners to between 12 and 18 months.

19 SEC. 3. Section 27 of the Business and Professions Code is
20 amended to read:

21 27. (a) ~~Each~~ Every entity specified in subdivision (b) shall
22 provide on the Internet information regarding the status of every
23 license issued by that entity in accordance with the California
24 Public Records Act (Chapter 3.5 (commencing with Section 6250)
25 of Division 7 of Title 1 of the Government Code) and the
26 Information Practices Act of 1977 (Chapter 1 (commencing with
27 Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).
28 The public information to be provided on the Internet shall include
29 information on suspensions and revocations of licenses issued by
30 the entity and other related enforcement action taken by the entity
31 relative to persons, businesses, or facilities subject to licensure or
32 regulation by the entity. In providing information on the Internet,
33 each entity shall comply with the Department of Consumer Affairs
34 Guidelines for Access to Public Records. The information may
35 not include personal information, including home telephone
36 number, date of birth, or social security number. Each entity shall
37 disclose a licensee's address of record. However, each entity shall
38 allow a licensee to provide a post office box number or other
39 alternate address, instead of his or her home address, as the address
40 of record. This section shall not preclude an entity from also

1 requiring a licensee, who has provided a post office box number
2 or other alternative mailing address as his or her address of record,
3 to provide a physical business address or residence address only
4 for the entity's internal administrative use and not for disclosure
5 as the licensee's address of record or disclosure on the Internet.

6 (b) Each of the following entities within the Department of
7 Consumer Affairs shall comply with the requirements of this
8 section:

9 (1) The Acupuncture Board shall disclose information on its
10 licensees.

11 (2) The Board of Behavioral Sciences shall disclose information
12 on its licensees, including marriage and family therapists, licensed
13 clinical social workers, and licensed educational psychologists.

14 (3) The Dental Board of California shall disclose information
15 on its licensees.

16 (4) The State Board of Optometry shall disclose information
17 regarding certificates of registration to practice optometry,
18 statements of licensure, optometric corporation registrations, branch
19 office licenses, and fictitious name permits of its licensees.

20 (5) The Board for Professional Engineers and Land Surveyors
21 shall disclose information on its registrants and licensees.

22 (6) The Structural Pest Control Board shall disclose information
23 on its licensees, including applicators, field representatives, and
24 operators in the areas of fumigation, general pest and wood
25 destroying pests and organisms, and wood roof cleaning and
26 treatment.

27 (7) The Bureau of Automotive Repair shall disclose information
28 on its licensees, including auto repair dealers, smog stations, lamp
29 and brake stations, smog check technicians, and smog inspection
30 certification stations.

31 (8) The Bureau of Electronic and Appliance Repair shall disclose
32 information on its licensees, including major appliance repair
33 dealers, combination dealers (electronic and appliance), electronic
34 repair dealers, service contract sellers, and service contract
35 administrators.

36 (9) The Cemetery and Funeral Bureau shall disclose information
37 on its licensees, including cemetery brokers, cemetery salespersons,
38 cemetery managers, crematory managers, cemetery authorities,
39 crematories, cremated remains disposers, embalmers, funeral
40 establishments, and funeral directors.

1 (10) The Professional Fiduciaries Bureau shall disclose
2 information on its licensees.

3 (11) The Contractors' State License Board shall disclose
4 information on its licensees in accordance with Chapter 9
5 (commencing with Section 7000) of Division 3. In addition to
6 information related to licenses as specified in subdivision (a), the
7 board shall also disclose information provided to the board by the
8 Labor Commissioner pursuant to Section 98.9 of the Labor Code.

9 (12) The Board of Psychology shall disclose information on its
10 licensees, including psychologists, psychological assistants, and
11 registered psychologists.

12 (13) The Bureau for Private Postsecondary Education shall
13 disclose information on private postsecondary institutions under
14 its jurisdiction, including disclosure of notices to comply issued
15 pursuant to Section 94935 of the Education Code.

16 (14) *The Board of Registered Nursing shall disclose information*
17 *on its licensees.*

18 (15) *The Board of Vocational Nursing and Psychiatric*
19 *Technicians of the State of California shall disclose information*
20 *on its licensees.*

21 (16) *The Veterinary Medical Board shall disclose information*
22 *on its licensees and registrants.*

23 (17) *The Physical Therapy Board of California shall disclose*
24 *information on its licensees.*

25 (18) *The California State Board of Pharmacy shall disclose*
26 *information on its licensees.*

27 (19) *The Speech-Language Pathology and Audiology and*
28 *Hearing Aid Dispensers Board shall disclose information on its*
29 *licensees.*

30 (20) *The Respiratory Care Board of California shall disclose*
31 *information on its licensees.*

32 (21) *The California Board of Occupational Therapy shall*
33 *disclose information on its licensees.*

34 (22) *The Naturopathic Medicine Committee of the Osteopathic*
35 *Medical Board of California shall disclose information on its*
36 *licensees.*

37 (23) *The Physician Assistant Committee of the Medical Board*
38 *of California shall disclose information on its licensees.*

39 (24) *The Dental Hygiene Committee of California shall disclose*
40 *information on its licensees.*

1 (c) “Internet” for the purposes of this section has the meaning
2 set forth in paragraph (6) of subdivision ~~(e)~~ (f) of Section 17538.

3 SEC. 4. Section 116 of the Business and Professions Code is
4 amended to read:

5 116. (a) The director *or his or her designee* may audit and
6 review, upon his or her own initiative, or upon the request of a
7 consumer or licensee, inquiries and complaints regarding licensees,
8 dismissals of disciplinary cases, the opening, conduct, or closure
9 of investigations, informal conferences, and discipline short of
10 formal accusation by *any of the Medical Board of California, the*
11 *allied health professional boards, and the California Board of*
12 *Podiatric Medicine; healing arts boards defined in Section 720.*
13 The director may make recommendations for changes to the
14 disciplinary system to the appropriate board, the Legislature, or
15 both.

16 (b) The director shall report to the Chairpersons of the Senate
17 Business and Professions Committee and the Assembly Health
18 Committee annually, ~~commencing March 1, 1995,~~ regarding his
19 or her findings from any audit, review, or monitoring and
20 evaluation conducted pursuant to this section.

21 SEC. 5. Section 125.3 of the Business and Professions Code,
22 as amended by Section 2 of Chapter 223 of the Statutes of 2006,
23 is amended to read:

24 125.3. (a) (1) Except as otherwise provided by law, in any
25 order issued in resolution of a *penalty or disciplinary proceeding*
26 *or hearing on a citation issued pursuant to Section 125.9 or*
27 *regulations adopted thereto,* before any board ~~within the~~
28 ~~department or before the Osteopathic Medical Board,~~ upon request
29 ~~of the entity bringing the proceeding specified in Section 101,~~ the
30 *board or the administrative law judge may direct a licensee any*
31 *licensee or applicant* found to have committed a violation or
32 violations of the ~~licensing act~~ law to pay *to the board* a sum not
33 to exceed the ~~reasonable~~ *actual* costs of the investigation,
34 *prosecution,* and enforcement of the case.

35 (2) *In an order issued pursuant to paragraph (1) that places a*
36 *license on probation, the administrative law judge may direct a*
37 *licensee to pay the board’s actual costs of monitoring that licensee*
38 *while he or she remains on probation, if so requested by the entity*
39 *bringing the proceeding. The board shall provide the*

1 *administrative law judge with a good faith estimate of the probation*
2 *monitoring costs at the time of the request.*

3 (b) In the case of a disciplined licentiate that is a corporation or
4 a partnership, the order may be made against the licensed corporate
5 entity or licensed partnership.

6 (c) A certified copy of the actual costs, or a good faith estimate
7 of costs where actual costs are not available, signed by the entity
8 bringing the proceeding or its designated representative shall be
9 prima facie evidence of ~~reasonable~~ *actual* costs of investigation
10 ~~and~~, prosecution, *and enforcement* of the case. The costs shall
11 include the amount of investigative, *prosecution*, and enforcement
12 costs up to the date of the hearing, including, but not limited to,
13 charges imposed by the Attorney General.

14 (d) The administrative law judge shall make a proposed finding
15 of the amount of ~~reasonable~~ *actual* costs of investigation ~~and~~,
16 prosecution, *and enforcement* of the case *and probation monitoring*
17 *costs* when requested pursuant to subdivision (a). The finding of
18 the administrative law judge with regard to costs shall not be
19 reviewable by the board to increase ~~the~~ *any* cost award. The board
20 may reduce or eliminate the cost award, or remand to the
21 administrative law judge if the proposed decision fails to make a
22 finding on costs requested pursuant to subdivision (a).

23 (e) If an order for recovery of costs is made ~~and~~, *payment is due*
24 *and payable 30 days after the effective date of the order. If* timely
25 payment is not made as directed in the board's decision, the board
26 may enforce the order for repayment in any appropriate court. This
27 right of enforcement shall be in addition to any other rights the
28 board may have as to any licentiate to pay costs.

29 (f) In any action for recovery of costs, proof of the board's
30 decision shall be conclusive proof of the validity of the order of
31 payment and the terms for payment.

32 (g) (1) Except as provided in paragraph (2), the board shall not
33 renew or reinstate the license of any licentiate who has failed to
34 pay all of the costs ordered under this section.

35 (2) Notwithstanding paragraph (1), the board may, in its
36 discretion, conditionally renew or reinstate for a maximum of one
37 year the license of any licentiate who demonstrates financial
38 hardship and who enters into a formal agreement with the board
39 to reimburse the board within that one-year period for the unpaid
40 costs.

1 (h) All costs recovered under this section shall be considered a
2 reimbursement for costs incurred and shall be deposited in the
3 fund of the board recovering the costs to be available upon
4 appropriation by the Legislature.

5 (i) Nothing in this section shall preclude a board from including
6 the recovery of the costs of investigation, *prosecution*, and
7 enforcement of a case in any stipulated settlement.

8 (j) This section does not apply to any board if a specific statutory
9 provision in that board's licensing act provides for *broader*
10 *authority for the* recovery of costs in an administrative disciplinary
11 proceeding.

12 (k) Notwithstanding the provisions of this section, the Medical
13 Board of California shall not request nor obtain from a physician
14 and surgeon, investigation and prosecution costs for a disciplinary
15 proceeding against the licentiate. The board shall ensure that this
16 subdivision is revenue neutral with regard to it and that any loss
17 of revenue or increase in costs resulting from this subdivision is
18 offset by an increase in the amount of the initial license fee and
19 the biennial renewal fee, as provided in subdivision (e) of Section
20 2435.

21 (l) *For purposes of this chapter, costs of prosecution shall*
22 *include, but not be limited to, costs of attorneys, expert consultants,*
23 *witnesses, any administrative filing and service fees, and any other*
24 *cost associated with the prosecution of the case.*

25 SEC. 6. Section 125.3 of the Business and Professions Code,
26 as added by Section 1 of Chapter 1059 of the Statutes of 1992, is
27 repealed.

28 ~~125.3.— (a) Except as otherwise provided by law, in any order~~
29 ~~issued in resolution of a disciplinary proceeding before any board~~
30 ~~within the department or before the Osteopathic Medical Board,~~
31 ~~upon request of the entity bringing the proceeding may request the~~
32 ~~administrative law judge to direct a licentiate found to have~~
33 ~~committed a violation or violations of the licensing act to pay a~~
34 ~~sum not to exceed the reasonable costs of the investigation and~~
35 ~~enforcement of the case.~~

36 ~~(b) In the case of a disciplined licentiate that is a corporation or~~
37 ~~a partnership, the order may be made against the licensed corporate~~
38 ~~entity or licensed partnership.~~

39 ~~(e) A certified copy of the actual costs, or a good faith estimate~~
40 ~~of costs where actual costs are not available, signed by the entity~~

1 bringing the proceeding or its designated representative shall be
2 prima facie evidence of reasonable costs of investigation and
3 prosecution of the case. The costs shall include the amount of
4 investigative and enforcement costs up to the date of the hearing,
5 including, but not limited to, charges imposed by the Attorney
6 General.

7 (d) The administrative law judge shall make a proposed finding
8 of the amount of reasonable costs of investigation and prosecution
9 of the case when requested pursuant to subdivision (a). The finding
10 of the administrative law judge with regard to costs shall not be
11 reviewable by the board to increase the cost award. The board may
12 reduce or eliminate the cost award, or remand to the administrative
13 law judge where the proposed decision fails to make a finding on
14 costs requested pursuant to subdivision (a).

15 (e) Where an order for recovery of costs is made and timely
16 payment is not made as directed in the board's decision, the board
17 may enforce the order for repayment in any appropriate court. This
18 right of enforcement shall be in addition to any other rights the
19 board may have as to any licentiate to pay costs.

20 (f) In any action for recovery of costs, proof of the board's
21 decision shall be conclusive proof of the validity of the order of
22 payment and the terms for payment.

23 (g) (1) Except as provided in paragraph (2), the board shall not
24 renew or reinstate the license of any licentiate who has failed to
25 pay all of the costs ordered under this section.

26 (2) Notwithstanding paragraph (1), the board may, in its
27 discretion, conditionally renew or reinstate for a maximum of one
28 year the license of any licentiate who demonstrates financial
29 hardship and who enters into a formal agreement with the board
30 to reimburse the board within that one-year period for the unpaid
31 costs.

32 (h) All costs recovered under this section shall be considered a
33 reimbursement for costs incurred and shall be deposited in the
34 fund of the board recovering the costs to be available upon
35 appropriation by the Legislature.

36 (i) Nothing in this section shall preclude a board from including
37 the recovery of the costs of investigation and enforcement of a
38 case in any stipulated settlement.

1 ~~(j) This section does not apply to any board if a specific statutory~~
2 ~~provision in that board's licensing act provides for recovery of~~
3 ~~costs in an administrative disciplinary proceeding.~~

4 SEC. 7. Section 125.4 is added to the Business and Professions
5 Code, to read:

6 125.4. Notwithstanding any other provision of law, a board
7 may contract with a collection agency for the purpose of collecting
8 outstanding fees, fines, or cost recovery amounts from any person
9 who owes that money to the board, and, for those purposes, may
10 provide to the collection agency the personal information of that
11 person, including his or her birth date, telephone number, and
12 social security number. The contractual agreement shall provide
13 that the collection agency may use or release personal information
14 only as authorized by the contract, and shall provide safeguards
15 to ensure that the personal information is protected from
16 unauthorized disclosure. The contractual agreement shall hold the
17 collection agency liable for the unauthorized use or disclosure of
18 personal information received or collected under this section.

19 SEC. 8. Section 125.9 of the Business and Professions Code
20 is amended to read:

21 125.9. (a) Except with respect to persons regulated under
22 Chapter 11 (commencing with Section 7500), and Chapter 11.6
23 (commencing with Section 7590) of Division 3, any board, bureau,
24 ~~or~~ commission, *or committee* within the department, the board
25 created by the Chiropractic Initiative Act, and the Osteopathic
26 Medical Board of California, may establish, by regulation, a system
27 for the issuance to a licensee of a citation ~~which~~ *that* may contain
28 an order of abatement or an order to pay an administrative fine
29 assessed by the board, bureau, ~~or~~ commission, *or committee* where
30 the licensee is in violation of the applicable licensing act or any
31 regulation adopted pursuant thereto.

32 (b) The system shall contain the following provisions:

33 (1) Citations shall be in writing and shall describe with
34 particularity the nature of the violation, including specific reference
35 to the provision of law determined to have been violated.

36 (2) Whenever appropriate, the citation shall contain an order of
37 abatement fixing a reasonable time for abatement of the violation.

38 (3) In no event shall the administrative fine assessed by the
39 board, bureau, ~~or~~ commission, *or committee* exceed five thousand
40 dollars (\$5,000) for each inspection or each investigation made

1 with respect to the violation, or five thousand dollars (\$5,000) for
2 each violation or count if the violation involves fraudulent billing
3 submitted to an insurance company, the Medi-Cal program, or
4 Medicare. In assessing a fine, the board, bureau, ~~or~~ commission,
5 *or committee* shall give due consideration to the appropriateness
6 of the amount of the fine with respect to factors such as the gravity
7 of the violation, the good faith of the licensee, and the history of
8 previous violations.

9 (4) A citation or fine assessment issued pursuant to a citation
10 shall inform the licensee that if he or she desires a hearing to
11 ~~contest~~ *appeal* the finding of a violation, that hearing shall be
12 requested by written notice to the board, bureau, ~~or~~ commission,
13 *or committee* within 30 days of the date of issuance of the citation
14 or assessment. If a hearing is not requested pursuant to this section,
15 payment of any fine shall not constitute an admission of the
16 violation charged. Hearings shall be held pursuant to Chapter 5
17 (commencing with Section 11500) of Part 1 of Division 3 of Title
18 2 of the Government Code *or, at the discretion of a healing arts*
19 *board, as defined in Section 720, pursuant to paragraph (5).*

20 (5) (A) *If the healing arts board is a board or committee, the*
21 *executive officer and two members of that board or committee*
22 *shall hear the appeal and issue a citation decision. A licensee*
23 *desiring to appeal the citation decision shall file a written appeal*
24 *of the citation decision with the board or committee within 30 days*
25 *of issuance of the decision. The appeal shall be considered by the*
26 *board or committee itself and shall issue a written decision on the*
27 *appeal. The members of the board or committee who issued the*
28 *citation decision shall not participate in the appeal before the*
29 *board or committee unless one or both of the members are needed*
30 *to establish a quorum to act on the appeal.*

31 (B) *If the healing arts board is a bureau, the director shall*
32 *appoint a designee to hear the appeal and issue a citation decision.*
33 *A licensee desiring to appeal the citation decision shall file a*
34 *written appeal of the citation decision with the bureau within 30*
35 *days of issuance of the decision. The appeal shall be considered*
36 *by the director or his or her designee who shall issue a written*
37 *decision on the appeal.*

38 (C) *The hearings specified in this paragraph are not subject to*
39 *the provisions of Chapter 5 (commencing with Section 11500) of*
40 *Part 1 of Division 3 of Title 2 of the Government Code.*

1 (D) A healing arts board may adopt regulations to implement
2 this paragraph, which may include the use of telephonic hearings.

3 (5)

4 (6) Failure of a licensee to pay a fine within 30 days of the date
5 of assessment, unless the citation is being appealed, may result in
6 disciplinary action being taken by the board, bureau, ~~or~~
7 commission, *or committee*. Where a citation is not contested and
8 a fine is not paid, the full amount of the assessed fine shall be
9 added to the fee for renewal of the license. A license shall not be
10 renewed without payment of the renewal fee and fine.

11 (c) The system may contain the following provisions:

12 (1) A citation may be issued without the assessment of an
13 administrative fine.

14 (2) Assessment of administrative fines may be limited to only
15 particular violations of the applicable licensing act.

16 (d) Notwithstanding any other provision of law, if a fine is paid
17 to satisfy an assessment based on the finding of a violation,
18 payment of the fine shall be represented as satisfactory resolution
19 of the matter for purposes of public disclosure.

20 (e) Administrative fines collected pursuant to this section shall
21 be deposited in the special fund of the particular board, bureau, ~~or~~
22 commission, *or committee*.

23 SEC. 9. Section 155 of the Business and Professions Code is
24 amended to read:

25 155. (a) In accordance with Section 159.5, the director may
26 employ such investigators, inspectors, and deputies as are necessary
27 properly to investigate and prosecute all violations of any law, the
28 enforcement of which is charged to the department or to any board,
29 agency, or commission in the department.

30 (b) It is the intent of the Legislature that inspectors used by
31 boards, bureaus, or commissions in the department shall not be
32 required to be employees of the Division of Investigation, but may
33 either be employees of, or under contract to, the boards, bureaus,
34 or commissions. Contracts for services shall be consistent with
35 Article 4.5 (commencing with Section 19130) of Chapter 6 of Part
36 2 of Division 5 of Title 2 of the Government Code. All civil service
37 employees currently employed as inspectors whose functions are
38 transferred as a result of this section shall retain their positions,
39 status, and rights in accordance with Section 19994.10 of the
40 Government Code and the State Civil Service Act (Part 2

1 (commencing with Section 18500) of Division 5 of Title 2 of the
2 Government Code).

3 (c) *Investigators used by any healing arts board, as defined in*
4 *Section 720, shall not be required to be employees of the Division*
5 *of Investigation and the healing arts board may contract for*
6 *investigative services provided by the Medical Board of California*
7 *or provided by the Department of Justice.*

8 (e)

9 (d) Nothing in this section limits the authority of, or prohibits,
10 investigators in the Division of Investigation in the conduct of
11 inspections or investigations of any licensee, or in the conduct of
12 investigations of any officer or employee of a board or the
13 department at the specific request of the director or his or her
14 designee.

15 SEC. 10. Section 159.5 of the Business and Professions Code
16 is amended to read:

17 159.5. There is in the department the Division of Investigation.
18 The division is in *the* charge of a person with the title of chief of
19 the division. *There is in the division the Health Quality*
20 *Enforcement Unit. The primary responsibility of the unit is to*
21 *investigate complaints against licensees and applicants within the*
22 *jurisdiction of the healing arts boards specified in Section 720.*

23 Except as provided in Section 16 of Chapter 1394 of the Statutes
24 of 1970, all positions for the personnel necessary to provide
25 investigative services, as specified in Section 160 of this code and
26 in subdivision (b) of Section 830.3 of the Penal Code, ~~to the~~
27 ~~agencies in the department~~ shall be in the division and the
28 personnel shall be appointed by the director. ~~However, if, pursuant~~
29 ~~to the Governor's Reorganization Plan No. 2 of the 1970 Regular~~
30 ~~Session, any agency has any investigative, inspectional, or auditing~~
31 ~~positions of its own, the agency shall retain those positions until~~
32 ~~the director determines, after consultation with, and consideration~~
33 ~~of, the views of the particular agency concerned, that the positions~~
34 ~~should be transferred to the division in the interests of efficient,~~
35 ~~economical, and effective service to the public, at which time they~~
36 ~~shall be so transferred.~~

37 SEC. 11. Section 160 of the Business and Professions Code is
38 amended to read:

39 160. (a) The Chief and ~~all~~ *designated* investigators of the
40 Division of Investigation of the department ~~and all, designated~~

1 investigators of the Medical Board of California ~~and~~, *designated*
2 *investigators of the Dental Board of Dental Examiners California,*
3 *and designated investigators of the Board of Registered Nursing*
4 have the authority of peace officers while engaged in exercising
5 the powers granted or performing the duties imposed upon them
6 or the division in investigating the laws administered by the various
7 boards comprising the department or commencing directly or
8 indirectly any criminal prosecution arising from any investigation
9 conducted under these laws. All persons herein referred to shall
10 be deemed to be acting within the scope of employment with
11 respect to all acts and matters in this section set forth.

12 *(b) The Division of Investigation, the Medical Board of*
13 *California, the Dental Board of California, and the Board of*
14 *Registered Nursing may employ investigators who are not peace*
15 *officers to provide investigative services.*

16 SEC. 12. Article 10.1 (commencing with Section 720) is added
17 to Chapter 1 of Division 2 of the Business and Professions Code,
18 to read:

19

20 Article 10.1. Healing Arts Licensing Enforcement

21

22 720. (a) Unless otherwise provided, as used in this article, the
23 term “healing arts board” shall include all of the following:

- 24 (1) The Dental Board of California.
25 (2) The Medical Board of California.
26 (3) The State Board of Optometry.
27 (4) The California State Board of Pharmacy.
28 (5) The Board of Registered Nursing.
29 (6) The Board of Behavioral Sciences.
30 (7) The Board of Vocational Nursing and Psychiatric
31 Technicians of the State of California.
32 (8) The Respiratory Care Board of California.
33 (9) The Acupuncture Board.
34 (10) The Board of Psychology.
35 (11) The California Board of Podiatric Medicine.
36 (12) The Physical Therapy Board of California.
37 (13) The Physician Assistant Committee of the Medical Board
38 of California.
39 (14) The Speech-Language Pathology and Audiology and
40 Hearing Aid Dispensers Board.

- 1 (15) The California Board of Occupational Therapy.
- 2 (16) The Osteopathic Medical Board of California.
- 3 (17) The Naturopathic Medicine Committee of the Osteopathic
- 4 Medical Board of California.
- 5 (18) The Dental Hygiene Committee of California.
- 6 (19) The Veterinary Medical Board.

7 (b) Unless otherwise provided, as used in this article, “board”
 8 means all healing arts boards described under subdivision (a) and
 9 “licensee” means a licensee of a healing arts board described in
 10 subdivision (a).

11 720.2. (a) The executive officer or executive director of a
 12 healing arts board may adopt a proposed default decision where
 13 an administrative action to revoke a license has been filed and the
 14 licensee has failed to file a notice of defense or to appear at the
 15 hearing and a proposed default decision revoking the license has
 16 been issued.

17 (b) The executive officer or executive director of a healing arts
 18 board may adopt a proposed settlement agreement where an
 19 administrative action to revoke a license has been filed by the
 20 healing arts board and the licensee has agreed to surrender his or
 21 her license.

22 720.4. (a) Notwithstanding Section 11415.60 of the
 23 Government Code, a healing arts board may enter into a settlement
 24 with a licensee or applicant prior to the board’s issuance of an
 25 accusation or statement of issues against that licensee or applicant,
 26 as applicable.

27 (b) No person who enters a settlement pursuant to this section
 28 may petition to modify the terms of the settlement or petition for
 29 early termination of probation, if probation is part of the settlement.

30 (c) Any settlement executed pursuant to this section shall be
 31 considered discipline and a public record and shall be posted on
 32 the applicable board’s Internet Web site.

33 720.6. (a) Notwithstanding any other provision of law, upon
 34 receipt of evidence that a licensee of a healing arts board has
 35 engaged in conduct that poses an imminent risk of serious harm
 36 to the public health, safety, or welfare, or has failed to comply
 37 with a request to inspect or copy records made pursuant to Section
 38 720.16, the executive officer of that board may petition the director
 39 to issue a temporary order that the licensee cease all practice and
 40 activities that require a license by that board.

1 (b) (1) The executive officer of the healing arts board shall, to
2 the extent practicable, provide telephonic, electronic mail, message,
3 or facsimile written notice to the licensee of a hearing on the
4 petition at least 24 hours prior to the hearing. The licensee and his
5 or her counsel and the executive officer or his or her designee shall
6 have the opportunity to present oral or written argument before
7 the director. After presentation of the evidence and consideration
8 of any arguments presented, the director may issue an order that
9 the licensee cease all practice and activities that require a license
10 by that board when, in the opinion of the director, the action is
11 necessary to protect the public health, safety, or welfare.

12 (2) The hearing specified in this subdivision shall not be subject
13 to the provisions of Chapter 5 (commencing with Section 11500)
14 of Part 1 of Division 3 of Title 2 of the Government Code.

15 (c) Any order to cease practice issued pursuant to this section
16 shall automatically be vacated within 120 days of issuance, or until
17 the healing arts board, pursuant to Section 494, files a petition for
18 an interim suspension order and the petition is denied or granted,
19 whichever occurs first.

20 (d) A licensee who fails or refuses to comply with an order of
21 the director to cease practice pursuant to this section is subject to
22 disciplinary action to revoke or suspend his or her license by his
23 or her respective healing arts board and an administrative fine
24 assessed by the board not to exceed twenty-five thousand dollars
25 (\$25,000). The remedies provided herein are in addition to any
26 other authority of the healing arts board to sanction a licensee for
27 practicing or engaging in activities subject to the jurisdiction of
28 the board without proper legal authority.

29 (e) Upon receipt of new information, the executive officer for
30 the healing arts board who requested the temporary suspension
31 order shall review the basis for the license suspension to determine
32 if the grounds for the suspension continue to exist. The executive
33 officer shall immediately notify the director if the executive officer
34 believes that the licensee no longer poses an imminent risk of
35 serious harm to the public health, safety, or welfare or that the
36 licensee has complied with the request to inspect or copy records
37 pursuant to Section 720.16. The director shall review the
38 information from the executive officer and may vacate the
39 suspension order, if he or she believes that the suspension is no
40 longer necessary to protect the public health, safety, or welfare.

1 (f) Any petition and order to cease practice shall be displayed
2 on the Internet Web site of the applicable healing arts board, except
3 that if the petition is not granted or the director vacates the
4 suspension order pursuant to subdivision (e), the petition and order
5 shall be removed from the respective board's Internet Web site.

6 (g) If the position of director is vacant, the chief deputy director
7 of the department shall fulfill the duties of this section.

8 (h) Temporary suspension orders shall be subject to judicial
9 review pursuant to Section 1094.5 of the Code of Civil Procedure
10 and shall be heard only in the superior court in, and for, the
11 Counties of Sacramento, San Francisco, Los Angeles, or San
12 Diego.

13 720.8. (a) The license of a licensee of a healing arts board
14 shall be suspended automatically during any time that the licensee
15 is incarcerated after conviction of a felony, regardless of whether
16 the conviction has been appealed. The healing arts board shall,
17 immediately upon receipt of the certified copy of the record of
18 conviction, determine whether the license of the licensee has been
19 automatically suspended by virtue of his or her incarceration, and
20 if so, the duration of that suspension. The healing arts board shall
21 notify the licensee of the license suspension and of his or her right
22 to elect to have the issue of penalty heard as provided in
23 subdivision (d).

24 (b) Upon receipt of the certified copy of the record of conviction,
25 if after a hearing before an administrative law judge from the Office
26 of Administrative Law it is determined that the felony for which
27 the licensee was convicted was substantially related to the
28 qualifications, functions, or duties of a licensee, the board shall
29 suspend the license until the time for appeal has elapsed, if no
30 appeal has been taken, or until the judgment of conviction has been
31 affirmed on appeal or has otherwise become final, and until further
32 order of the healing arts board.

33 (c) Notwithstanding subdivision (b), a conviction of a charge
34 of violating any federal statute or regulation or any statute or
35 regulation of this state, regulating dangerous drugs or controlled
36 substances, or a conviction of Section 187, 261, 262, or 288 of the
37 Penal Code, shall be conclusively presumed to be substantially
38 related to the qualifications, functions, or duties of a licensee and
39 no hearing shall be held on this issue. However, upon its own
40 motion or for good cause shown, the healing arts board may decline

1 to impose or may set aside the suspension when it appears to be
2 in the interest of justice to do so, with due regard to maintaining
3 the integrity of, and confidence in, the practice regulated by the
4 healing arts board.

5 (d) (1) Discipline may be ordered against a licensee in
6 accordance with the laws and regulations of the healing arts board
7 when the time for appeal has elapsed, the judgment of conviction
8 has been affirmed on appeal, or an order granting probation is
9 made suspending the imposition of sentence, irrespective of a
10 subsequent order under Section 1203.4 of the Penal Code allowing
11 the person to withdraw his or her plea of guilty and to enter a plea
12 of not guilty, setting aside the verdict of guilty, or dismissing the
13 accusation, complaint, information, or indictment.

14 (2) The issue of penalty shall be heard by an administrative law
15 judge from the Office of Administrative Law. The hearing shall
16 not be had until the judgment of conviction has become final or,
17 irrespective of a subsequent order under Section 1203.4 of the
18 Penal Code, an order granting probation has been made suspending
19 the imposition of sentence; except that a licensee may, at his or
20 her option, elect to have the issue of penalty decided before those
21 time periods have elapsed. Where the licensee so elects, the issue
22 of penalty shall be heard in the manner described in subdivision
23 (b) at the hearing to determine whether the conviction was
24 substantially related to the qualifications, functions, or duties of a
25 licensee. If the conviction of a licensee who has made this election
26 is overturned on appeal, any discipline ordered pursuant to this
27 section shall automatically cease. Nothing in this subdivision shall
28 prohibit the healing arts board from pursuing disciplinary action
29 based on any cause other than the overturned conviction.

30 (e) The record of the proceedings resulting in a conviction,
31 including a transcript of the testimony in those proceedings, may
32 be received in evidence.

33 (f) Any other provision of law setting forth a procedure for the
34 suspension or revocation of a license issued by a healing arts board
35 shall not apply to proceedings conducted pursuant to this section.

36 720.10. Except as otherwise provided, any proposed decision
37 or decision issued under this article in accordance with the
38 procedures set forth in Chapter 5 (commencing with Section 11500)
39 of Part 1 of Division 3 of Title 2 of the Government Code, that
40 contains any finding of fact that the licensee or registrant engaged

1 in any act of sexual contact, as defined in subdivision (c) of Section
2 729, with a patient, or has committed an act or been convicted of
3 a sex offense as defined in Section 44010 of the Education Code,
4 shall contain an order of revocation. The revocation shall not be
5 stayed by the administrative law judge. Unless otherwise provided
6 in the laws and regulations of the healing arts board, the patient
7 shall no longer be considered a patient of the licensee when the
8 order for medical services and procedures provided by the licensee
9 is terminated, discontinued, or not renewed by the prescribing
10 physician and surgeon.

11 720.12. (a) Except as otherwise provided, with regard to an
12 individual who is required to register as a sex offender pursuant
13 to Section 290 of the Penal Code, or the equivalent in another state
14 or territory, under military law, or under federal law, the healing
15 arts board shall be subject to the following requirements:

16 (1) The healing arts board shall deny an application by the
17 individual for licensure in accordance with the procedures set forth
18 in Chapter 5 (commencing with Section 11500) of Part 1 of
19 Division 3 of Title 2 of the Government Code.

20 (2) If the individual is licensed under this division, the healing
21 arts board shall promptly revoke the license of the individual in
22 accordance with the procedures set forth in Chapter 5 (commencing
23 with Section 11500) of Part 1 of Division 3 of Title 2 of the
24 Government Code. The healing arts board shall not stay the
25 revocation and place the license on probation.

26 (3) The healing arts board shall not reinstate or reissue the
27 individual's license. The healing arts board shall not issue a stay
28 of license denial and place the license on probation.

29 (b) This section shall not apply to any of the following:

30 (1) An individual who has been relieved under Section 290.5
31 of the Penal Code of his or her duty to register as a sex offender,
32 or whose duty to register has otherwise been formally terminated
33 under California law or the law of the jurisdiction that requires his
34 or her registration as a sex offender.

35 (2) An individual who is required to register as a sex offender
36 pursuant to Section 290 of the Penal Code solely because of a
37 misdemeanor conviction under Section 314 of the Penal Code.
38 However, nothing in this paragraph shall prohibit the healing arts
39 board from exercising its discretion to discipline a licensee under

1 any other provision of state law based upon the licensee's
2 conviction under Section 314 of the Penal Code.

3 (3) Any administrative adjudication proceeding under Chapter
4 5 (commencing with Section 11500) of Part 1 of Division 3 of
5 Title 2 of the Government Code that is fully adjudicated prior to
6 January 1, 2008. A petition for reinstatement of a revoked or
7 surrendered license shall be considered a new proceeding for
8 purposes of this paragraph, and the prohibition against reinstating
9 a license to an individual who is required to register as a sex
10 offender shall be applicable.

11 720.14. (a) A licensee of a healing arts board shall not include
12 or permit to be included any of the following provisions in an
13 agreement to settle a civil dispute arising from his or her practice,
14 whether the agreement is made before or after the filing of an
15 action:

16 (1) A provision that prohibits another party to the dispute from
17 contacting or cooperating with the healing arts board.

18 (2) A provision that prohibits another party to the dispute from
19 filing a complaint with the healing arts board.

20 (3) A provision that requires another party to the dispute to
21 withdraw a complaint he or she has filed with the healing arts
22 board.

23 (b) A provision described in subdivision (a) is void as against
24 public policy.

25 (c) A violation of this section constitutes unprofessional conduct
26 and may subject the licensee to disciplinary action.

27 (d) If a board complies with Section 2220.7, that board shall
28 not be subject to the requirements of this section.

29 720.16. (a) Notwithstanding any other provision of law making
30 a communication between a licensee of a healing arts board and
31 his or her patients a privileged communication, those provisions
32 shall not apply to investigations or proceedings conducted by a
33 healing arts board. Members of a healing arts board, deputies,
34 employees, agents, the office of the Attorney General, and
35 representatives of the board shall keep in confidence during the
36 course of investigations the names of any patients whose records
37 are reviewed and may not disclose or reveal those names, except
38 as is necessary during the course of an investigation, unless and
39 until proceedings are instituted. The authority under this
40 subdivision to examine records of patients in the office of a licensee

1 is limited to records of patients who have complained to the healing
2 arts board about that licensee.

3 (b) Notwithstanding any other provision of law, the Attorney
4 General and his or her investigative agents, and a healing arts board
5 and its investigators and representatives may inquire into any
6 alleged violation of the laws under the jurisdiction of the healing
7 arts board or any other federal or state law, regulation, or rule
8 relevant to the practice regulated by the healing arts board,
9 whichever is applicable, and may inspect documents relevant to
10 those investigations in accordance with the following procedures:

11 (1) Any document relevant to an investigation may be inspected,
12 and copies may be obtained, where patient consent is given.

13 (2) Any document relevant to the business operations of a
14 licensee, and not involving medical records attributable to
15 identifiable patients, may be inspected and copied where relevant
16 to an investigation of a licensee.

17 (c) In all cases where documents are inspected or copies of those
18 documents are received, their acquisition or review shall be
19 arranged so as not to unnecessarily disrupt the medical and business
20 operations of the licensee or of the facility where the records are
21 kept or used.

22 (d) Where certified documents are lawfully requested from
23 licensees in accordance with this section by the Attorney General
24 or his or her agents or deputies, or investigators of any board, the
25 documents shall be provided within 10 business days of receipt of
26 the request, unless the licensee is unable to provide the certified
27 documents within this time period for good cause, including, but
28 not limited to, physical inability to access the records in the time
29 allowed due to illness or travel. Failure to produce requested
30 certified documents or copies thereof, after being informed of the
31 required deadline, shall constitute unprofessional conduct. A
32 healing arts board may use its authority to cite and fine a licensee
33 for any violation of this section. This remedy is in addition to any
34 other authority of the healing arts board to sanction a licensee for
35 a delay in producing requested records.

36 (e) Searches conducted of the office or medical facility of any
37 licensee shall not interfere with the recordkeeping format or
38 preservation needs of any licensee necessary for the lawful care
39 of patients.

1 (f) The licensee shall cooperate with the healing arts board in
2 furnishing information or assistance as may be required, including,
3 but not limited to, participation in an interview with investigators
4 or representatives of the healing arts board.

5 (g) If a board complies with Section 2225, that board shall not
6 be subject to the requirements of this section.

7 720.18. (a) (1) Notwithstanding any other provision of law,
8 a licensee who fails or refuses to comply with a request for the
9 certified medical records of a patient, that is accompanied by that
10 patient's written authorization for release of records to a healing
11 arts board, within 10 days of receiving the request and
12 authorization, shall pay to the healing arts board a civil penalty of
13 one thousand dollars (\$1,000) per day for each day that the
14 documents have not been produced after the 10th day, up to one
15 hundred thousand dollars (\$100,000), unless the licensee is unable
16 to provide the documents within this time period for good cause.

17 (2) A health care facility shall comply with a request for the
18 certified medical records of a patient that is accompanied by that
19 patient's written authorization for release of records to a healing
20 arts board together with a notice citing this section and describing
21 the penalties for failure to comply with this section. Failure to
22 provide the authorizing patient's certified medical records to the
23 healing arts board within 10 days of receiving the request,
24 authorization, and notice shall subject the health care facility to a
25 civil penalty, payable to the healing arts board, of up to one
26 thousand dollars (\$1,000) per day for each day that the documents
27 have not been produced after the 10th day, up to one hundred
28 thousand dollars (\$100,000), unless the health care facility is unable
29 to provide the documents within this time period for good cause.
30 This paragraph shall not require health care facilities to assist a
31 healing arts board in obtaining the patient's authorization. A
32 healing arts board shall pay the reasonable costs of copying the
33 certified medical records, but shall not be required to make that
34 payment prior to the production of the medical records.

35 (b) (1) A licensee who fails or refuses to comply with a court
36 order, issued in the enforcement of a subpoena, mandating the
37 release of records to a healing arts board, shall pay to the healing
38 arts board a civil penalty of up to one thousand dollars (\$1,000)
39 per day for each day that the documents have not been produced
40 after the date by which the court order requires the documents to

1 be produced, unless it is determined that the order is unlawful or
2 invalid. Any statute of limitations applicable to the filing of an
3 accusation by the healing arts board shall be tolled during the
4 period the licensee is out of compliance with the court order and
5 during any related appeals.

6 (2) Any licensee who fails or refuses to comply with a court
7 order, issued in the enforcement of a subpoena, mandating the
8 release of records to a board is guilty of a misdemeanor punishable
9 by a fine payable to the board not to exceed five thousand dollars
10 (\$5,000). The fine shall be added to the licensee's renewal fee if
11 it is not paid by the next succeeding renewal date. Any statute of
12 limitations applicable to the filing of an accusation by a healing
13 arts board shall be tolled during the period the licensee is out of
14 compliance with the court order and during any related appeals.

15 (3) A health care facility that fails or refuses to comply with a
16 court order, issued in the enforcement of a subpoena, mandating
17 the release of patient records to a healing arts board, that is
18 accompanied by a notice citing this section and describing the
19 penalties for failure to comply with this section, shall pay to the
20 healing arts board a civil penalty of up to one thousand dollars
21 (\$1,000) per day for each day that the documents have not been
22 produced, up to one hundred thousand dollars (\$100,000), after
23 the date by which the court order requires the documents to be
24 produced, unless it is determined that the order is unlawful or
25 invalid. Any statute of limitations applicable to the filing of an
26 accusation by the board against a licensee shall be tolled during
27 the period the health care facility is out of compliance with the
28 court order and during any related appeals.

29 (4) Any health care facility that fails or refuses to comply with
30 a court order, issued in the enforcement of a subpoena, mandating
31 the release of records to a healing arts board is guilty of a
32 misdemeanor punishable by a fine payable to the board not to
33 exceed five thousand dollars (\$5,000). Any statute of limitations
34 applicable to the filing of an accusation by the healing arts board
35 against a licensee shall be tolled during the period the health care
36 facility is out of compliance with the court order and during any
37 related appeals.

38 (c) Multiple acts by a licensee in violation of subdivision (b)
39 shall be punishable by a fine not to exceed five thousand dollars
40 (\$5,000) or by imprisonment in a county jail not exceeding six

1 months, or by both that fine and imprisonment. Multiple acts by
2 a health care facility in violation of subdivision (b) shall be
3 punishable by a fine not to exceed five thousand dollars (\$5,000),
4 shall be reported to the State Department of Public Health, and
5 shall be considered as grounds for disciplinary action with respect
6 to licensure, including suspension or revocation of the license or
7 certificate.

8 (d) A failure or refusal of a licensee to comply with a court
9 order, issued in the enforcement of a subpoena, mandating the
10 release of records to the healing arts board constitutes
11 unprofessional conduct and is grounds for suspension or revocation
12 of his or her license.

13 (e) Imposition of the civil penalties authorized by this section
14 shall be in accordance with the Administrative Procedure Act
15 (Chapter 5 (commencing with Section 11500) of Division 3 of
16 Title 2 of the Government Code). Any civil penalties paid to, or
17 received by, a healing arts board pursuant to this section shall be
18 deposited into the fund administered by the healing arts board.

19 (f) For purposes of this section, “certified medical records”
20 means a copy of the patient’s medical records authenticated by the
21 licensee or health care facility, as appropriate, on a form prescribed
22 by the licensee’s board.

23 (g) For purposes of this section, a “health care facility” means
24 a clinic or health facility licensed or exempt from licensure
25 pursuant to Division 2 (commencing with Section 1200) of the
26 Health and Safety Code.

27 (h) If a board complies with Section 1684.5, 2225.5, or 2969,
28 that board shall not be subject to the requirements of this section.

29 (i) This section shall not apply to a licensee who does not have
30 access to, or control over, certified medical records.

31 720.20. (a) Notwithstanding any other provision of law, a state
32 agency shall, upon receiving a request in writing from a healing
33 arts board, immediately provide to the healing arts board all records
34 in the custody of the state agency, including, but not limited to,
35 confidential records, medical records, and records related to closed
36 or open investigations.

37 (b) If a state agency has knowledge that a person it is
38 investigating is licensed by a healing arts board, the state agency
39 shall notify the healing arts board that it is conducting an
40 investigation against one of its licentiates. The notification of

1 investigation to the healing arts board is to include the name,
2 address, and, if known, the professional licensure type and license
3 number of the person being investigated and the name and address
4 or telephone number of a person who can be contacted for further
5 information about the investigation. The state agency shall
6 cooperate with the healing arts board in providing any requested
7 information.

8 720.22. Notwithstanding any other provision of law, all local
9 and state law enforcement agencies, state and local governments,
10 state agencies, licensed health care facilities, and employers of a
11 licensee of a healing arts board shall provide records to the healing
12 arts board upon request prior to receiving payment from the board.

13 720.24. (a) Any employer of a health care licensee shall report
14 to the board the suspension or termination for cause, or any
15 resignation in lieu of suspension or termination for cause, of any
16 health care licensee in its employ within five business days. The
17 report shall not be made until after the conclusion of the review
18 process specified in Section 52.3 of Title 2 of the California Code
19 of Regulations and *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d
20 194, for public employees. This required reporting shall not
21 constitute a waiver of confidentiality of medical records. The
22 information reported or disclosed shall be kept confidential except
23 as provided in subdivision (c) of Section 800 and shall not be
24 subject to discovery in civil cases.

25 (b) For purposes of the section, “suspension or termination for
26 cause” is defined as suspension or termination from employment
27 for any of the following reasons:

28 (1) Use of controlled substances or alcohol to the extent that it
29 impairs the licensee’s ability to safely practice.

30 (2) Unlawful sale of a controlled substance or other prescription
31 items.

32 (3) Patient or client abuse, neglect, physical harm, or sexual
33 contact with a patient or client.

34 (4) Falsification of medical records.

35 (5) Gross negligence or incompetence.

36 (6) Theft from a patient or client, any other employee, or the
37 employer.

38 (c) Failure of an employer to make a report required by this
39 section is punishable by an administrative fine not to exceed one
40 hundred thousand dollars (\$100,000) per violation.

1 (d) Pursuant to Section 43.8 of the Civil Code, no person shall
2 incur any civil penalty as a result of making any report required
3 by this chapter.

4 (e) This section shall not apply to any of the reporting
5 requirements under Section 805.

6 720.26. (a) Each healing arts board shall report annually to
7 the department and the Legislature, not later than October 1 of
8 each year, the following information:

9 (1) The total number of consumer calls received by the board
10 and the number of consumer calls or letters designated as
11 discipline-related complaints.

12 (2) The total number of complaint forms received by the board.

13 (3) The total number of reports received by the board pursuant
14 to Sections 801, 801.01, and 803, as applicable.

15 (4) The total number of coroner reports received by the board.

16 (5) The total number of convictions reported to the board.

17 (6) The total number of criminal filings reported to the board.

18 (7) If the board is authorized to receive reports pursuant to
19 Section 805, the total number of Section 805 reports received by
20 the board, by the type of peer review body reporting and, where
21 applicable, the type of health care facility involved, and the total
22 number and type of administrative or disciplinary actions taken
23 by the board with respect to the reports, and their disposition.

24 (8) The total number of complaints closed or resolved without
25 discipline, prior to accusation.

26 (9) The total number of complaints and reports referred for
27 formal investigation.

28 (10) The total number of accusations filed and the final
29 disposition of accusations through the board and court review,
30 respectively.

31 (11) The total number of citations issued, with fines and without
32 fines, and the number of public letters of reprimand, letters of
33 admonishment, or other similar action issued, if applicable.

34 (12) The total number of final licensee disciplinary actions
35 taken, by category.

36 (13) The total number of cases in process for more than six
37 months, more than 12 months, more than 18 months, and more
38 than 24 months, from receipt of a complaint by the board.

39 (14) The average and median time in processing complaints,
40 from original receipt of the complaint by the board, for all cases,

1 at each stage of the disciplinary process and court review,
2 respectively.

3 (15) The total number of licensees in diversion or on probation
4 for alcohol or drug abuse or mental disorder, and the number of
5 licensees successfully completing diversion programs or probation,
6 and failing to do so, respectively.

7 (16) The total number of probation violation reports and
8 probation revocation filings, and their dispositions.

9 (17) The total number of petitions for reinstatement, and their
10 dispositions.

11 (18) The total number of caseloads of investigators for original
12 cases and for probation cases, respectively.

13 (b) “Action,” for purposes of this section, includes proceedings
14 brought by, or on behalf of, the healing arts board against licensees
15 for unprofessional conduct that have not been finally adjudicated,
16 as well as disciplinary actions taken against licensees.

17 (c) If a board complies with Section 2313, that board shall not
18 be subject to the requirements of this section.

19 720.28. Unless otherwise provided, on or after July 1, 2013,
20 every healing arts board shall post on the Internet the following
21 information in its possession, custody, or control regarding every
22 licensee for which the board licenses:

23 (a) With regard to the status of every healing arts license,
24 whether or not the licensee is in good standing, subject to a
25 temporary restraining order, subject to an interim suspension order,
26 subject to a restriction or cease practice ordered pursuant to Section
27 23 of the Penal Code, or subject to any of the enforcement actions
28 described in Section 803.1.

29 (b) With regard to prior discipline of a licensee, whether or not
30 the licensee has been subject to discipline by the healing arts board
31 or by the board of another state or jurisdiction, as described in
32 Section 803.1.

33 (c) Any felony conviction of a licensee reported to the healing
34 arts board after January 3, 1991.

35 (d) All current accusations filed by the Attorney General,
36 including those accusations that are on appeal. For purposes of
37 this paragraph, “current accusation” means an accusation that has
38 not been dismissed, withdrawn, or settled, and has not been finally
39 decided upon by an administrative law judge and the board unless
40 an appeal of that decision is pending.

1 (e) Any malpractice judgment or arbitration award imposed
2 against a licensee and reported to the healing arts board after
3 January 1, 1993.

4 (f) Any hospital disciplinary action imposed against a licensee
5 that resulted in the termination or revocation of a licensee's hospital
6 staff privileges for a medical disciplinary cause or reason pursuant
7 to Section 720.18 or 805.

8 (g) Any misdemeanor conviction of a licensee that results in a
9 disciplinary action or an accusation that is not subsequently
10 withdrawn or dismissed.

11 (h) Appropriate disclaimers and explanatory statements to
12 accompany the above information, including an explanation of
13 what types of information are not disclosed. These disclaimers and
14 statements shall be developed by the healing arts board and shall
15 be adopted by regulation.

16 720.30. (a) The office of the Attorney General shall serve, or
17 submit to a healing arts board for service, an accusation within 60
18 calendar days of receipt from the healing arts board.

19 (b) The office of the Attorney General shall serve, or submit to
20 a healing arts board for service, a default decision within five days
21 following the time period allowed for the filing of a notice of
22 defense.

23 (c) The office of the Attorney General shall set a hearing date
24 within three days of receiving a notice of defense, unless the
25 healing arts board gives the office of the Attorney General
26 instruction otherwise.

27 720.32. (a) Whenever it appears that an applicant for a license,
28 certificate, or permit from a healing arts board may be unable to
29 practice his or her profession safely because the applicant's ability
30 to practice would be impaired due to mental illness, or physical
31 illness affecting competency, the healing arts board may order the
32 applicant to be examined by one or more physicians and surgeons
33 or psychologists designated by the healing arts board. The report
34 of the examiners shall be made available to the applicant and may
35 be received as direct evidence in proceedings conducted pursuant
36 to Chapter 2 (commencing with Section 480) of Division 1.5.

37 (b) An applicant's failure to comply with an order issued under
38 subdivision (a) shall authorize the board to deny an applicant a
39 license, certificate, or permit.

1 (c) A healing arts board shall not grant a license, certificate, or
2 permit until it has received competent evidence of the absence or
3 control of the condition that caused its action and until it is satisfied
4 that with due regard for the public health and safety the person
5 may safely practice the profession for which he or she seeks
6 licensure.

7 720.34. (a) An applicant for a license, certificate, or permit
8 from a healing arts board who is otherwise eligible for that license
9 but is unable to practice some aspects of his or her profession
10 safely due to a disability may receive a limited license if he or she
11 does both of the following:

- 12 (1) Pays the initial licensure fee.
- 13 (2) Signs an agreement on a form prescribed by the healing arts
14 board in which the applicant agrees to limit his or her practice in
15 the manner prescribed by the healing arts board.

16 (b) The healing arts board may require the applicant described
17 in subdivision (a) to obtain an independent clinical evaluation of
18 his or her ability to practice safely as a condition of receiving a
19 limited license under this section.

20 (c) Any person who knowingly provides false information in
21 the agreement submitted pursuant to subdivision (a) shall be subject
22 to any sanctions available to the healing arts board.

23 720.35. (a) Each healing arts board shall conduct a search on
24 the National Practitioner Data Bank and the Healthcare Integrity
25 and Protection Data Bank prior to granting or renewing a license,
26 certificate, or permit to an applicant who is licensed by another
27 state.

28 (b) A healing arts board may charge a fee to cover the actual
29 cost to conduct the search specified in subdivision (a).

30 720.36. Unless it is otherwise expressly provided, any person,
31 whether licensed pursuant to this division or not, who violates any
32 provision of this article is guilty of a misdemeanor and shall be
33 punished by a fine of not less than two hundred dollars (\$200) nor
34 more than one thousand two hundred dollars (\$1,200), or by
35 imprisonment for a term of not less than 60 days nor no more than
36 180 days, or by both the fine and imprisonment.

37 SEC. 13. Section 726 of the Business and Professions Code is
38 amended to read:

39 726. (a) The commission of any act of sexual abuse,
40 misconduct, or relations with a patient, client, or customer

1 constitutes unprofessional conduct and grounds for disciplinary
2 action for any person licensed under this division, *and* under any
3 initiative act referred to in this division ~~and under Chapter 17~~
4 ~~(commencing with Section 9000) of Division 3.~~

5 *(b) For purposes of Division 1.5 (commencing with Section*
6 *475), and the licensing laws and regulations of a healing arts*
7 *board, as defined in Section 720, the commission of, and conviction*
8 *for, any act of sexual abuse, sexual misconduct, or attempted sexual*
9 *misconduct, whether or not with a patient, or conviction of a felony*
10 *requiring registration pursuant to Section 290 of the Penal Code*
11 *shall be considered a crime substantially related to the*
12 *qualifications, functions, or duties of a licensee of a healing arts*
13 *board.*

14 **This**

15 *(c) This section shall not apply to sexual contact between a*
16 *physician and surgeon and his or her spouse or person in an*
17 *equivalent domestic relationship when that physician and surgeon*
18 *provides medical treatment, other than psychotherapeutic treatment,*
19 *to his or her spouse or person in an equivalent domestic*
20 *relationship.*

21 SEC. 14. Section 734 is added to the Business and Professions
22 Code, to read:

23 734. (a) The conviction of a charge of violating any federal
24 statute or regulation or any statute or regulation of this state
25 regulating dangerous drugs or controlled substances constitutes
26 unprofessional conduct. The record of the conviction is conclusive
27 evidence of the unprofessional conduct. A plea or verdict of guilty
28 or a conviction following a plea of nolo contendere is deemed to
29 be a conviction within the meaning of this section.

30 (b) Discipline may be ordered against a licensee in accordance
31 with the laws and regulations of the healing arts board or the board
32 may order the denial of the license when the time for appeal has
33 elapsed, or the judgment of conviction has been affirmed on appeal,
34 or when an order granting probation is made suspending the
35 imposition of sentence, irrespective of a subsequent order under
36 the provisions of Section 1203.4 of the Penal Code allowing that
37 person to withdraw his or her plea of guilty and to enter a plea of
38 not guilty, or setting aside the verdict of guilty, or dismissing the
39 accusation, complaint, information, or indictment.

1 SEC. 15. Section 735 is added to the Business and Professions
2 Code, to read:

3 735. A violation of any federal statute or federal regulation or
4 any of the statutes or regulations of this state regulating dangerous
5 drugs or controlled substances constitutes unprofessional conduct.

6 SEC. 16. Section 736 is added to the Business and Professions
7 Code, to read:

8 736. (a) The use or prescribing for or administering to himself
9 or herself of any controlled substance; or the use of any of the
10 dangerous drugs specified in Section 4022, or of alcoholic
11 beverages, to the extent or in such a manner as to be dangerous or
12 injurious to the licensee, or to any other person or to the public,
13 or to the extent that the use impairs the ability of the licensee to
14 practice safely; or any misdemeanor or felony involving the use,
15 consumption, or self-administration of any of the substances
16 referred to in this section, or any combination thereof, constitutes
17 unprofessional conduct. The record of the conviction is conclusive
18 evidence of the unprofessional conduct.

19 (b) A plea or verdict of guilty or a conviction following a plea
20 of nolo contendere is deemed to be a conviction within the meaning
21 of this section. Discipline may be ordered against a licensee in
22 accordance with the laws and regulations of the healing arts board
23 or the board may order the denial of the license when the time for
24 appeal has elapsed or the judgment of conviction has been affirmed
25 on appeal or when an order granting probation is made suspending
26 imposition of sentence, irrespective of a subsequent order under
27 the provisions of Section 1203.4 of the Penal Code allowing that
28 person to withdraw his or her plea of guilty and to enter a plea of
29 not guilty, or setting aside the verdict of guilty, or dismissing the
30 accusation, complaint, information, or indictment.

31 (c) A violation of subdivision (a) is a misdemeanor punishable
32 by a fine of up to ten thousand dollars (\$10,000), imprisonment
33 in the county jail of up to six months, or both the fine and
34 imprisonment.

35 SEC. 17. Section 737 is added to the Business and Professions
36 Code, to read:

37 737. It shall be unprofessional conduct for any licensee of a
38 healing arts board to fail to comply with the following:

1 (a) Furnish information in a timely manner to the healing arts
2 board or the board’s investigators or representatives if legally
3 requested by the board.

4 (b) Cooperate and participate in any disciplinary investigation
5 or other regulatory or disciplinary proceeding pending against
6 himself or herself. However, this subdivision shall not be construed
7 to deprive a licensee of any privilege guaranteed by the Fifth
8 Amendment to the Constitution of the United States, or any other
9 constitutional or statutory privileges. This subdivision shall not
10 be construed to require a licensee to cooperate with a request that
11 requires him or her to waive any constitutional or statutory
12 privilege or to comply with a request for information or other
13 matters within an unreasonable period of time in light of the time
14 constraints of the licensee’s practice. Any exercise by a licensee
15 of any constitutional or statutory privilege shall not be used against
16 the licensee in a regulatory or disciplinary proceeding against him
17 or her.

18 SEC. 18. Section 802.1 of the Business and Professions Code
19 is amended to read:

20 802.1. (a) (1) ~~A physician and surgeon, osteopathic physician~~
21 ~~and surgeon, and a doctor of podiatric medicine~~ *A licensee of a*
22 *healing arts board defined under Section 720 shall submit a written*
23 *report either of any of the following to the entity that issued his or*
24 *her license:*

25 (A) The bringing of an indictment or information charging a
26 felony against the licensee.

27 (B) *The arrest of the licensee.*

28 ~~(B)~~

29 (C) The conviction of the licensee, including any verdict of
30 guilty, or plea of guilty or no contest, of any felony or
31 misdemeanor.

32 (D) *Any disciplinary action taken by another licensing entity*
33 *or authority of this state or of another state.*

34 (2) The report required by this subdivision shall be made in
35 writing within 30 days of the date of the bringing of the indictment
36 ~~or information or of the charging of a felony, the arrest, the~~
37 *conviction, or the disciplinary action.*

38 (b) Failure to make a report required by this section shall be a
39 public offense punishable by a fine not to exceed five thousand
40 dollars (\$5,000).

1 SEC. 19. Section 803 of the Business and Professions Code is
2 amended to read:

3 803. (a) Except as provided in subdivision (b), within 10 days
4 after a judgment by a court of this state that a person who holds a
5 license, certificate, or other similar authority from ~~the Board of~~
6 ~~Behavioral Sciences or from an agency mentioned in subdivision~~
7 ~~(a) of Section 800 (except a person licensed pursuant to Chapter~~
8 ~~3 (commencing with Section 1200))~~ *a healing arts board defined*
9 *in Section 720*, has committed a crime, or is liable for any death
10 or personal injury resulting in a judgment for an amount in excess
11 of thirty thousand dollars (\$30,000) caused by his or her
12 negligence, error or omission in practice, or his or her rendering
13 unauthorized professional services, the clerk of the court that
14 rendered the judgment shall report that fact to the agency that
15 issued the license, certificate, or other similar authority.

16 (b) For purposes of a physician and surgeon, osteopathic
17 physician and surgeon, or doctor of podiatric medicine, who is
18 liable for any death or personal injury resulting in a judgment of
19 any amount caused by his or her negligence, error or omission in
20 practice, or his or her rendering unauthorized professional services,
21 the clerk of the court that rendered the judgment shall report that
22 fact to the ~~agency~~ *board* that issued the license.

23 SEC. 20. Section 803.5 of the Business and Professions Code
24 is amended to read:

25 803.5. (a) The district attorney, city attorney, or other
26 prosecuting agency shall notify the ~~Medical Board of California,~~
27 ~~the Osteopathic Medical Board of California, the California Board~~
28 ~~of Podiatric Medicine, the State Board of Chiropractic Examiners,~~
29 ~~or other appropriate allied health board,~~ *healing arts board defined*
30 *in Section 720* and the clerk of the court in which the charges have
31 been filed, of any filings against a licensee of that board charging
32 a felony immediately upon obtaining information that the defendant
33 is a licensee of the board. The notice shall identify the licensee
34 and describe the crimes charged and the facts alleged. The
35 prosecuting agency shall also notify the clerk of the court in which
36 the action is pending that the defendant is a licensee, and the clerk
37 shall record prominently in the file that the defendant holds a
38 license from one of the boards described above.

39 (b) The clerk of the court in which a licensee of one of the
40 boards is convicted of a crime shall, within 48 hours after the

1 conviction, transmit a certified copy of the record of conviction
2 to the applicable board.

3 SEC. 21. Section 803.6 of the Business and Professions Code
4 is amended to read:

5 803.6. (a) The clerk of the court shall transmit any felony
6 preliminary hearing transcript concerning a defendant licensee to
7 ~~the Medical Board or other appropriate allied health board, as~~
8 ~~applicable~~; *the appropriate healing arts boards defined in Section*
9 *720* where the total length of the transcript is under 800 pages and
10 shall notify the appropriate board of any proceeding where the
11 transcript exceeds that length.

12 (b) In any case where a probation report on a licensee is prepared
13 for a court pursuant to Section 1203 of the Penal Code, a copy of
14 that report shall be transmitted by the probation officer to the
15 *appropriate* board.

16 SEC. 22. Section 803.7 is added to the Business and Professions
17 Code, to read:

18 803.7. The Department of Justice shall ensure that subsequent
19 reports authorized to be issued to any board identified in Section
20 101 are submitted to that board within 30 days from notification
21 of subsequent arrests, convictions, or other updates.

22 SEC. 23. Article 15 (commencing with Section 870) is added
23 to Chapter 1 of Division 2 of the Business and Professions Code,
24 to read:

25

26 Article 15. Healing Arts Licensing Fees

27

28 870. (a) Notwithstanding any provision of law establishing a
29 fee or a fee range in this division, the department may annually
30 establish a maximum fee amount for each healing arts board, as
31 defined in Section 720, adjusted consistent with the California
32 Consumer Price Index.

33 (b) The department shall promulgate regulations pursuant to
34 the Administrative Procedures Act to establish the maximum fee
35 amount calculated pursuant to subdivision (a).

36 (c) A healing arts board, as defined in Section 720, shall
37 establish, through regulations, the specific amount of all fees
38 authorized by statute at a level that is at or below the amount
39 established pursuant to subdivision (b).

1 SEC. 24. Article 16 (commencing with Section 880) is added
2 to Chapter 1 of Division 2 of the Business and Professions Code,
3 to read:

4
5 Article 16. Unlicensed Practice
6

7 880. (a) (1) It is a public offense, punishable by a fine not to
8 exceed one hundred thousand dollars (\$100,000), by imprisonment
9 in a county jail not to exceed one year, or by both that fine and
10 imprisonment, for a person to do any of the following:

11 (A) Any person who does not hold a current and valid license
12 to practice a healing art under this division who engages in that
13 practice.

14 (B) Any person who fraudulently buys, sells, or obtains a license
15 to practice any healing art in this division or to violate any
16 provision of this division.

17 (C) Any person who represents himself or herself as engaging
18 or authorized to engage in a healing art of this division who is not
19 authorized to do so.

20 (2) Subparagraph (A) of paragraph (1) shall not apply to any
21 person who is already being charged with a crime under the specific
22 healing arts licensing provisions for which he or she engaged in
23 unauthorized practice.

24 (b) Notwithstanding any other provision of law, any person who
25 is licensed under this division, but who is not authorized to provide
26 some or all services of another healing art, who practices or
27 supervises the practice of those unauthorized services, is guilty of
28 a public crime, punishable by a fine not to exceed one hundred
29 thousand dollars (\$100,000), by imprisonment in a county jail not
30 to exceed one year, or by both that fine and imprisonment.

31 SEC. 25. Section 1699.2 is added to the Business and
32 Professions Code, to read:

33 1699.2. This article shall remain in effect only until January
34 1, 2013, and as of that date is repealed, unless a later enacted
35 statute, that is enacted before January 1, 2013, deletes or extends
36 that date.

37 SEC. 26. Section 2372 is added to the Business and Professions
38 Code, to read:

1 2372. This article shall remain in effect only until January 1,
2 2013, and as of that date is repealed, unless a later enacted statute,
3 that is enacted before January 1, 2013, deletes or extends that date.

4 SEC. 27. Section 2669.2 is added to the Business and
5 Professions Code, to read:

6 2669.2. This article shall remain in effect only until January
7 1, 2013, and as of that date is repealed, unless a later enacted
8 statute, that is enacted before January 1, 2013, deletes or extends
9 that date.

10 SEC. 28. Section 2715 of the Business and Professions Code
11 is amended to read:

12 2715. The board shall prosecute all persons guilty of violating
13 the provisions of this chapter.

14 ~~Except as provided by Section 159.5, the~~

15 *The board, in accordance with the provisions of the Civil Service*
16 *Law, may employ such investigators, nurse consultants, and other*
17 *personnel as it deems necessary to carry into effect the provisions*
18 *of this chapter. Investigators employed by the board shall be*
19 *provided special training in investigating nursing practice*
20 *activities.*

21 The board shall have and use a seal bearing the name “Board of
22 Registered Nursing.” The board may adopt, amend, or repeal, in
23 accordance with the provisions of Chapter 4.5 (commencing with
24 ~~Section 11371), 11371) of Part 1, 1 of Division 3, 3 of Title 2 of~~
25 the Government Code, such rules and regulations as may be
26 reasonably necessary to enable it to carry into effect the provisions
27 of this chapter.

28 SEC. 29. Section 2770.18 is added to the Business and
29 Professions Code, to read:

30 2770.18. This article shall remain in effect only until January
31 1, 2013, and as of that date is repealed, unless a later enacted
32 statute, that is enacted before January 1, 2013, deletes or extends
33 that date.

34 SEC. 30. Section 3534.12 is added to the Business and
35 Professions Code, to read:

36 3534.12. This article shall remain in effect only until January
37 1, 2013, and as of that date is repealed, unless a later enacted
38 statute, that is enacted before January 1, 2013, deletes or extends
39 that date.

1 SEC. 31. Section 4375 is added to the Business and Professions
2 Code, to read:

3 4375. This article shall remain in effect only until January 1,
4 2013, and as of that date is repealed, unless a later enacted statute,
5 that is enacted before January 1, 2013, deletes or extends that date.

6 SEC. 32. Section 4873.2 is added to the Business and
7 Professions Code, to read:

8 4873.2. This article shall remain in effect only until January
9 1, 2013, and as of that date is repealed, unless a later enacted
10 statute, that is enacted before January 1, 2013, deletes or extends
11 that date.

12 SEC. 33. Section 12529 of the Government Code, as amended
13 by Section 8 of Chapter 505 of the Statutes of 2009, is amended
14 to read:

15 12529. (a) There is in the Department of Justice the Health
16 Quality Enforcement Section. The primary responsibility of the
17 section is to investigate and prosecute proceedings against licensees
18 and applicants within the jurisdiction of the Medical Board of
19 California, the California Board of Podiatric Medicine, the Board
20 of Psychology, ~~or any committee under the jurisdiction of the~~
21 ~~Medical Board of California, or any other healing arts board, as~~
22 ~~defined in Section 720 of the Business and Professions Code, as~~
23 ~~requested by the executive officer of that board.~~

24 (b) The Attorney General shall appoint a Senior Assistant
25 Attorney General of the Health Quality Enforcement Section. The
26 Senior Assistant Attorney General of the Health Quality
27 Enforcement Section shall be an attorney in good standing licensed
28 to practice in the State of California, experienced in prosecutorial
29 or administrative disciplinary proceedings and competent in the
30 management and supervision of attorneys performing those
31 functions.

32 (c) The Attorney General shall ensure that the Health Quality
33 Enforcement Section is staffed with a sufficient number of
34 experienced and able employees that are capable of handling the
35 most complex and varied types of disciplinary actions against the
36 licensees of the ~~board~~ boards.

37 (d) Funding for the Health Quality Enforcement Section shall
38 be budgeted in consultation with the Attorney General from the
39 special funds financing the operations of the Medical Board of
40 California, the California Board of Podiatric Medicine, the Board

1 of Psychology, ~~and~~ the committees under the jurisdiction of the
2 Medical Board of California, *and any other healing arts board,*
3 *as defined in Section 720 of the Business and Professions Code,*
4 with the intent that the expenses be proportionally shared as to
5 services rendered.

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

9 SEC. 34. Section 12529 of the Government Code, as amended
10 by Section 9 of Chapter 505 of the Statutes of 2009, is amended
11 to read:

12 12529. (a) There is in the Department of Justice the Health
13 Quality Enforcement Section. The primary responsibility of the
14 section is to prosecute proceedings against licensees and applicants
15 within the jurisdiction of the Medical Board of California, the
16 California Board of Podiatric Medicine, the Board of Psychology,
17 ~~or~~ any committee under the jurisdiction of the Medical Board of
18 California, *or any other healing arts board, as defined in Section*
19 *720 of the Business and Professions Code, as requested by the*
20 *executive officer of that board,* and to provide ongoing review of
21 the investigative activities conducted in support of those
22 prosecutions, as provided in subdivision (b) of Section 12529.5.

23 (b) The Attorney General shall appoint a Senior Assistant
24 Attorney General of the Health Quality Enforcement Section. The
25 Senior Assistant Attorney General of the Health Quality
26 Enforcement Section shall be an attorney in good standing licensed
27 to practice in the State of California, experienced in prosecutorial
28 or administrative disciplinary proceedings and competent in the
29 management and supervision of attorneys performing those
30 functions.

31 (c) The Attorney General shall ensure that the Health Quality
32 Enforcement Section is staffed with a sufficient number of
33 experienced and able employees that are capable of handling the
34 most complex and varied types of disciplinary actions against the
35 licensees of the ~~board~~ boards.

36 (d) Funding for the Health Quality Enforcement Section shall
37 be budgeted in consultation with the Attorney General from the
38 special funds financing the operations of the Medical Board of
39 California, the California Board of Podiatric Medicine, the Board
40 of Psychology, ~~and~~ the committees under the jurisdiction of the

1 Medical Board of California, *and any other healing arts board,*
2 *as defined in Section 720 of the Business and Professions Code,*
3 *with the intent that the expenses be proportionally shared as to*
4 *services rendered.*

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

6 SEC. 35. Section 12529.5 of the Government Code, as amended
7 by Section 10 of Chapter 505 of the Statutes of 2009, is amended
8 to read:

9 12529.5. (a) All complaints or relevant information concerning
10 licensees that are within the jurisdiction of the Medical Board of
11 California, the California Board of Podiatric Medicine, or the
12 Board of Psychology shall be made available to the Health Quality
13 Enforcement Section. *Complaints or relevant information may be*
14 *referred to the Health Quality Enforcement Section as determined*
15 *by the executive officer of any other healing arts board, as defined*
16 *in Section 720 of the Business and Professions Code.*

17 (b) The Senior Assistant Attorney General of the Health Quality
18 Enforcement Section shall assign attorneys to work on location at
19 the intake unit of the ~~boards described in subdivision (d) of Section~~
20 ~~12529~~ *Medical Board of California, the California Board of*
21 *Podiatric Medicine, or the Board of Psychology, and shall assign*
22 *attorneys to work on location at the Health Quality Enforcement*
23 *Unit of the Division of Investigation of the Department of*
24 *Consumer Affairs to assist in evaluating and screening complaints*
25 *and to assist in developing uniform standards and procedures for*
26 *processing complaints.*

27 (c) The Senior Assistant Attorney General or his or her deputy
28 attorneys general shall assist the ~~boards or~~ committees, *and the*
29 *Division of Investigation* in designing and providing initial and
30 in-service training programs for staff of the boards or committees,
31 including, but not limited to, information collection and
32 investigation.

33 (d) The determination to bring a disciplinary proceeding against
34 a licensee of the boards shall be made by the executive officer of
35 the boards or committees as appropriate in consultation with the
36 senior assistant.

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

1 SEC. 36. Section 12529.5 of the Government Code, as amended
2 by Section 11 of Chapter 505 of the Statutes of 2009, is amended
3 to read:

4 12529.5. (a) All complaints or relevant information concerning
5 licensees that are within the jurisdiction of the Medical Board of
6 California, the California Board of Podiatric Medicine, or the
7 Board of Psychology shall be made available to the Health Quality
8 Enforcement Section. *Complaints or relevant information may be*
9 *referred to the Health Quality Enforcement Section as determined*
10 *by the executive officer of any other healing arts board, as defined*
11 *in Section 720 of the Business and Professions Code.*

12 (b) The Senior Assistant Attorney General of the Health Quality
13 Enforcement Section shall assign attorneys to assist the boards in
14 intake and investigations, *shall assign attorneys to work on location*
15 *at the Health Quality Enforcement Unit of the Division of*
16 *Investigation of the Department of Consumer Affairs*, and to direct
17 discipline-related prosecutions. Attorneys shall be assigned to
18 work closely with each major intake and investigatory unit of the
19 boards, to assist in the evaluation and screening of complaints from
20 receipt through disposition and to assist in developing uniform
21 standards and procedures for the handling of complaints and
22 investigations.

23 A deputy attorney general of the Health Quality Enforcement
24 Section shall frequently be available on location at each of the
25 working offices at the major investigation centers of the boards,
26 to provide consultation and related services and engage in case
27 review with the boards' investigative, medical advisory, and intake
28 staff *and the Division of Investigation*. The Senior Assistant
29 Attorney General and deputy attorneys general working at his or
30 her direction shall consult as appropriate with the investigators of
31 the boards, medical advisors, and executive staff in the
32 investigation and prosecution of disciplinary cases.

33 (c) The Senior Assistant Attorney General or his or her deputy
34 attorneys general shall assist the boards or committees in designing
35 and providing initial and in-service training programs for staff of
36 the boards or committees, including, but not limited to, information
37 collection and investigation.

38 (d) The determination to bring a disciplinary proceeding against
39 a licensee of the boards shall be made by the executive officer of

1 the boards or committees as appropriate in consultation with the
2 senior assistant.

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

4 SEC. 37. Section 12529.6 of the Government Code is amended
5 to read:

6 12529.6. (a) The Legislature finds and declares that the
7 ~~Medical Board of California~~ *healing arts boards, as defined in*
8 *Section 720 of the Business and Professions Code*, by ensuring
9 the quality and safety of ~~medical health care, performs~~ *perform*
10 one of the most critical functions of state government. Because of
11 the critical importance of ~~the~~ *a* board's public health and safety
12 function, the complexity of cases involving alleged misconduct
13 by ~~physicians and surgeons~~ *health care practitioners*, and the
14 evidentiary burden in ~~the~~ *a* *healing arts* board's disciplinary cases,
15 the Legislature finds and declares that using a vertical enforcement
16 and prosecution model for those investigations is in the best
17 interests of the people of California.

18 (b) Notwithstanding any other provision of law, ~~as of January~~
19 ~~1, 2006~~, each complaint that is referred to a district office of the
20 ~~board~~ *Medical Board of California, the California Board of*
21 *Podiatric Medicine, the Board of Psychology, or the Health Quality*
22 *Enforcement Unit* for investigation shall be simultaneously and
23 jointly assigned to an investigator and to the deputy attorney
24 general in the Health Quality Enforcement Section responsible for
25 prosecuting the case if the investigation results in the filing of an
26 accusation. The joint assignment of the investigator and the deputy
27 attorney general shall exist for the duration of the disciplinary
28 matter. During the assignment, the investigator so assigned shall,
29 under the direction but not the supervision of the deputy attorney
30 general, be responsible for obtaining the evidence required to
31 permit the Attorney General to advise the board on legal matters
32 such as whether the board should file a formal accusation, dismiss
33 the complaint for a lack of evidence required to meet the applicable
34 burden of proof, or take other appropriate legal action.

35 (c) The Medical Board of California, the Department of
36 Consumer Affairs, and the Office of the Attorney General shall,
37 if necessary, enter into an interagency agreement to implement
38 this section.

39 (d) This section does not affect the requirements of Section
40 12529.5 as applied to the Medical Board of California where

1 complaints that have not been assigned to a field office for
2 investigation are concerned.

3 (e) It is the intent of the Legislature to enhance the vertical
4 enforcement and prosecution model as set forth in subdivision (a).
5 The Medical Board of California shall do all of the following:

6 (1) Increase its computer capabilities and compatibilities with
7 the Health Quality Enforcement Section in order to share case
8 information.

9 (2) Establish and implement a plan to ~~locate~~ *collocate, when*
10 *feasible*, its enforcement staff and the staff of the Health Quality
11 Enforcement Section ~~in the same offices, as appropriate~~, in order
12 to carry out the intent of the vertical enforcement and prosecution
13 model.

14 (3) Establish and implement a plan to assist in team building
15 between its enforcement staff and the staff of the Health Quality
16 Enforcement Section in order to ensure a common and consistent
17 knowledge base.

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

21 SEC. 38. Section 12529.7 of the Government Code is amended
22 to read:

23 12529.7. By March 1, 2012, the ~~Medical Board of California~~
24 *Department of Consumer Affairs*, in consultation with the *healing*
25 *arts boards, as defined in Section 720 of the Business and*
26 *Professions Code, and the Department of Justice* ~~and the~~
27 ~~Department of Consumer Affairs~~, shall report and make
28 recommendations to the Governor and the Legislature on the
29 vertical enforcement and prosecution model created under Section
30 12529.6.

31 SEC. 39. Section 830.3 of the Penal Code is amended to read:

32 830.3. The following persons are peace officers whose authority
33 extends to any place in the state for the purpose of performing
34 their primary duty or when making an arrest pursuant to Section
35 836 of the Penal Code as to any public offense with respect to
36 which there is immediate danger to person or property, or of the
37 escape of the perpetrator of that offense, or pursuant to Section
38 8597 or 8598 of the Government Code. These peace officers may
39 carry firearms only if authorized and under those terms and
40 conditions as specified by their employing agencies:

1 (a) Persons employed by the Division of Investigation of the
2 Department of Consumer Affairs and investigators of the Medical
3 Board of California ~~and, the Board of Dental Examiners~~ *Board of*
4 *California, and the Board of Registered Nursing* who are
5 designated by the Director of Consumer Affairs, provided that the
6 primary duty of these peace officers shall be the enforcement of
7 the law as that duty is set forth in Section 160 of the Business and
8 Professions Code.

9 (b) Voluntary fire wardens designated by the Director of
10 Forestry and Fire Protection pursuant to Section 4156 of the Public
11 Resources Code, provided that the primary duty of these peace
12 officers shall be the enforcement of the law as that duty is set forth
13 in Section 4156 of that code.

14 (c) Employees of the Department of Motor Vehicles designated
15 in Section 1655 of the Vehicle Code, provided that the primary
16 duty of these peace officers shall be the enforcement of the law as
17 that duty is set forth in Section 1655 of that code.

18 (d) Investigators of the California Horse Racing Board
19 designated by the board, provided that the primary duty of these
20 peace officers shall be the enforcement of Chapter 4 (commencing
21 with Section 19400) of Division 8 of the Business and Professions
22 Code and Chapter 10 (commencing with Section 330) of Title 9
23 of Part 1 of this code.

24 (e) The State Fire Marshal and assistant or deputy state fire
25 marshals appointed pursuant to Section 13103 of the Health and
26 Safety Code, provided that the primary duty of these peace officers
27 shall be the enforcement of the law as that duty is set forth in
28 Section 13104 of that code.

29 (f) Inspectors of the food and drug section designated by the
30 chief pursuant to subdivision (a) of Section 106500 of the Health
31 and Safety Code, provided that the primary duty of these peace
32 officers shall be the enforcement of the law as that duty is set forth
33 in Section 106500 of that code.

34 (g) All investigators of the Division of Labor Standards
35 Enforcement designated by the Labor Commissioner, provided
36 that the primary duty of these peace officers shall be the
37 enforcement of the law as prescribed in Section 95 of the Labor
38 Code.

39 (h) All investigators of the State Departments of Health Care
40 Services, Public Health, Social Services, Mental Health, and

1 Alcohol and Drug Programs, the Department of Toxic Substances
2 Control, the Office of Statewide Health Planning and Development,
3 and the Public Employees' Retirement System, provided that the
4 primary duty of these peace officers shall be the enforcement of
5 the law relating to the duties of his or her department or office.
6 Notwithstanding any other provision of law, investigators of the
7 Public Employees' Retirement System shall not carry firearms.

8 (i) The Chief of the Bureau of Fraudulent Claims of the
9 Department of Insurance and those investigators designated by the
10 chief, provided that the primary duty of those investigators shall
11 be the enforcement of Section 550.

12 (j) Employees of the Department of Housing and Community
13 Development designated under Section 18023 of the Health and
14 Safety Code, provided that the primary duty of these peace officers
15 shall be the enforcement of the law as that duty is set forth in
16 Section 18023 of that code.

17 (k) Investigators of the office of the Controller, provided that
18 the primary duty of these investigators shall be the enforcement
19 of the law relating to the duties of that office. Notwithstanding any
20 other law, except as authorized by the Controller, the peace officers
21 designated pursuant to this subdivision shall not carry firearms.

22 (l) Investigators of the Department of Corporations designated
23 by the Commissioner of Corporations, provided that the primary
24 duty of these investigators shall be the enforcement of the
25 provisions of law administered by the Department of Corporations.
26 Notwithstanding any other provision of law, the peace officers
27 designated pursuant to this subdivision shall not carry firearms.

28 (m) Persons employed by the Contractors' State License Board
29 designated by the Director of Consumer Affairs pursuant to Section
30 7011.5 of the Business and Professions Code, provided that the
31 primary duty of these persons shall be the enforcement of the law
32 as that duty is set forth in Section 7011.5, and in Chapter 9
33 (commencing with Section 7000) of Division 3, of that code. The
34 Director of Consumer Affairs may designate as peace officers not
35 more than three persons who shall at the time of their designation
36 be assigned to the special investigations unit of the board.
37 Notwithstanding any other provision of law, the persons designated
38 pursuant to this subdivision shall not carry firearms.

39 (n) The Chief and coordinators of the Law Enforcement Division
40 of the Office of Emergency Services.

1 (o) Investigators of the office of the Secretary of State designated
2 by the Secretary of State, provided that the primary duty of these
3 peace officers shall be the enforcement of the law as prescribed
4 in Chapter 3 (commencing with Section 8200) of Division 1 of
5 Title 2 of, and Section 12172.5 of, the Government Code.
6 Notwithstanding any other provision of law, the peace officers
7 designated pursuant to this subdivision shall not carry firearms.

8 (p) The Deputy Director for Security designated by Section
9 8880.38 of the Government Code, and all lottery security personnel
10 assigned to the California State Lottery and designated by the
11 director, provided that the primary duty of any of those peace
12 officers shall be the enforcement of the laws related to assuring
13 the integrity, honesty, and fairness of the operation and
14 administration of the California State Lottery.

15 (q) Investigators employed by the Investigation Division of the
16 Employment Development Department designated by the director
17 of the department, provided that the primary duty of those peace
18 officers shall be the enforcement of the law as that duty is set forth
19 in Section 317 of the Unemployment Insurance Code.

20 Notwithstanding any other provision of law, the peace officers
21 designated pursuant to this subdivision shall not carry firearms.

22 (r) The chief and assistant chief of museum security and safety
23 of the California Science Center, as designated by the executive
24 director pursuant to Section 4108 of the Food and Agricultural
25 Code, provided that the primary duty of those peace officers shall
26 be the enforcement of the law as that duty is set forth in Section
27 4108 of the Food and Agricultural Code.

28 (s) Employees of the Franchise Tax Board designated by the
29 board, provided that the primary duty of these peace officers shall
30 be the enforcement of the law as set forth in Chapter 9
31 (commencing with Section 19701) of Part 10.2 of Division 2 of
32 the Revenue and Taxation Code.

33 (t) Notwithstanding any other provision of this section, a peace
34 officer authorized by this section shall not be authorized to carry
35 firearms by his or her employing agency until that agency has
36 adopted a policy on the use of deadly force by those peace officers,
37 and until those peace officers have been instructed in the employing
38 agency's policy on the use of deadly force.

1 Every peace officer authorized pursuant to this section to carry
2 firearms by his or her employing agency shall qualify in the use
3 of the firearms at least every six months.

4 (u) Investigators of the Department of Managed Health Care
5 designated by the Director of the Department of Managed Health
6 Care, provided that the primary duty of these investigators shall
7 be the enforcement of the provisions of laws administered by the
8 Director of the Department of Managed Health Care.
9 Notwithstanding any other provision of law, the peace officers
10 designated pursuant to this subdivision shall not carry firearms.

11 (v) The Chief, Deputy Chief, supervising investigators, and
12 investigators of the Office of Protective Services of the State
13 Department of Developmental Services, provided that the primary
14 duty of each of those persons shall be the enforcement of the law
15 relating to the duties of his or her department or office.

16 SEC. 40. (a) It is the intent of the Legislature that the
17 Department of Consumer Affairs shall, on or before December
18 31, 2012, establish an enterprise information technology system
19 necessary to electronically create and update healing arts license
20 information, track enforcement cases, and allocate enforcement
21 efforts pertaining to healing arts licensees. The Legislature intends
22 the system to be designed as an integrated system to support all
23 business automation requirements of the department's licensing
24 and enforcement functions.

25 (b) The Legislature also intends the department to enter into
26 contracts for telecommunication, programming, data analysis, data
27 processing, and other services necessary to develop, operate, and
28 maintain the enterprise information technology system.

29 SEC. 41. No reimbursement is required by this act pursuant
30 to Section 6 of Article XIII B of the California Constitution for
31 certain costs that may be incurred by a local agency or school
32 district because, in that regard, this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.

38 However, if the Commission on State Mandates determines that
39 this act contains other costs mandated by the state, reimbursement
40 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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