MEETING NOTICE

May 6-7, 2010

Pepperdine University – Irvine Graduate Campus
Lakeshore Towers III
18111 Von Karman Ave, Rooms 324 & 326
Irvine, CA 92612

May 6th
9:00 a.m.

FULL BOARD OPEN SESSION - Call to Order & Establishment of a Quorum

I. Introductions

II. Approval of the January 23, 2010 Board Meeting Minutes

III. Approval of the February 16, 2010 Board Meeting Minutes

IV. Chairperson’s Report
   a. Introduction of New Board Member – Janice Cone, LCSW
   b. Upcoming Board and Committee Meeting Dates

V. Executive Officer’s Report
   a. Budget Report
   b. Operations Report
   c. Personnel Update

VI. DCA Update
    Kimberly Kirchmeyer, Deputy Director, Board and Bureau Relations

VII. Compliance and Enforcement Committee Report
    a. Review and Discussion of Senate Bill 1111 (Negrete McLeod)
    b. Update on the Substance Abuse Coordination Committee Uniform Standards
    c. Enforcement Performance Measures

VIII. Policy and Advocacy Committee Report
    a. Recommendation #1 – Oppose Assembly Bill 612 (Beall)
    b. Recommendation #2 – Support Assembly Bill 1310 (Hernandez)
    c. Recommendation #3 – Support Assembly Bill 2028 (Hernandez)
    d. Recommendation #4 – Consider Assembly Bill 2086 (Coto)
    e. Recommendation #5 – Oppose Assembly Bill 2167 (Nava)
    f. Recommendation #6 – Consider Assembly Bill 2229 (Brownley)
    g. Recommendation #7 – Support Assembly Bill 2339 (Smyth)
    h. Recommendation #8 – Support Assembly Bill 2380 (Lowenthal)
    i. Recommendation #9 – Support Assembly Bill 2435 (Lowenthal) if amended
    j. Recommendation #10 – Oppose Senate Bill 389 (Negrete Leod) unless amended
    k. Recommendation #11 – Consider Senate Bill 543 (Leno)
    l. Recommendation #12 – Consider Senate Bill 1282 (Steinberg)
m. Recommendation #13 – Sponsor Amendments to Assembly Bill 2191 (Emmerson)

n. Recommendation #14 – Initiate Rulemaking for Implementation of Senate Bill 788 (Wyland) Establishing Licensed Professional Clinical Counselors

o. Recommendation #15 – Sponsor Amendments to Assembly Bill 1489 (Committee on Business, Professions, and Economic Development)

p. Rulemaking Update

IX. Discussion and Possible Action Regarding Other Legislation Affecting the Board

X. Public Comment for Items Not on the Agenda

XI. Suggestions for Future Agenda Items

May 7th
9:30 a.m.

FULL BOARD CLOSED SESSION - Call to Order & Establishment of a Quorum

XII. Pursuant to Government Code Section 11126(c)(1) Regarding Possible Development and Administration of a Licensing Examination on the Differences Between the Practice of Licensed Marriage and Family Therapists and Licensed Professional Clinical Counselors and the Practice of Licensed Clinical Social Workers and Licensed Professional Clinical Counselors

XIII. Pursuant to Government Code Section 11126(c)(3), the Board Will Meet in Closed Session for Discussion and Possible Action on Disciplinary Matters

FULL BOARD OPEN SESSION

XIV. Licensing and Examination Committee Report
   a. Progress Report on the Licensed Professional Clinical Counselor Gap Analysis Project – Presented by Dr. Tracy Montez
   b. Discussion and Possible Action Regarding Revising the Board’s Examination Program

XV. Discussion and Possible Action Regarding Modifications of Rulemaking Package Related to Continuing Education Requirements: Licensed Educational Psychologists, Exceptions and Providers

XVI. Review and Possible Action of Strategic Plan

XVII. Election of Board Officers for 2010-2011

XVIII. Public Comment for Items Not on the Agenda

XIX. Suggestions for Future Agenda Items

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.
DRAFT BOARD MEETING MINUTES
January 23, 2010

Shriners Hospital for Children
2425 Stockton Blvd.
Auditorium, 1st Floor
Sacramento, CA 95817

Members Present
Renee Lonner, Chair, LCSW Member
Elise Froistad, Vice Chair, MFT Member
Samara Ashley, Public Member
Gordonna (Donna) DiGiorgio, Public Member
Harry Douglas, Public Member
Mona Foster, Public Member
Judy Johnson, LEP Member
Patricia Lock-Dawson, Public Member
Victor Perez, Public Member
Michael Webb, MFT Member

Staff Present
Kim Madsen, Interim Executive Officer
Christy Berger, MHSA Manager
Tracy Rhine, Legislation Analyst
Sean O’Connor, Outreach Coordinator
Marsha Gove, Examination Analyst
James Maynard, Legal Counsel

Members Absent
None

Guest List
On file

FULL BOARD OPEN SESSION

Renee Lonner, Board Chair, called the meeting to order at approximately 10:30 a.m. Marsha Gove called roll, and a quorum was established.

III. Introductions

Ms. Lonner announced recent appointments to the Board. All board members introduced themselves, with the new appointees providing comments about their respective backgrounds and workplace settings. Board staff and audience members also introduced themselves.

IV. Approval of the October 10, 2009 Board Meeting Minutes

Harry Douglas moved to approve the board meeting minutes of October 10, 2009. Donna DiGiorgio seconded. The board voted 9-0 to adopt the minutes, with one member (Patricia Lock-Dawson) abstaining.
V. Approval of the December 7, 2009 Examination Program Review Committee Minutes

Judy Johnson moved to approve the Examination Program Committee meeting minutes of December 7, 2009. Elise Froistad seconded. The board voted 9-0 to adopt the minutes, with one member (Patricia Lock-Dawson) abstaining.

VI. Chairperson's Report

a. Appointment of Interim Executive Officer

Ms. Lonner reported that in a closed session meeting held December 7, 2009, via a roll-call vote, the Board approved Kim Madsen as the Interim Executive Officer.

b. Possible Appointment of Executive Officer

Ms. Lonner announced that earlier in the day on January 23, 2010, the Board voted unanimously to select Kim Madsen as the Board's official Executive Officer.

Ms. Lonner then administered the oath of office to Ms. Madsen.

c. Upcoming Meeting Dates

The following dates were discussed as possible board meeting dates:

May 6-7, 2010 (location to be determined)
July 28-29, 2010 (Sacramento)
November 4-5, 2010 (location to be determined)

Ms. Lonner announced that committee meeting dates had not been set. A review of the committee structure is underway. Ms. Lonner indicated that, as the structure is fine-tuned, Board members could expect to be contacted for participation in the various groups.

Ms. Madsen clarified that the Board Meeting previously scheduled in April had been rescheduled to the May 6-7, 2010 dates discussed earlier.

VII. Executive Officer's Report

a. Budget Report

Ms. Madsen provided an update on the status of the Board's budget for the current fiscal year. She also presented a similar update for the current fiscal year Mental Health Services Act (MHSA) budget. She indicated that both budgets are expected to have an unexpended reserve at the end of the fiscal year.

Ms. Madsen indicated that on January 8, 2010, the Governor issued an executive order directing all state agencies to reduce the personnel services component of the budget by five (5) percent. She reported recently receiving instruction regarding how the reduction would be implemented. She reviewed with the Board the Expenditure Report pertaining to FY 09/10, and indicated which items reflected on the report are included when speaking about "personnel services." Ms. Madsen indicated that the
Board’s targeted reduction for the current budget year is approximately $29,000; she described the manner in which those savings are expected to be achieved. Ms. Madsen also spoke briefly about the restrictions that had been imposed by the Department of Finance on funds remaining available after the required reduction has been achieved. She explained that although a reserve in the budget is anticipated at the end of the fiscal year, none of those funds can be redirected to offset the expenses that must be cut from the personnel services line item.

In FY 10/11, a personnel services reduction of approximately $123,000 must be achieved. Ms. Madsen described the task as “difficult,” and offered as partial explanation that newly enacted legislation had resulted in the Board being assigned regulation of another profession, “Professional Counselor.” She reported plans to work with the Department of Consumer Affairs, professional associations, and the Senator who authored the legislation in an attempt to ensure as smooth an implementation of the new program as possible, despite the required budget cuts.

Ms. Madsen apprised the Board that approval had been received for staffing for the Licensed Professional Clinical Counselor (LPCC) program. Approval was also received for positions in both the Enforcement and Licensing programs.

Other pending changes to the 2010/11 budget include a reduction in funding for the MHSA program; Ms. Madsen described those changes. She also stated that the Governor’s Budget suggests the possibility that employee furloughs will cease. However, the fiscal impact to the state of returning to a five-day work week would be offset by a required increase in employee retirement contributions, as well as a five percent “across the board” cut to staff salaries. Ms. Madsen noted that while a return to “normal work hours” would allow more time to address an increasing workload, staff would still feel the impact financially. She emphasized that changes to employee retirement contributions or salary would have to be implemented via legislation and worked out.

b. Operations Report

Ms. Madsen reviewed the Operations Report, which reflects statistics for the last two years, as pertain to various aspects of the Board’s business processes. She commended Board staff on their efforts to address the workload in a timely manner during a period of reduced work hours. Ms. Madsen noted that the processing times reflected on the report have not changed significantly.

c. Personnel Update

Ms. Madsen spoke about various personnel changes that had occurred with Board staff, including promotions and staff reassignments.

d. Licensed Professional Clinical Counselor Program

Ms. Madsen indicated that, as noted previously, legislation (SB 788) enacted in October 2009 creates a new category of psychotherapist in California — Licensed Professional Clinical Counselor (LPCC). Regulation of LPCCs will be the responsibility of the Board of Behavioral Sciences. Ms. Madsen reported about meetings held with Board staff to discuss priorities and timelines pertaining to implementation of the new
program. Additionally, discussion has been held with the Office of Professional Examination Services regarding development of necessary examinations, including recruitment of Subject Matter Experts.

Ms. Madsen also noted that SB 788 requires the Board to conduct a comparison of LPCC practice to both the Marriage and Family Therapist (MFT) and Licensed Clinical Social Worker (LCSW) professions. The analysis is intended to determine if sufficient differences exist between the LPCC profession and each of the others to require licensed MFTs and LCSWs to complete an examination in order to become licensed as an LPCC. Upon determination by the Board that an outside vendor was needed to complete the required analysis, steps were taken to obtain bids and initiate the contract process. The contract was subsequently awarded to Applied Measurement Services, LLC, (AMS) with work on the analysis to begin immediately.

Pursuant to the requirements of SB 788, the Board will also conduct an audit of the national examination for LPCCs, to determine if use of that examination is a viable option for use in California. The audit will be performed by AMS as well.

Ms. Madsen closed her report on the LPCC program by indicating that plans had been made to recruit staff to fill positions authorized for the program, beginning in roughly mid-February. However, those plans have been impacted by directives resulting from statewide budgetary constraints, and the recruitment halted at this time.

e. MHSA Program Coordinator Report

Prior to the start of this report, an audience member asked for additional information regarding the School Liaison position referenced by Ms. Madsen during the Personnel Update portion of her report. Christy Berger, Mental Health Services Act (MHSA) Coordinator, clarified that the position involved working with the schools authorized to offer an educational program leading to licensure by the Board, and does not involve evaluation of school children or students.

With respect to the MHSA Program, Ms. Berger began by providing a brief background of the Mental Health Services Act. She spoke about how the MHSA brings changes to the paradigm of how services are delivered, and subscribes to principles such as recovery being possible for individuals suffering from severe mental illness. Ms. Berger indicated her role as MHSA Coordinator is to take the new vision brought by the MHSA and determine how it impacts the practice of Board licensees, and what changes might be necessary to the Board’s requirements for licensure as a result of the MHSA.

Ms. Berger provided a list of major activities related to the Mental Health Services Act that took place during 2009, or will be occurring in early 2010. She made particular note of the changes to the Marriage and Family Therapist educational requirements, slated to take effect in August 2012. Ms. Berger indicated she has been working with educators to provide training and technical assistance in implementing the new requirements. She also spoke briefly about other activities in which she has been involved.
Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT) referred to Ms. Berger’s involvement in the effort to help California LCSWs qualify for federal loan repayment programs. Ms. Riemersma indicated that California MFTs and LCSWs face the same dilemma, that due to the licensure examination not being a national test, neither group is currently eligible for federal programs designed to assist with loan repayment. She asked that the same efforts be put forward for MFTs as for LCSWs in this arena. Ms. Berger indicated she would follow up on Ms. Riemersma’s request.

VIII. Examination Program Review Committee Report Presentation by Dr. Tracy Montez Regarding the Examination Program Review Committee’s Progress

Elise Froistad, MFT, Board Vice-Chair, opened the report by providing background information about the Examination Program Review Committee (EPRC). She reported that the EPRC was established in February 2008, and, following delays due to budgetary issues began its work in December 2008. The committee was assigned to review the MFT and LCSW licensure examinations, both currently comprised of a multiple-choice exam and a clinical vignette (CV) exam, and the manner in which those tests are administered. When funding was subsequently received related to the Mental Health Services Act, the decision was made to also look at how the MHSA was impacting LCSW and MFT practice, and what changes, if any, might be necessary to ensure the exams are testing competencies related to the MHSA. She noted that Dr. Montez has provided education and training to the committee members regarding examination construction and development at each of several meetings during 2009. Ms. Froistad then deferred to Dr. Montez for information regarding the committee’s status and any recommendations that have come to the Board from the EPRC as a result of their work.

Dr. Montez reported that effective December 7, 2009, the EPRC concluded the committee meetings with a final training component addressing how the examinations are administered via computer-based testing. The group discussed the information available to candidates on the website, and reviewed the various standards regulating why tests are administered as they are and why it is important to provide information to candidates.

Dr. Montez then reported on the seven recommendations the EPRC had developed based on its studies and stakeholder feedback. She also spoke about documentation supporting those recommendations.

Board Member Judy Johnson commented about the recommendation (#5) concerning a survey of reference materials used by schools to assist with examination development efforts. Ms. Johnson based her comments on experience gained as an educator, private practitioner, and former subject matter expert for the Board. She indicated that there is a difference between reference materials used by schools and those used in the development of the examination. She encouraged the inclusion of reference materials used by subject matter experts in the survey recommended by the committee.

Renee Lonner noted that although it had previously been reported that the EPRC had concluded its meetings, there may be the need for additional meetings to work out the fine points pertaining to the committee’s recommendations. She gave as one example the issue of the recommended Law and Ethics Examination, and the most appropriate
time for that test to be administered. Dr. Montez noted the importance of continuing to have stakeholders and subject matter experts involved in any future EPRC meetings.

Janlee Wong, NASW, commented about several of the committee’s recommendations, including the proposed Law and Ethics examination, when it should be administered, and what repercussions might occur if a candidate does not pass that examination. He spoke about the differences between the MFT and LCSW curricula. Mr. Wong encouraged the Board to remain aware of and consider those dissimilarities when making decisions that impact the licensure process for both professions.

a. Discussion and Possible Action on Recommendation of the Examination Program Review Committee

1. Discussion and Possible Legislative Action on the Recommendations of the Examination Committee

Tracy Rhine, Legislation Analyst, referred Board Members to a memo she had prepared regarding implementation of the EPRC recommendations, specifically Registrant Law and Ethics. She commented that this was a starting point for where the Board might want to go with the committee’s recommendations. She also spoke in favor of continuing the EPRC to discuss in depth the issues surrounding implementation of the recommendations. Ms. Rhine reviewed the framework for the new examination process, and spoke about the consequences of structuring the exam process in the recommended manner. She spoke about the four populations of examination candidates that had been identified by Board staff as impacted by the recommended changes. Ms. Rhine reiterated that a very difficult task will be to determine how to implement the changes to be fair and equitable to all candidates, and not present a barrier to licensure, which is not the Board’s intention. She then opened the issue for discussion.

An audience member asked for clarification regarding two statements in Ms. Rhine’s report that appeared to be conflicting; specifically, one statement speaks about a candidate being required to pass the new law and ethics exam within the first year of registration, while another statement speaks about what will happen if the registrant cannot pass the examination by the second year after initial issuance of the registration.

Ms. Rhine clarified that according to the proposal, if a registrant did not pass the law and ethics examination in the first year of registration, he or she would not lose the registration, but would not be able to renew it or continue to gain hours of supervised experience. The candidate would maintain the registration as they tried to pass the test, but the registration would not be current, and could not be renewed until the examination is passed. Kim Madsen, Executive Officer, emphasized that the suggestions in Ms. Rhine’s memo were starting points or ideas that came to mind when staff from the Board and the Office of Professional Examination Services discussed the issue. Ms. Madsen noted that the process has been multi-layered, with one idea leading to two or three others. She welcomed the idea that the EPRC continue meeting to work through the related concerns.

The audience member then went on to express her concerns with the contents of the law and ethics examination, considering the MHSA and how the approach to treatment challenges the traditional ethics that MFTs function by at the present time. She spoke about the formidable challenge in developing a test that will take into consideration the
changes, and expressed concern that the new ethical standards have not yet been
developed.

Ms. Rhine commented that one of the ideas when starting to implement the new exam
is to have two different law and ethics examinations. One exam would be for new
registrants with the exam based more on education, while the other test would be for
individuals who are already practicing. She indicated that this was one of the
considerations when the committee was developing the recommendations.

Mary Riemersma, CAMFT, voiced the organization’s conceptual support for the
proposed law and ethics examination, but agreed that more work needs to be
completed on the issue. She expressed concern with the proposal as presented, and
cited several areas in which more information needs to be gathered. She encouraged
the Board to bear in mind the anxiety that can come with overly changing something to
which people are accustomed. She suggested implementation of the requirement for
newly registered interns, but allow those interns who are already registered to continue
as before unless the individual had to obtain another registration due to the expiration
of the initial one. In such situations, those individuals would then be held to the same
requirements as newly registered persons. She agreed with Ms. Loewy that the
proposal as presented contained conflicts. Ms. Riemersma specified certain areas of
concern, such as imposing a time frame during which the law and ethics exam must be
successfully completed or the registration is cancelled. She expressed support for the
concept of requiring completion of a course, but encouraged the Board to develop
specific requirements for the course including content, course length, and setting. She
committed CAMFT’s continued involvement in the committee’s work.

Ms. Madsen noted that many of the issues raised by Ms. Riemersma were similar to
the concerns Board staff had identified as needing to be resolved.

Geri Esposito, California Society for Clinical Social Work (CSCSW), voiced her
agreement with previously noted concerns that current social work curricula do not
uniformly provide the education in law and ethics that a recent graduate would need to
successfully complete a test of the type being proposed. She, too, encouraged the
Board to bear in mind the differences between the MFT and LCSW curricula when
developing examination requirements to encompass both professions.

Cathy Atkins, CAMFT, stated that in reviewing the proposal, many questions come to
mind. She asked about the appropriate forum for addressing those issues. Ms. Atkins
was encouraged to submit her concerns in writing to Ms. Rhine, for future discussion
by the EPRC.

An audience member (unidentified) asked about policing or censorship of social
workers who obtain a doctoral degree from an unaccredited, on-line educational
program. He made specific reference to court appointed mediators acting as a
supervised facilitator. Ms. Lonner noted that the required education level for board
licensees is a master’s degree; a doctoral degree is not required in order to obtain
licensure by the Board. The audience member asked about any difference between a
social worker and a supervised visitation facilitator. James Maynard, Legal Counsel,
responded that it seemed what the audience member was talking about was a
standard imposed by the court system, and not something that fell under the Board’s
purview. When the audience member asked about repercussions to a licensee for
falsification of their title, Mr. Maynard encouraged the gentleman to contact the Board
if he believed a licensee has falsified or misrepresented themselves professionally.
Following a brief exchange, Mr. Maynard spoke of the need to adhere to the announced agenda, in compliance with existing statute.

Another audience member spoke of his concerns regarding the proposed law and ethics examination. He noted that the Board’s current licensure examinations are based on an occupational analysis. He asked if, in terms of the proposed exam, a separate occupational analysis would be performed for MFTs and LCSWs. He noted that currently the exams for the two professions differ in percentage of emphasis on law and ethics, and asked how the proposed exam would be formulated to align itself with issues seen to be important in both professions. The audience member also noted that there had been discussion about whether the California examinations would in some way dovetail with the national examinations. He asked the Board’s intent in terms of moving to a national exam or continuing to administer a state constructed test.

Dr. Montez was asked to respond regarding a separate occupational analysis. She indicated that a full occupational analysis would not be performed. Rather, focus groups would be held and subject matter experts brought together to review the current test plans and make modifications as appropriate.

Dr. Montez also noted that, with respect to the issue of a national examination, the Board is currently looking into the use of the national examination for each profession. She stated that steps would need to be taken before California can begin use of the national examinations, and that progress is being made in these areas.

Elise Froistad, Board Vice-Chair, commented that the EPRC has established a working relationship with the AMFTRB (Association of Marriage and Family Therapist Regulatory Boards). The Board and the AMFTRB plan to collaborate on the next occupational analysis for the national exam. The Board hopes to engage in similar collaboration with respect to the next national occupational analysis pertaining to the social work profession. Ms. Madsen emphasized that the Board is still gathering information regarding this issue, and a formal decision has not been made.

Ms. Riemersma, CAMFT, added that AMFTRB is now looking at the possibility of adopting the education currently prescribed in California as a national model.

Ms. Lonner referred the various issues back to the EPRC for further review and consideration.

IX. 2010 Legislation

a. Discussion and Possible Action to Add a Retired License Status

Tracy Rhine, Legislation Analyst, provided background regarding the proposal to create a retired license status for Board licensees. She noted that, in 2007, the Board approved proposed language changing existing statute to allow licensees the option of maintaining a retired license. However, due to workload issues staff has to date been unable to introduce legislation necessary to implement those changes. Ms. Rhine indicated that the proposal approved by the Board in 2007 has been amended to reflect pertinent statutory changes that have occurred since 2007. She noted that the current proposal is nearly identical to the previously approved language. She reviewed the content of the amended proposal, and asked the Board to discuss those
changes, as necessary, and if acceptable, sponsor legislation to create a retired license status.

Mary Riemersma, CAMFT, began by making an unrelated request that, since the Board was working on changes to the law, a word other than “delinquent” could be used to describe an unrenewed or lapsed license. She then commented about the proposed language, and suggested alternate wording. She also asked for clarification and history regarding certain sections of the proposed statutory changes.

Discussion occurred regarding the use of the word “retired” by licensees who are no longer practicing, but who do not hold a “retired license.” Mr. Maynard noted that the Board does not have the authority to restrict use of the word “retired.” Ms. Rhine suggested deletion of the proposed language that could be construed as imposing such restrictions.

Susan Kelsey, CAMFT, asked if the proposed statute would include a requirement that a licensee practice for a period of time before requesting a retired license. She asked the difference between the proposed retired license and one that is inactive. Mr. Maynard explained that with a retired license, an individual cannot practice; individuals are legally mandated to have an active license in order to engage in the practice authorized by the license. Ms. Rhine indicated that there is nothing in the proposed statute that would require a licensee to practice before requesting a retired license.

Janlee Wong, NASW, also expressed uncertainty about the difference between a retired and an inactive license. Discussion ensued. Ms. Madsen explained that an individual holding an inactive license continues to renew that license and can reactivate it by completion of required continuing education, regardless of how long the license has been inactive. The proposed retired license would limit to three years the period during which the license could be made active; after three years the retired licensee would have to pass existing licensure requirements in order to restore the license to full active status.

Mr. Wong questioned the need for implementation of the new license status. Ms. Rhine responded that numerous requests have been received from licensees about obtaining a retired license, with an often noted concern being the negative connotation associated with the “delinquent” or “inactive” status currently assigned to the unused license. Ms. Madsen added that the availability of a retired license is not uncommon in many professions. Mr. Wong continued to express concern over the seeming difference in the manner in which individuals with an inactive license would be treated versus those with a retired license.

Sean O’Connor, Outreach Coordinator, commented that one consideration that needed to be addressed with respect to the proposed retired license status involves the new fingerprint requirement for long-time licensees. He suggested that the Board look at how the fingerprint requirement might impact individuals seeking a retired license.

Ms. Rhine revisited the previous suggestion to change the time limit during which a retired license can be reactivated, from three years to five. She asked if the Board wanted to discuss the issue at the present time. Discussion occurred, and touched on the need for continuing education (CE) when reactivating a license. Mr. O’Connor
provided clarification regarding the CE requirement, and explained that individuals are
not required to complete continuing education when renewing in inactive status; the
CE must be completed during a specified period of time prior to the return to active
status.

Geri Esposito, CSCSW, commented about extending the period of time to reactivate
the retired license. She noted numerous contacts from licensees announcing their
retirement. Ms. Esposito stated she encourages those individuals to renew the license
in inactive status and not let the license go delinquent and ultimately cancel, because
circumstances change and the license might be needed in the future.

Mr. Maynard outlined for the Board Members what options are available regarding
action on the issue of the retired license status.

**Patricia Lock-Dawson moved to accept the legislative proposal, with
amendments. The amendments would 1) change, from three to five years, the
period in which a retired licensee can reactivate the license without having to
retake the licensure examination; and 2) remove the second sentence from
subdivision (b) of the statutory proposals pertaining to sections 4984.41,
4989.45, 4997.1, and 4999.113 of the Business and Professions Code. Victor
Perez seconded. The Board voted unanimously (10-0) to pass the motion.**

**b. Sunset Legislation**

Tracy Rhine, Legislation Analyst, reported that there currently are two sections of the
Business and Professions (B&P) Code pertaining to the Board which will be repealed
effective January 1, 2011, unless extended through legislation. B&P Code Sections
4990 and 4990.04, in summary, speak to the composition and function of the Board,
and the appointment and authority of the Executive Officer, respectively. Ms. Rhine
stated that what is known as the Sunset Review process historically has occurred
every few years. It is intended to assess various facets of a board within the
Department of Consumer Affairs, to determine if that regulatory agency is functioning
effectively and should continue to exist. She noted that in recent years the reviews
have not been conducted due to a lack of funding for the legislative office charged with
performing the assessments.

Currently, the Board is scheduled to “sunset” January 1, 2011. Ms. Rhine indicated
that in order for the Board to continue functioning, legislation must be passed in 2010
to ensure its ongoing operation. Historically, such legislation is sponsored by the
Senate Business and Professions Committee, and includes several regulatory
agencies which, in addition to the Board, are under review. Ms. Rhine reported having
spoken with staff of the Senate B&P Committee about the introduction of such
legislation. Although she did not receive a specific response, Ms. Rhine indicated she
was told not to include the sunset review issue in other legislation, such as the Board’s
Omnibus Bill. At the present time, the Board has no plans to introduce legislation
specific to the sunset review procedure. Ms. Rhine voiced the opinion that the B&P
Committee may be in the process of revamping the existing process, and stated she
had seen at least one piece of legislation aimed at that goal.

Ms. Rhine closed by noting that her report was intended to bring the Board Members
up to date on the subject of Sunset Review. She stated that although there are no
plans for the Board to introduce legislation in this area, it is anticipated that changes to the sunset process are underway and will be introduced. Ms. Rhine committed to keeping the Board Members apprised of any changes that occur.

The Board adjourned for a lunch break at 12:30 p.m., and reconvened at approximately 1:00 p.m.

c. Omnibus Legislation

Ms. Rhine reported that, on an annual basis, the Board sponsors either its own Omnibus legislation, or a piece of a larger Omnibus Bill. The purpose of the bill is generally to clean-up existing statute and maintain the code specific to the Board. Ms. Rhine indicated that the proposed omnibus legislation currently before the Board includes a significant number of amendments required as a result of the passage Senate Bill 788, legislation establishing the licensure and regulation of Licensed Professional Clinical Counselors (LPCC) by the Board. Ms. Rhine stated that the proposed legislation is broken down into four main categories; she named each section and indicated she would review the contents of the proposed bill, category by category. She noted that a portion of the material to be reviewed is very technical, and encouraged meeting participants to ask questions if clarification is required.

TECHNICAL AND NONSUBSTANTIVE CHANGES

Ms. Rhine reviewed each of the proposed changes. She noted that specific language pertaining to all recommended changes was attached to the report provided to the Board Members.

Harry Douglas, Public Member, asked about the proposed change to B&P Code Section 4980.40.5. The suggested change resulted from a revision to the name of one of the accrediting agencies accepted by the Board. Mr. Douglas questioned the absence of the Western Association of Schools and Colleges (WASC) from the list of suitable agencies. Ms. Rhine noted that reference is made to WASC as an acceptable accrediting agency in a different, related section of the B&P Code. She expressed the understanding that the agencies currently listed in B&P Section 4980.40.5 are accrediting agencies throughout the United States that are on par with WASC. Mr. Douglas encouraged a further review of B&P Section 4980.40.5 to determine if WASC should also be added to the list of accrediting agencies.

TECHNICAL CLEAN-UP TO LPCC LICENSING LAW

Ms. Rhine noted that the changes made to the unprofessional conduct statute for Licensed Professional Clinical Counselors (LPCCs) had previously been made to similar code sections pertaining to the other professions (MFT; LCSW; LEP) regulated by the Board. She stated that the proposed amendments to the LPCC unprofessional conduct statute would make those sections of the LPCC law consistent with comparable sections of the MFT, LCSW and LEP laws. She then reviewed the changes to the unprofessional conduct statute.

Next, Ms. Rhine reviewed the code sections pertaining to Professional Experience of LPCC Interns. She noted that in current MFT, LCSW, and LEP statute, there is no limitation as to the number of registrants who may be supervised by one qualified
licensee, except in a private practice setting. The LPCC statute does not make any exception about setting, but puts a limitation of two (2) on the number of registrants who can be supervised by one supervisor. The proposed change would remove that limitation. The rationale for the amendment is that, in the early stages of the new licensing program, the number of individuals seeking registration will far exceed the number of eligible supervisors, for at least two years. Current MFT law requires an individual to be licensed for at least two years in order to be qualified to supervise. The assumption is that the same standards will be applied to LPCCs.

Mary Riemersma, California Association of Marriage and Family Therapists (CAMFT), asked if the Board intended to place a limitation on LPCC registrants in private practice settings. Ms. Rhine responded that the issue was a policy decision and would need to be brought before the Board for consideration. She expressed the intent to include the issue on the next Board Meeting agenda.

The next issue pertained to gaining hours of experience under the supervision of a spouse or relative by blood or marriage. Again, existing MFT and LCSW statute prohibits supervision of a registrant by a spouse or relative of that registrant. The recommended change would make the LPCC law consistent with MFT and LCSW statute.

Mary Riemersma, CAMFT, pointed out that existing statute pertaining to MFT and LCSW licensure also prohibits a registrant from gaining supervision from an individual with whom the registrant currently has, or in the past has had, a personal or business relationship. Ms. Rhine expressed the belief that the provision referenced by Ms. Riemersma appears in a separate section of the LPCC law. However, she committed to research the matter further and recommend changes necessary to ensure consistency with MFT and LCSW statute.

Ms. Rhine indicated the next amendment served to clarify existing statute regarding direct supervisor contact for registrants. Current law requires direct supervisor contact for every ten (10) hours of client contact in each setting. MFT and LCSW laws require one hour of direct supervisor contact for every week in which there more than 10 hours of face-to-face psychotherapy is performed in each setting. The suggested change to the LPCC law would make it consistent with MFT and LCSW statutes.

Mary Riemersma, CAMFT, expressed confusion with the proposed amendment, stating it sounded as though the registrant would require supervision only if more than ten hours of psychotherapy was performed, but not until that point. Ms. Rhine reaffirmed that the intent was to make this provision consistent with the other Board licensing laws. Discussion was held among meeting participants, resulting in rewording of the proposed amendment to provide clarification and consistency.

Ms. Rhine reviewed the balance of the proposed amendments pertaining to Professional Experience of LPCC Interns. No comment or request for clarification was made by meeting participants.

The last of the technical clean-up to the LPCC law involved Out-of-State Applicants. Ms. Rhine indicated that the LPCC law was written to include a section for out-of-state applicants who apply for examination eligibility between January 1, 2011 and December 31, 2013. She noted there are also sections applicable to candidates who
apply January 1, 2014 and after. Ms. Rhine stated that to make the LPCC law consistent with the MFT statute specifically, there was a need for two sections pertaining to out-of-state applicants who apply between January 1, 2011 and December 31, 2013. Current law speaks about candidates who have held licensure as an LPCC in another state for at least two years. The proposed amendment would add a section specifically applicable to candidates who have been licensed in another state for less than two years.

Ms. Rhine completed her review of the proposed amendments pertaining to out-of-state applicants. She then raised an issue not included in her report. Specifically, Ms. Rhine reported that current MFT law does not require a candidate who is fully licensed in another state for at least two years to complete 250 hours of supervised experience within California. The requirement is only applicable to out-of-state candidates with less than two years of licensure in another state. Existing LPCC law requires the 250 hours of all out-of-state candidates. In order to make the LPCC requirements consistent with MFT statute, Ms. Rhine proposed amending the LPCC statute to require the hours of supervised experience only of candidates whose out-of-state licensure has been for less than two years.

**ADDITION OF LPCCs TO MFT AND LCSW LICENSING LAW**

Ms. Rhine reported that current MFT and LCSW statutes allow the Board to deny an application or take disciplinary action against a licensee or registrant based on disciplinary action taken against a separate Board issued license or registration. The proposed amendment would update the applicable sections of MFT and LCSW laws to add professional clinical counselor to the list of professions under the Board’s jurisdiction.

**ADDITION OF LPCCs TO GENERAL BOARD STATUTES**

Ms. Rhine reported there are sections of statute that are applicable to all licensees under the jurisdiction of the Board. With the implementation of the LPCC program, these sections must be amended accordingly. The proposal would update the necessary sections to include reference to the practice of professional clinical counseling.

Ms. Rhine next reviewed and clarified the suggested changes made by the Board with respect to the proposals she had presented in her report.

Ms. Lonner invited public comment regarding the proposed legislative and regulatory changes.

Janlee Wong, NASW, spoke about the use of the term ACSW. He stated that in the 1960s the NASW created a credential called the ACSW, meaning “Academy of Certified Social Workers.” He further indicated that the Board-issued registration called the Associate Clinical Social Worker was sometimes also referred to as ACSW, which led to confusion for some. Mr. Wong proposed possibly including language in the Omnibus Bill to specify that the acronym ASW would be used when referring to the Associate Clinical Social Worker.
Ms. Rhine asked if Mr. Wong was proposing a change to the Board’s Advertising Guidelines. A brief discussion ensued. Mr. Wong clarified that his suggestion was made in an attempt to resolve confusion to the public as well as within the profession with respect to the meaning of the term ACSW. Ms. Rhine indicated the need to research the matter further before taking any action, and that the suggestion could then be brought before the Policy and Advocacy Committee.

James Maynard, Legal Counsel, voiced concern about a proposed amendment to B&P Code Section 4999.90(c) relating to the use of controlled substances and dangerous drugs. Discussion occurred regarding the intent behind the proposed change, and the impact of that change on the Board’s disciplinary authority. Mr. Maynard recommended not making the proposed change, and leaving the section un-amended.

Donna DiGiorgio moved to pass the Omnibus Legislation, as amended. Staff was instructed to research and make the suggested changes to the proposed legislation, and return the matter to the Board for further review and discussion. An unidentified speaker seconded. The Board voted 10-0 to pass the motion.

X. 2010 Rulemaking

a. Discussion and Possible Action Regarding Title 16, CCR Sections 1807, 1807.2, 1810, 1819.1, 1887 to 1887.14, Continuing Education Requirements: Licensed Educational Psychologists, Exceptions From and Providers

Renee Lonner, Board Chair, announced that Board Member Judy Johnson, LEP, had left the meeting. She noted Ms. Johnson’s support of the next issue pertaining to continuing education (CE) for Licensed Educational Psychologists.

Ms. Rhine reported that continuing education for LEPs has been a topic of discussion for the Board on several occasions. She provided a brief history of the statute requiring CE as a condition of LEP license renewal. She indicated that implementation of this law requires adoption of regulations. Ms. Rhine stated that, per prior Board approval, a proposal had been filed with the Office of Administrative Law (OAL) providing for a phased-in implementation of the CE requirement. After describing how the “phase in” process would work, Ms. Rhine listed several courses that would be required CE for LEPs. Those courses are currently required CE for MFTs and LCSWs.

As part of the regulatory process, public comment was received by the Board regarding the proposed regulations, including three negative comments. Ms. Rhine outlined these three responses. The first involved the contention that the mandatory coursework in large part is not relevant to the practice of educational psychology, despite the fact that the coursework is required of all other Board licensees (MFT and LCSW practice). The next argument presented through public comment was that although the Board would require only 18 hours of CE for individuals renewing in 2011, a total of 63 hours would be required to complete the mandatory coursework listed in the proposal. The third comment was that the CE coursework was more than the five dollars ($5) per unit stated in the Board’s proposal. Ms. Rhine explained that in the proposal the cost was estimated at $15 per hour for each of the courses. She described the process followed in determining the average cost of five dollars per unit.
Following the public comment period, staff reviewed the comments received and developed options for the Board to consider in addressing public concern regarding the proposal. Ms. Rhine reviewed those options with the Board. In summary, the options were:

1. Delete some of the specific courses required. Possibly revisit the currently mandated coursework to determine if the requirements should apply to all Board licensees regardless of differences in scope of practice;

2. Delete all specific coursework required, but keep the blanket requirement regarding the number of hours that must be completed;

3. Maintain coursework requirements but change implementation timeline to allow coursework to be completed over more than one renewal cycle;

4. Make no changes to the regulatory package.

Ms. Rhine referred the Board to language she had developed reflecting an updated list of mandatory CE courses for LEPs, including Law and Ethics; Child Abuse Assessment; and Alcoholism and Other Substance Dependency.

Discussion occurred about the importance of CE in ensuring all licensees have the same competencies. Ms. Rhine noted that LEP Board Member Judy Johnson felt strongly about the importance of keeping the profession on par with other related professions. Ms. Rhine stated a significant amount of discussion had occurred in determining the areas that were most important for all LEPs to be knowledgeable of in order to be safe and competent practitioners. Discussion continued among meeting participants.

Janlee Wong, NASW, provided a historical perspective on the need for the mandated coursework for Board licensees. He discussed issues such as Human Sexuality, and the importance for a licensee whose scope of practice includes providing psychological counseling to have specified knowledge in this and other related areas. He encouraged the Board to consider leaving the list of mandatory courses for LEPs the same as those courses required for completion by MFTs and LCSWs.

Jim Russell, California Association of School Psychologists (CASP), stated that CASP has provided testimony and written a letter regarding this issue. He noted that school psychologists and licensed educational psychologists do not disagree with the need for knowledge in certain areas such as alcohol and substance abuse; however, he noted that such treatment is not part of the daily practice for an LEP. Mr. Russell expressed concern that requiring an LEP to complete coursework that includes treatment of a particular disability implies that the licensee’s scope of practice in fact allows the individual to provide that treatment. He stated the position that an overview course intended to provide background knowledge about a disability such as alcoholism would be sufficient for an LEP. In terms of professional development, however, it would be better for the licensee to complete coursework that is applicable to the scope of practice for their license.

Discussion ensued regarding the LEP scope of practice. Ms. Lonner suggested that further dialogue regarding the agenda item be deferred until the next meeting to allow opportunity for additional research into the issues raised by Mr. Russell. She expressed concern that the subject required more time and attention than would be available at the present meeting. She apologized for any inconvenience the tabling of
the item caused to meeting participants, and committed to revisiting the issue at the next Board Meeting.

XI. Review and Discussion of the Board’s Enforcement Program

a. Update on the Substance Abuse Coordination Committee’s Uniform Standards

Ms. Lonner announced that Kimberly Kirchmeyer, Deputy Director of Board/Bureau Relations, Department of Consumer Affairs, would present information regarding the work of the Substance Abuse Coordination Committee. Ms. Kirchmeyer provided background information regarding the establishment of the committee, pursuant to passage of Senate Bill 1441 (Ridley-Thomas). She noted that the monitoring of substance abusing licensees for all healing arts boards has been a focus of discussion for approximately two years. The committee was established, consisting of executive officers from the allied health boards; the Director, Department of Consumer Affairs; and a representative from the Department of Alcohol and Drug Programs. The group met with set criteria to develop guidelines for compliance with each of sixteen (16) requirements outlined in SB 1441. Ms. Kirchmeyer stated that her attendance at the Board Meeting was to solicit the Board Members’ support for the sixteen guidelines. She noted that each standard has undergone legal review. As a result, the determination has been made that some of the items will require legislation in order to be implemented. Ms. Kirchmeyer indicated that the necessary legislative language is being developed and will be included in a bill. She asked the Board’s support for the guidelines/standards that will come up in legislation. Further, she asked that the Board at its next meeting include on the agenda regulatory proposals necessary for implementation of the standards that require such action. Last, she asked the Board to take steps to have the executive officer implement as soon as possible, those standards that can be implemented as policy.

James Maynard, Legal Counsel, reported meeting with Ms. Madsen to review the committee’s recommendations and determine how they would dovetail with the Board’s laws and regulations. Several of the recommendations were found not to be applicable to the Board in that they related to a diversion program, which the Board does not have. It was determined that four of the items could be implemented via changes to the Board’s Disciplinary Guidelines. The remaining standards were found to require legislation for implementation.

Mary Riemersma, CAMFT, expressed the association’s concerns regarding the proposed guidelines. She began by affirming CAMFT’s position that individuals who inflict harm to the public should be swiftly and appropriately sanctioned. She expressed CAMFT’s position, however, that it is impossible to impose standards in the same manner on boards that have a diversion program versus boards that do not. She expressed concern that in reviewing the proposed guidelines, it is not clear who they apply to until you reach the end of the document. She encouraged the committee to clearly define initially who is impacted by the standards. Additionally, Ms. Riemersma expressed that some of the proposed requirements are so strong as to result in financial hardship to the licensee who attempts to comply. She stated CAMFT’s position that historically the Board has done well with respect to its disciplinary cases, and that it is important for the Board to maintain the discretion to make decisions based on the facts and circumstances particular to each case. She urged the Board to be cautious in how it adopts the committee’s recommendations.
b. Department of Consumer Affairs Enforcement Model

Ms. Kirchmeyer indicated she was speaking on behalf of the Brian Stiger, Director, Department of Consumer Affairs (Department), with respect to the Consumer Protection Enforcement Initiative. She provided a brief history of the genesis of the initiative, citing systemic problems experienced by various healing arts boards in the timely investigation and prosecution of consumer complaints. In response to the unveiling of these difficulties, representatives within the Department met and developed the Consumer Protection Enforcement Initiative. The purpose of the proposal is to improve the enforcement processes, reducing the time to prosecute licensees found to have violated the law. At the onset of the project, the average enforcement completion timeline was thirty-six (36) months; the goal of the Department is to reduce that to between twelve (12) and eighteen (18) months.

Ms. Kirchmeyer noted that the initiative is designed to address three specific areas: Administrative Improvements; Staffing and IT Resources; and Legislative Changes. She reported that representatives from the healing arts boards have met with the Department in a coordinated effort to identify best enforcement practices. The anticipation is that based on the best practices, an Enforcement Academy can be developed for enforcement personnel from each board to attend and be trained in the entire process.

Another step taken by the Department was to hire a Deputy Director of Enforcement and Compliance to review and monitor the boards’ performance and compliance with the applicable requirements. Ms. Kirchmeyer also reported the establishment of performance agreements with certain state agencies critically involved in the enforcement process, including the Office of the Attorney General and the Office of Administrative Hearings.

Ms. Kirchmeyer touched on other areas applicable to the success of the Consumer Protection Enforcement Initiative, including planned improvements to the licensing and enforcement database systems. She also spoke about legislative changes being proposed that will contribute to the success of the initiative, improving such areas as the length of time required to suspend a license; better access to medical records; and delegating to the executive officer approval of default decisions and stipulated settlements. Ms. Kirchmeyer indicated that no legislative language is yet ready for the Board’s review, but committed to provide that information as soon as it is available. She again asked for the Board’s support for the proposed legislation and for the proposed enforcement model. She closed by thanking the Board and staff for its significant contribution to this process.

Renee Lonner, Board Chair, asked how the reduced staff and work hours will impact the efforts to improve the enforcement process. Ms. Kirchmeyer indicated that those issues had been taken into consideration in the development of the initiative. It is recognized that the decrease in work hours and staff could present hurdles in reducing the enforcement timelines. Ms. Madsen noted that the Board has begun a thorough review of its enforcement processes, many of which have been in place for a long period of time. She stated that at least two areas have already been identified in which time savings can be realized simply by eliminating steps in the process that are no longer necessary. Ms. Madsen expressed the expectation that completion of the
review will serve to fine tune and improve timelines associated with the enforcement process.

c. Retroactive Fingerprint Update

Sean O’Connor, Outreach Coordinator, provided a background of the fingerprint project for the new Board Members. He explained that the Board currently requires background checks and receives subsequent arrest notifications for new applicants; however, a group of individuals was identified who were licensed by the Board prior to the implementation of the fingerprint requirement. These 34,685 individuals are now being required to submit fingerprints. To date, approximately 7,800 have been notified of the need to comply with the requirement. A majority of those licensees and registrants has now been fingerprinted. Mr. O’Connor reviewed the processes followed by Board staff in apprising individuals of the need to be fingerprinted, and in following-up with those who have not complied within a specified time frame. In closing, he noted that in December 2009, Board staff in conjunction with the Department of Consumer Affairs Office of Information Services developed an automated system for receiving fingerprint information from the Department of Justice. As a result, a significant reduction has been realized in the need for manual key data entry of information received through the fingerprint process.

Janlee Wong, NASW, asked Mr. O’Connor to describe the process that is followed once an individual’s fingerprint information is received by the Board. Mr. O’Connor responded that once fingerprints are submitted, the Board receives an initial criminal background check, and the individual’s name is stored with the Department of Justice. If that individual is subsequently convicted of a crime, the Board is notified immediately, sometimes within two to three days of the event. He described the program as fundamental to consumer protection. The question was raised about whether the notification was received after the individual is convicted or accused. Ms. Madsen explained that two types of notification might be received. The Board can receive an arrest notification immediately after the arrest, and/or an arrest and conviction notice together. The Board might receive only a conviction notice if the incident is old. Either notification would result in some type of action by the Board.

Ms. Lonner commended Mr. O’Connor and other Board staff for their efforts with the fingerprint project. She spoke briefly about her experience in fulfilling the requirement. Ms. Madsen joined Ms. Lonner in giving kudos to staff for their work in this area, pointing out that the Board was one of the first to implement the retroactive fingerprinting. Staff work to develop and streamline the process resulted in the Board being one of the first to receive the automated system described earlier.

d. Presentation by Deputy Attorney General Christina Thomas Regarding Penal Code Section 23

Christina Thomas, Deputy Attorney General (DAG), briefly explained her role as Attorney General (AG) liaison to the Board. She provides litigation for the Board, and works with other DAGs statewide regarding cases against Board licensees and registrants.

Ms. Thomas introduced the Board to Penal Code Section 23. This provision allows for immediate action against licensees determined to be a public threat. She stated the
statute allows the Board to appear in any criminal proceedings against a Board licensee and provide information and assistance as necessary to promote consumer protection, if the crime charged is substantially related to the qualifications, functions, or duties of the licensee. Ms. Thomas also referred the Board to B&P Code Section 320, which provides administrative authority for the Board to take action pursuant to PC 23. She then offered pros and cons to use of the statute. Ms. Thomas then provided the Board with information pertaining to a case in which the provisions of PC 23 were used successfully.

Ms. Thomas also spoke about an Interim Suspension Order (ISO), which is a tool that can only be used when there is no criminal case. It is a device that allows the Board to petition for an order in the same manner as when using PC 23, but only through use of a declaration. She noted that this tool is helpful when working with witnesses who are hesitant, afraid, or want to remain anonymous. Ms. Thomas indicated there are stringent requirements associated with obtaining an ISO that keep it from being a favored tool in the disciplinary process.

Janlee Wong, NASW, asked for clarification regarding when the Board might present information pursuant to PC 23.

Mary Riemersma, CAMFT, expressed the association’s concern that the Board’s attempts to take swift action against a licensee or registrant do not result in a violation of due process. Ms. Thomas cited applicable federal case law, and committed to forward a copy of the law to Ms. Riemersma.

XII. Review and Possible Action of Strategic Plan

This agenda item was tabled for discussion at a future Board Meeting.

XIII. Discussion and Possible Action Regarding Board Registrants Paying for Supervision by a Licensee

James Maynard, Legal Counsel, reported that this issue had been discussed at a previous meeting. The Board received a letter from a licensee asking about the appropriateness of registrants paying for supervision by a licensee. He referred to existing law that makes it illegal for an employer to require an employee to pay the employer any money. Mr. Maynard reported that the Labor Board had been contacted and had agreed with the Board’s position that imposing such a requirement on a registrant/employee is not a legal labor practice. He noted that the Board of Behavioral Sciences does not have the authority to tell a supervisor/employer they cannot require payment for the supervision but the Labor Board does hold that authority. Mr. Maynard recommended lobbying of the legislature and/or the Department of Labor Standards Enforcement to effect change in this area. Ms. Madsen stated that in discussing the matter with the Department of Labor Standards, she was informed that individuals with concerns related to this practice could submit those concerns in writing and an opinion would be rendered in response. Ms. Madsen then provided addresses where regular mail and e-mail contact could be made with the Department.

Mr. Maynard provided clarification about situations in which it would be appropriate to pay for supervision. He referred to situations in which the registrant is serving as a volunteer. Discussion ensued among meeting participants.
Mary Riemersma, CAMFT, requested clarification on certain aspects of the issue, and expressed concern with the impact of the labor board’s findings on Board licensees and registrants attempting to gain hours of experience required for licensure. Mr. Maynard reiterated that the focus when talking about paying for supervision needs to be on any employer/employee relationship. He again noted the need for legislation to revise requirements pertaining to supervision. Discussion continued among meeting participants. The Board was encouraged to continue studying and addressing the issue thoroughly.

a. Representative from the Department of Labor Standards Enforcement

No representative from the Department of Labor Standards Enforcement attended or provided input at the meeting.

XIV. Public Comment for Items Not on the Agenda

Gerry Grossman stated that he previously raised concerns regarding mandatory reporting responsibilities in cases of consensual sex acts between minors. He spoke specifically about Penal Code Section 11165.1, which names the types of acts the knowledge of which constitutes a mandatory reporting responsibility for a therapist. Mr. Grossman reported a concern among clinicians about the seeming discrepancy between the sex acts named in the statute and others not considered reportable but which also involve minors. He noted there is currently proposed legislation on the floor pertaining to this issue. Mr. Grossman asked to make a presentation at the next board meeting to provide information to the Board and garner support for the bill.

XV. Suggestions for Future Agenda Items

Consensual Sex Involving Minors – Mandatory Reporting Requirements Pursuant to Penal Code Section 11165.1
BOARD MEETING MINUTES - DRAFT
February 16, 2010

The Board of Behavioral Sciences met via telephone on February 16, 2010 at the following locations:

Department of Consumer Affairs
2420 Del Paso Road
1st Floor, Room 109 A & B
Sacramento, CA 95834

Department of Public Social Services
4060 County Circle Drive
Riverside, CA 92503

1151 Dove Street, #170
Newport Beach, CA 92660

5506 Ranchito Avenue
Sherman Oaks, CA 91401

6405 S. Halm Avenue
Los Angeles, CA 90056

415 Karla Court
Novato, CA 94949

10800 E. Benavon Street
Whittier, CA 90606

925 Harbor Plaza
Long Beach, CA 90802

30622 Via Pared
Thousand Palms, CA 92276

Members Present
Renee Lonner, Chair, LCSW Member
Samara Ashley, Public Member
Gordonna (Donna) DiGiorgio, Public Member
Harry Douglas, Public Member
Mona Foster, Public Member
Judy Johnson, LEP Member
Patricia Lock-Dawson, Public Member
Michael Webb, MFT Member
Christina Wietlisbach, Public Member

Members Absent
Elise Froistad, Vice Chair, MFT Member
Victor Perez, Public Member

Staff Present
Kim Madsen, Interim Executive Officer
James Maynard, Legal Counsel
Marsha Gove, Examination Analyst
FULL BOARD CLOSED SESSION

I. Call to Order and Establishment of a Quorum
Renee Lonner, Board Chair, called the closed session meeting to order at 8:38 a.m. Marsha Gove called roll, and a quorum was established.

II. Pursuant to Government Code section 11126(c)(3), the Board Will Meet in Closed Session to Deliberate and Take Action on Disciplinary Matters
The Board discussed and took action on disciplinary matters.

III. Pursuant to Government Code Section 11126(a)(1), the Board Will Meet in Closed Session to Determine the New Executive Officer Salary Level
The Board discussed and took action on the Executive Officer salary.

The full board closed session ended at 9:53 a.m.

FULL BOARD OPEN SESSION

IV. Establish Board Committees and Board Member Appointments
The full board open session began at 9:53 a.m.

Renee Lonner introduced and welcomed new board members: Michael Webb, Samara Ashley, Christine Wietlisbach, Mona Foster, and Patricia Lock-Dawson.

Ms. Lonner announced the Policy and Advocacy Committee and its appointments. The Chair of this committee is Donna DiGiorgio. Committee members include: Renee Lonner, Michael Webb, and Samara Ashley.

Ms. Lonner announced the Compliance and Enforcement Committee and its appointments. This new committee will provide oversight of the enforcement process and help integrate the new substance abuse standards of Senate Bill 1441. The Chair of this committee is Patricia Lock-Dawson. Committee members include: Victor Perez, Harry Douglas.

Ms. Lonner announced that the Examination Program Review Committee has been renamed to the Licensing and Exam Committee because its scope has been enlarged. This committee will also address the new LPCC program license. The Chair of this committee is Elise Froistad. Committee members include: Christine Wietlisbach, Mona Foster.

V. Public Comment for Items Not on the Agenda
No public comments were received.

VI. Suggestions for Future Agenda Items
No suggestions were received.

The meeting adjourned at 9:59 a.m.
2010 BOARD MEETINGS

July 28-29, 2010  Sacramento, CA
November 4-5, 2010  Sacramento, CA

2010 COMMITTEE MEETINGS

POLICY AND ADVOCACY COMMITTEE

June 7, 2010  Sacramento, CA
October 12, 2010  Sacramento, CA

LICENSING AND EXAM COMMITTEE

June 14, 2010  Sacramento, CA
September 13, 2010  Sacramento, CA

COMPLIANCE AND ENFORCEMENT COMMITTEE

June 25, 2010  Sacramento, CA
September 24, 2010  Sacramento, CA
The April 2010 Summary Analysis released by the State Controller’s Office indicates the State’s General Fund revenues improved in March 2010. Although sales tax revenues were lower than anticipated, corporate and personal tax revenues were higher than expected. Overall General Fund revenues were 5.9% higher than expected. Yet, in comparison to last year’s revenue collections, personal income and corporate taxes are lower.

The recent numbers are encouraging and reflect that the economy is moving towards recovery, but continues to be slow. This suggests that in the upcoming fiscal years, California will continue to struggle with budget issues. Although the Board is self funded, solely supported by the fees of its licensees and applicants, we will continue to feel the impact of the statewide budget issues.

The Board's expenditure report projects that we will have a year-end balance of approximately $209,290 in FY 2009/10. The Mental Health Services Act (MHSA) expenditure report projects a year-end balance of approximately $3,020. Please see the enclosed expenditure report for more detail.

Additionally, our current fund condition report reflects 6.4 months in reserve and reflects $9 million in outstanding general fund loans.

On June 8, 2009, the Governor issued Executive Order S-09-09 requiring state departments, regardless of funding source, to submit a plan to their Agency Secretary that provides for a reduction of the amount of the department’s appropriation to be encumbered by new contracts, extended contracts, or purchases from statewide master contracts by 15% in the 2009/10 fiscal year. The Board’s plan proposed a reversion of $219,000 from our Operating Expense and Equipment (OE&E) budget line, which was approved.

On March 4, 2010, the Department of Consumer Affairs (DCA) met with the Executive Officers and Bureau Chiefs to discuss Governor Schwarzenegger’s Job Creation Program. Since much of the licensing activity within DCA allows individuals issued a license or registration to enter the workforce, DCA is well suited to assist in this program. DCA directed Boards and Bureaus that have a licensing backlog to utilize the necessary resources to reduce the backlog fifty percent by June 30, 2010.

The Board is permitted to allow staff to work extra hours during the week, furlough days, and weekends as well as hire temporary help to achieve this goal. Further, the Board has been authorized to utilize its OE&E budget line savings ($219,000) to compensate staff working the extra hours. Staff working on furlough Fridays may only receive time for compensation.

At the time of this direction, the Board identified a backlog in processing Intern Marriage and Family Therapist registrations (580 applications). The Board’s goal is 290 applications. Accordingly, Board staff began working extra hours to reduce the application backlog. To date, licensing backlog stands at 285 applications, which includes 84 applications (MFT) older than 30 days. Compensating staff for the time worked will not exceed our $219,000 OE&E savings.

Throughout the fiscal year the Board was encouraged to evaluate all expenditures and refrain from expenditures that were non-essential to the Board’s operations. Expenditures relating to travel, attendance at association conferences, outreach events, and equipment purchases were impacted.

The Board’s 2010/2011 budget will increase by over $2 million dollars, from $6,500,001 to $8,596,000. The increase is a result of the new licensing program, Licensed Professional Clinical Counselors, and additional enforcement staff. The Board’s Mental Health Services Act (MHSA) funding will decrease to $91,000 from $306,000. This figure reflects the loss of the $200,000 one-time funding from the Department of Mental Health (DMH) as well as reductions to DMH’s budget.

The Board is subject to Executive Order S-01-10 issued on January 8, 2010, which directs state agencies to achieve a five percent savings in its personal services expenditures in fiscal year 2010/11. To achieve this reduction, the Board is eliminating all paid overtime, will recruit and hire LPPC staff in a staggered manner, and delay recruitment for vacant positions. The Board anticipates the continued evaluation of all expenditures throughout 2010/11. However, expenditures necessary to implement the LPCC program are not expected to be impacted.

Furloughs are expected to end on June 30, 2010, and state employees will return to a 40-hour work week.
Many unanswered questions regarding state employee compensation remain. The Governor has proposed changing state employee’s compensation in order to achieve ongoing cost savings to the General Fund. This issue, the ongoing budget deficit, and proposed program cuts provide the backdrop for this summer’s upcoming budget negotiations.

Budget negotiations for 2010/11 are expected to be difficult and prolonged. As in previous years, it is doubtful that a budget will be approved by the July 1, 2010. Without an approved budget, the Board is prohibited from adversely affected by a potential lengthy budget negotiation process.

The Board is preparing to ensure that core functions are not spending any of its $8,596,000 budget authority. This includes purchasing basic office supplies, reimbursing for travel, as well as paying for any services. The Board is preparing to ensure that core functions are not adversely affected by a potential lengthy budget negotiation process.

**Spending Authority**

The Board’s budget consists of both Non-Discretionary and Discretionary funds. Of the board’s budget, approximately 71% of its expenditures are non-discretionary and 29% discretionary.

Non-discretionary funds make up what is known as Personal Services, such as:
- Salary and wages
- Staff benefits
- Departmental billing
- Interagency services (OER Inter-Agency Agreements)

Discretionary funds make up what is known as Operating Expenses and Equipment, such as:
- Overtime
- General Expense
- Travel
- Training

The Board’s overall budget has increased approximately 37% over the last five years. As of March 2010, Board revenue has exceeded $5.2 million. The Board estimates its revenue pertaining to the new Licensed Professional Clinical Counselor (LPCC) licensing program to be as follows:

- **Revenue**
  - The Board has seen approximately a 47% growth in its expenditures during the period of FY 2005/06 thru FY 2009/10. As of March 2010, Board revenue has exceeded $5.2 million.
  - The increase is a result of the rising application volume that the board has been experiencing over the past several years and increasing interest earnings. The Board has had a 32% growth in application volume in the past five years. As of March 2010, Board revenue has exceeded $5.2 million.

- **Board Expenditures**
  - The Board has seen approximately a 47% growth in its expenditures during the period of FY 2005/06 thru FY 2009/10 (Graph 1). With the consistent increase of expenditures, the board has also increased Personnel Years (PY) from 30.3 in FY 07/08 to 33.8 in FY 08/09, 36.8 in FY 09/10, and will be 45.9 in FY 10/11.

  - (Graph 1)

- **Reimbursement Authority**

  - The estimated revenue was based on the following fees:

    | Fee Type                                      | FY 2010/11 | FY 2011/12 | FY 2012/13 | FY 2013/14 | Ongoing |
    |-----------------------------------------------|------------|------------|------------|------------|---------|
    | Application Fee (GPT-MFT)                      | $180       | $180       | $180       | $180       | $180    |
    | Application Fee (GPT-LCSW)                     | $180       | $180       | $180       | $180       | $180    |
    | Application Fee (GPT)                          | $180       | $180       | $180       | $180       | $180    |
    | Application Fee (LPIC Intern)                  | $100       | $100       | $100       | $100       | $100    |
    | Examination Eligibility Application Fee (LPC)  | $100       | $100       | $100       | $100       | $100    |
    | Fingerprinting Fee (Out-of-State only)          | $51        | $51        | $51        | $51        | $51     |
    | Law and Ethics Exam Fee (GPT only)             | $100       | $100       | $100       | $100       | $100    |
    | Law and Ethics Re-Exam Fee (GPT only)          | $100       | $100       | $100       | $100       | $100    |
    | Practice Divergence Exam Fee (MFT GPT)         | $100       | $100       | $100       | $100       | $100    |
    | Practice Divergence Re-Exam Fee (MFT GPT)      | $100       | $100       | $100       | $100       | $100    |
    | Practice Divergence Exam Fee (LCSW GPT)        | $100       | $100       | $100       | $100       | $100    |
    | Practice Divergence Exam Fee (LCSW GPT)        | $100       | $100       | $100       | $100       | $100    |
    | Written Exam Fee (LPC only)                     | $150       | $150       | $150       | $150       | $150    |
    | Written Re-Exam Fee (LPC only)                  | $150       | $150       | $150       | $150       | $150    |
    | Initial License Fee (GPT)                       | $200       | $200       | $200       | $200       | $200    |
    | Initial License Fee (LPC)                       | $200       | $200       | $200       | $200       | $200    |
    | Yearly Renewal Fee (GPT)                        | $150       | $150       | $150       | $150       | $150    |
    | Yearly Renewal Fee (LPIC Intern)                | $100       | $100       | $100       | $100       | $100    |
    | Two-Year Renewal Fee (LPC)                      | $175       | $175       | $175       | $175       | $175    |
    | CE Provider App Fee                             | $200       | $200       | $200       | $200       | $200    |

**Estimated Budget**

<table>
<thead>
<tr>
<th>Budget</th>
<th>FY 2010/11</th>
<th>FY 2011/12</th>
<th>FY 2012/13</th>
<th>FY 2013/14</th>
<th>Ongoing</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1,170,379</td>
<td>$1,527,999</td>
<td>$1,363,641</td>
<td>$1,255,632</td>
<td>$1,255,632</td>
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</table>
# BBS Expenditure Report FY 2009/10

## Personal Services

<table>
<thead>
<tr>
<th>Object Description</th>
<th>Actual Expenditures</th>
<th>Budget Allotment</th>
<th>Current As of 3/31/2010</th>
<th>Projections to Year End</th>
<th>Unencumbered Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salary &amp; Wages (Civ Svc Perm)</td>
<td>1,433,012</td>
<td>1,579,636</td>
<td>1,053,843</td>
<td>1,540,000</td>
<td>39,636</td>
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<tr>
<td>Salary &amp; Wages (Stat Exempt)</td>
<td>90,599</td>
<td>79,051</td>
<td>56,111</td>
<td>78,000</td>
<td>1,051</td>
</tr>
<tr>
<td>Temp Help (907)(Seasonals)</td>
<td>36,805</td>
<td>105</td>
<td>90,056</td>
<td>15,000</td>
<td>(14,895)</td>
</tr>
<tr>
<td>Temp Help (915)(Proctors)</td>
<td>0</td>
<td>444</td>
<td>0</td>
<td>0</td>
<td>444</td>
</tr>
<tr>
<td>Board Memb (Per Diem)</td>
<td>9,500</td>
<td>12,900</td>
<td>4,400</td>
<td>10,000</td>
<td>2,900</td>
</tr>
<tr>
<td>Overtime</td>
<td>70,115</td>
<td>7,533</td>
<td>755</td>
<td>1,000</td>
<td>6,533</td>
</tr>
<tr>
<td>Totals Staff Benefits</td>
<td>667,989</td>
<td>697,193</td>
<td>537,237</td>
<td>697,193</td>
<td>0</td>
</tr>
</tbody>
</table>

Salary Savings (79,547) (79,547)

**Total, Personal Service:** 2,308,020 2,297,315 1,740,902 2,341,193 (43,878)

## Operating Exp & Equip

<table>
<thead>
<tr>
<th>Object Description</th>
<th>Actual Expenditures</th>
<th>Budget Allotment</th>
<th>Current As of 3/31/2010</th>
<th>Projections to Year End</th>
<th>Unencumbered Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fingerprint Reports</td>
<td>5,159</td>
<td>36,954</td>
<td>19,629</td>
<td>27,000</td>
<td>9,954</td>
</tr>
<tr>
<td>General Expense</td>
<td>66,706</td>
<td>51,263</td>
<td>59,854</td>
<td>70,000</td>
<td>(18,737)</td>
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<tr>
<td>Printing</td>
<td>76,604</td>
<td>107,630</td>
<td>43,197</td>
<td>50,000</td>
<td>57,630</td>
</tr>
<tr>
<td>Communication</td>
<td>12,579</td>
<td>37,019</td>
<td>7,820</td>
<td>10,500</td>
<td>26,519</td>
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<td>Postage</td>
<td>72,822</td>
<td>118,645</td>
<td>59,795</td>
<td>70,000</td>
<td>48,645</td>
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<tr>
<td>Travel, In State</td>
<td>104,351</td>
<td>219,547</td>
<td>57,090</td>
<td>21,047</td>
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<tr>
<td>Travel, Out-of-State</td>
<td>0</td>
<td>490</td>
<td>0</td>
<td>0</td>
<td>490</td>
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<tr>
<td>Training</td>
<td>13,448</td>
<td>22,202</td>
<td>5,993</td>
<td>12,202</td>
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</tr>
<tr>
<td>Facilities Operations</td>
<td>166,926</td>
<td>219,547</td>
<td>128,305</td>
<td>198,500</td>
<td>21,047</td>
</tr>
<tr>
<td>C&amp;P Services - Interdept.</td>
<td>0</td>
<td>14,939</td>
<td>0</td>
<td>0</td>
<td>14,939</td>
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<tr>
<td>C&amp;P Services-External Contracts</td>
<td>59,349</td>
<td>10,978</td>
<td>1,118</td>
<td>45,000</td>
<td>(34,022)</td>
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</table>

**Departmental Prorata**

<table>
<thead>
<tr>
<th>Object Description</th>
<th>Actual Expenditures</th>
<th>Budget Allotment</th>
<th>Current As of 3/31/2010</th>
<th>Projections to Year End</th>
<th>Unencumbered Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>DP Billing</td>
<td>404,464</td>
<td>351,616</td>
<td>262,620</td>
<td>351,616</td>
<td>0</td>
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<tr>
<td>Indirect Distribution Costs</td>
<td>347,651</td>
<td>320,114</td>
<td>240,084</td>
<td>320,114</td>
<td>0</td>
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<tr>
<td>Public Affairs</td>
<td>17,424</td>
<td>27,988</td>
<td>20,988</td>
<td>27,988</td>
<td>0</td>
</tr>
<tr>
<td>D of I Prorata</td>
<td>14,015</td>
<td>12,859</td>
<td>9,648</td>
<td>12,859</td>
<td>0</td>
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<tr>
<td>Consumer Relations Division</td>
<td>17,090</td>
<td>15,545</td>
<td>11,655</td>
<td>15,545</td>
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</tr>
<tr>
<td>OPP Support Services</td>
<td>0</td>
<td>490</td>
<td>0</td>
<td>490</td>
<td>0</td>
</tr>
<tr>
<td>Interagency Services (OER IACs)</td>
<td>237,692</td>
<td>245,065</td>
<td>105,302</td>
<td>245,065</td>
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<tr>
<td>Consolidated Data Services</td>
<td>2,295</td>
<td>24,382</td>
<td>2,346</td>
<td>50,000</td>
<td>2,000</td>
</tr>
<tr>
<td>Data Proc (Maint, Supplies, Cont)</td>
<td>8,378</td>
<td>3,137</td>
<td>3,847</td>
<td>3,757</td>
<td>0</td>
</tr>
<tr>
<td>Statewide Pro Rata</td>
<td>211,636</td>
<td>177,947</td>
<td>133,461</td>
<td>177,947</td>
<td>0</td>
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</table>

## Exam Expenses

<table>
<thead>
<tr>
<th>Object Description</th>
<th>Actual Expenditures</th>
<th>Budget Allotment</th>
<th>Current As of 3/31/2010</th>
<th>Projections to Year End</th>
<th>Unencumbered Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exam Site Rental</td>
<td>63,193</td>
<td>99,630</td>
<td>35,258</td>
<td>99,630</td>
<td>0</td>
</tr>
<tr>
<td>Exam Contract (PSI) (404.00)</td>
<td>337,052</td>
<td>326,312</td>
<td>223,980</td>
<td>350,000</td>
<td>(4,588)</td>
</tr>
<tr>
<td>Expert Examiners (404.03)</td>
<td>279,555</td>
<td>295,260</td>
<td>102,531</td>
<td>295,260</td>
<td>0</td>
</tr>
</tbody>
</table>

## Enforcement

<table>
<thead>
<tr>
<th>Object Description</th>
<th>Actual Expenditures</th>
<th>Budget Allotment</th>
<th>Current As of 3/31/2010</th>
<th>Projections to Year End</th>
<th>Unencumbered Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Attorney General</td>
<td>508,831</td>
<td>888,992</td>
<td>555,923</td>
<td>750,000</td>
<td>138,992</td>
</tr>
<tr>
<td>Office of Admin. Hearing</td>
<td>52,569</td>
<td>201,228</td>
<td>37,705</td>
<td>100,000</td>
<td>101,228</td>
</tr>
<tr>
<td>Court Reporters</td>
<td>3,224</td>
<td>0</td>
<td>4,173</td>
<td>5,500</td>
<td>(5,500)</td>
</tr>
<tr>
<td>Evidence/Witness Fees</td>
<td>30,368</td>
<td>71,334</td>
<td>43,214</td>
<td>60,000</td>
<td>11,334</td>
</tr>
<tr>
<td>Division of Investigation</td>
<td>290,155</td>
<td>366,725</td>
<td>275,040</td>
<td>300,000</td>
<td>66,725</td>
</tr>
<tr>
<td>Minor Equipment (226)</td>
<td>34,933</td>
<td>48,300</td>
<td>23,169</td>
<td>50,000</td>
<td>(1,700)</td>
</tr>
<tr>
<td>Equipment, Replacement (452)</td>
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<td>3,271</td>
<td>5,000</td>
<td>2,000</td>
<td>0</td>
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</table>

## OE&E Reduction Plan

<table>
<thead>
<tr>
<th>Object Description</th>
<th>Actual Expenditures</th>
<th>Budget Allotment</th>
<th>Current As of 3/31/2010</th>
<th>Projections to Year End</th>
<th>Unencumbered Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fingerprints</td>
<td>(4,392)</td>
<td>(24,000)</td>
<td>27,769</td>
<td>24,000</td>
<td>(219,000)</td>
</tr>
<tr>
<td>Other Reimbursements</td>
<td>(16,044)</td>
<td>(26,000)</td>
<td>9,765</td>
<td>0</td>
<td>253,168</td>
</tr>
<tr>
<td>Unscheduled Reimbursements</td>
<td>(35,307)</td>
<td>0</td>
<td>56,746</td>
<td>0</td>
<td>66,725</td>
</tr>
<tr>
<td>Total Reimbursements</td>
<td>(55,743)</td>
<td>24,000</td>
<td>94,280</td>
<td>209,290</td>
<td>0</td>
</tr>
</tbody>
</table>

## Total Expenditures

<table>
<thead>
<tr>
<th>Object Description</th>
<th>Actual Expenditures</th>
<th>Budget Allotment</th>
<th>Current As of 3/31/2010</th>
<th>Projections to Year End</th>
<th>Unencumbered Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fingerprints</td>
<td>(4,392)</td>
<td>(24,000)</td>
<td>27,769</td>
<td>24,000</td>
<td>(219,000)</td>
</tr>
<tr>
<td>Other Reimbursements</td>
<td>(16,044)</td>
<td>(26,000)</td>
<td>9,765</td>
<td>0</td>
<td>253,168</td>
</tr>
<tr>
<td>Unscheduled Reimbursements</td>
<td>(35,307)</td>
<td>0</td>
<td>56,746</td>
<td>0</td>
<td>66,725</td>
</tr>
<tr>
<td>Total Reimbursements</td>
<td>(55,743)</td>
<td>24,000</td>
<td>94,280</td>
<td>209,290</td>
<td>0</td>
</tr>
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</table>

## Net Appropriation

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expenditures</strong></td>
<td><strong>5,690,394</strong></td>
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<tr>
<td><strong>Net Appropriation</strong></td>
<td><strong>5,690,394</strong></td>
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<tr>
<td><strong>Budget Appropriation</strong></td>
<td><strong>6,500,001</strong></td>
</tr>
<tr>
<td><strong>Unencumbered Balance</strong></td>
<td><strong>6,340,711</strong></td>
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### MHSA EXPENDITURE REPORT FY 2009/10

<table>
<thead>
<tr>
<th>OBJECT DESCRIPTION</th>
<th>2008/09</th>
<th>FY 2009/10</th>
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<tbody>
<tr>
<td></td>
<td>ACTUAL EXPENDITURES</td>
<td>BUDGET ALLOTMENT</td>
</tr>
<tr>
<td>PERSONAL SERVICES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salary &amp; Wages (Civ Svc Perm)</td>
<td>61,104</td>
<td>64,000</td>
</tr>
<tr>
<td>Totals Staff Benefits</td>
<td>33,620</td>
<td>26,511</td>
</tr>
<tr>
<td>Salary Savings</td>
<td></td>
<td>(3,083)</td>
</tr>
<tr>
<td>TOTALS, PERSONAL SERVICES</td>
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<td>87,428</td>
</tr>
<tr>
<td>OPERATING EXP &amp; EQUIP</td>
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<td></td>
</tr>
<tr>
<td>General Expense</td>
<td>2,655</td>
<td>5,656</td>
</tr>
<tr>
<td>Printing</td>
<td>817</td>
<td>800</td>
</tr>
<tr>
<td>Communication</td>
<td>871</td>
<td>1,000</td>
</tr>
<tr>
<td>Postage</td>
<td>5,000</td>
<td>800</td>
</tr>
<tr>
<td>Travel, In State</td>
<td>3,580</td>
<td>200</td>
</tr>
<tr>
<td>Training</td>
<td>10,479</td>
<td>1,000</td>
</tr>
<tr>
<td>Facilities Operations</td>
<td>2,328</td>
<td>2,000</td>
</tr>
<tr>
<td>Minor Equipment (226)</td>
<td>433</td>
<td>0</td>
</tr>
<tr>
<td>C&amp;P Svs - External (402)</td>
<td>118,197</td>
<td>200,000</td>
</tr>
<tr>
<td>Statewide Prorata (438)</td>
<td>7,116</td>
<td>5,468</td>
</tr>
<tr>
<td>TOTAL, OE&amp;E</td>
<td>144,360</td>
<td>218,572</td>
</tr>
<tr>
<td>TOTAL EXPENDITURES</td>
<td>239,084</td>
<td>$306,000</td>
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</tbody>
</table>

Index - 3085
PCA - 18385
DGS Code - 057472
### BOARD OF BEHAVIORAL SCIENCES

#### Analysis of Fund Condition

(Dollars in Thousands)

**NOTE:** $6.0 Million General Fund Outstanding (2002/2003)

**NOTE:** $3.0 Million General Fund Outstanding (2008/2009)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>BEGINNING BALANCE</strong></td>
<td>$7,048</td>
<td>$4,493</td>
<td>$4,568</td>
<td>$4,711</td>
<td>$3,809</td>
<td>$3,233</td>
<td>$2,610</td>
</tr>
<tr>
<td>Prior Year Adjustment</td>
<td>$110</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td><strong>TOTAL ADJUSTED RESERVES</strong></td>
<td>$7,158</td>
<td>$4,493</td>
<td>$4,568</td>
<td>$4,711</td>
<td>$3,809</td>
<td>$3,233</td>
<td>$2,610</td>
</tr>
</tbody>
</table>

#### REVENUES AND TRANSFERS

- **Fees**
  - Actual 2008-09: $5,829
  - Current Year 2009-10: $6,535
  - Governor's BY 2010-11: $8,660
  - 2011-12: $7,831
  - 2012-13: $8,404
  - 2013-14: $8,595
  - 2014-15: $8845

- **Interest**
  - Actual 2008-09: $128
  - Current Year 2009-10: $45
  - Governor's BY 2010-11: $43
  - 2011-12: $38
  - 2012-13: $34
  - 2013-14: $29
  - 2014-15: $26

- **Totals, Revenues**
  - Actual 2008-09: $5,957
  - Current Year 2009-10: $6,580
  - Governor's BY 2010-11: $8,703
  - 2011-12: $7,869
  - 2012-13: $8,438
  - 2013-14: $8,624
  - 2014-15: $8,871

- **Transfers from Other Funds**
  - F00683 Teale Data Center: $ -

- **Transfers to Other Funds**
  - General Fund Loan: $(3000)

**TOTAL REVENUES AND TRANSFERS**

- Actual 2008-09: $2,957
- Current Year 2009-10: $6,580
- Governor's BY 2010-11: $8,703
- 2011-12: $7,869
- 2012-13: $8,438
- 2013-14: $8,624
- 2014-15: $8,871

**TOTAL RESOURCES**

- $10,115
- $11,073
- $13,271
- $12,580
- $12,247
- $11,857
- $11,481

#### EXPENDITURES

- **Disbursements**
  - State Controller (State Operations): $2
  - Financial Information System for California: $10
  - Program Expenditures (State Operations): $5,717
  - Projected Expenses (BCPs) - Breeze: $877

**TOTAL**

- $5,622
- $6,505
- $8,560
- $8,771
- $9,041
- $9,246
- $9,397

#### FUND BALANCE

- Reserve for economic uncertainties: $4,493
- 2009-10: $4,568
- 2010-11: $4,711
- 2011-12: $3,809
- 2012-13: $3,233
- 2013-14: $2,610
- 2014-15: $2,085

- Months in Reserve
  - 2009-10: 8.3
  - 2010-11: 6.4
  - 2011-12: 6.4
  - 2012-13: 4.9
  - 2013-14: 4.2
  - 2014-15: 3.3

**NOTES:**

*ASSUMES FLAT LINE PREDICTED VALUES BASED ON PREDICTIVE MODEL
ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED FOR 2008-09 AND ONGOING.
ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.
ASSUMES INTEREST RATE AT 2%.

4/23/2010
The State's General Fund revenues continued to improve in March 2010. Compared to estimates found in the 2010-11 Governor's Budget, total General Fund revenues were $356 million higher (5.9%) than expected. Sales tax revenues were $264 million lower (-11.2%) than anticipated. However, corporate tax revenues came in above projections by $516 million (50.3%) and personal income taxes also did better than expected by $8.4 million (0.4%).

At this time last year, the State was forced to delay $4.8 billion in payments to manage a cash crisis. To present a true comparison against that period, last year's revenues are adjusted to account for those delays. Compared to March 2009, General Fund revenue in March 2010 was up $906 million (16.6%). The total for the three largest taxes was above 2009 levels by $734 million (14.0%). Although corporate taxes were down by $329 million (-17.6%), sales taxes were $464 million higher (28.3%) than last year and personal income taxes came in $599 million above (34.4%) last March.

(Continued on page 2)
(Continued from page 1)

Tax Revenue Fiscal Year to Date

⇒ Compared with the 2010-11 Governor’s Budget, General Fund revenues through March were above the year-to-date estimate by $2.3 billion (4.1%). The three largest sources of revenue were above estimates by $2.12 billion (4.0%). Corporate tax collections year to date were up $792 million (15.8%) from estimates. Income taxes were $877 million higher (3.1%) than expected, and sales taxes were also up $453 million (2.4%). Because the Governor’s Budget estimates contained actual figures through November, this revenue improvement occurred between December 2009 and March 2010.

⇒ Compared to this date in March 2009, revenue receipts were up by $1.16 billion (2.0%). This was driven by sales taxes, which came in $2.08 billion above (11.8%) the same time last year.

⇒ Year-to-date collections for the three major taxes were $884 million higher (1.6%) than last year at this time. However, personal income taxes were down $979 million (-3.2%) and corporate taxes were down $219 million (-3.6%) from last year’s total at the end of March.

(Continued on page 3)
April 2010 Summary Analysis

(Continued from page 2)

Summary of Net Cash Position as of March 31, 2010

⇒ Through March, the State had total receipts of $60.3 billion (Table 1) and disbursements of $71.0 billion (Table 2).

⇒ The State ended last fiscal year with a deficit of $11.9 billion, so the combined current year deficit stands at $22.6 billion (Table 3). Those deficits are being covered with $13.8 billion of internal borrowing and $8.8 billion in external borrowing.

⇒ Of the largest expenditures, $52.4 billion went to local assistance and $17.1 billion went to State operations (See Table 2).

(Continued on page 4)

<table>
<thead>
<tr>
<th>Revenue Source</th>
<th>Actual Receipts to Date</th>
<th>2010-11 Governor’s Budget Estimate</th>
<th>Actual Over (Under) Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Tax</td>
<td>$5,808</td>
<td>$5,016</td>
<td>$792</td>
</tr>
<tr>
<td>Personal Income Tax</td>
<td>$29,291</td>
<td>$28,414</td>
<td>$877</td>
</tr>
<tr>
<td>Retail Sales and Use Tax</td>
<td>$19,710</td>
<td>$19,257</td>
<td>$453</td>
</tr>
<tr>
<td>Other Revenues</td>
<td>$3,782</td>
<td>$3,603</td>
<td>$178</td>
</tr>
<tr>
<td>Total General Fund Revenue</td>
<td>$58,591</td>
<td>$56,290</td>
<td>$2,301</td>
</tr>
<tr>
<td>Non-Revenue</td>
<td>$1,736</td>
<td>$1,763</td>
<td>($26)</td>
</tr>
<tr>
<td>Total General Fund Receipts</td>
<td>$60,327</td>
<td>$58,052</td>
<td>$2,274</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Recipient</th>
<th>Actual Disbursements</th>
<th>2010-11 Governor’s Budget Estimate</th>
<th>Actual Over (Under) Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Assistance</td>
<td>$52,406</td>
<td>$52,691</td>
<td>($285)</td>
</tr>
<tr>
<td>State Operations</td>
<td>$17,112</td>
<td>$17,343</td>
<td>($231)</td>
</tr>
<tr>
<td>Other</td>
<td>$1,497</td>
<td>$1,552</td>
<td>($56)</td>
</tr>
<tr>
<td>Total Disbursements</td>
<td>$71,014</td>
<td>$71,586</td>
<td>($572)</td>
</tr>
</tbody>
</table>
Local assistance payments were $285 million lower (-0.5%) than the 2010-11 Governor’s Budget. State operations were $231 million below (-1.3%) estimates as well.

<table>
<thead>
<tr>
<th></th>
<th>Actual Cash Balance</th>
<th>2010-11 Governor’s Budget Estimate</th>
<th>Actual Over (Under) Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning Cash Balance July 1, 2009</td>
<td>($11,908)</td>
<td>($11,908)</td>
<td>$0</td>
</tr>
<tr>
<td>Receipts Over (Under) Disbursements to Date</td>
<td>($10,687)</td>
<td>($13,533)</td>
<td>$2,846</td>
</tr>
<tr>
<td>Cash Balance March 31, 2010</td>
<td>($22,595)</td>
<td>($25,441)</td>
<td>$2,846</td>
</tr>
</tbody>
</table>

How to Subscribe to this Publication

This Statement of General Fund Cash Receipts and Disbursements for March 2010 is available on the State Controller’s Web site at www.sco.ca.gov.

To have the monthly financial statement and summary analysis e-mailed to you directly, sign up at: http://www.sco.ca.gov/ard_monthly_cash_email.html

Any questions concerning this Summary Analysis may be directed to Hallye Jordan, Deputy Controller for Communications, at (916) 445-2636.
## California Economic Snapshot

<table>
<thead>
<tr>
<th>Metric</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Auto Registrations (Fiscal Year to Date)</td>
<td>511,314</td>
<td>431,951</td>
</tr>
<tr>
<td>Median Home Price (for Single Family Homes)</td>
<td>$224,000</td>
<td>$249,000</td>
</tr>
<tr>
<td>Single Family Home Sales</td>
<td>29,225</td>
<td>28,111</td>
</tr>
<tr>
<td>Foreclosures Initiated (Notices of Default)</td>
<td>75,230</td>
<td>84,568</td>
</tr>
<tr>
<td>Total State Employment (Seasonally Adjusted)</td>
<td>14,401,000</td>
<td>13,814,600</td>
</tr>
<tr>
<td>Newly Permitted Residential Units (Seasonally Adjusted Annual Rate)</td>
<td>34,343</td>
<td>48,907</td>
</tr>
</tbody>
</table>

Data Sources: DataQuick, California Employment Development Department, Construction Industry Research Board, State Department of Finance
To: Board Members  Date: April 22, 2010

From: Kim Madsen  Telephone: (916) 574-7841
Executive Officer

Subject: Operations Report

The quarterly operation report provides an overview of the Board’s programs. Beginning the first quarter of 2010, the enforcement statistics reflect the new performance standards introduced in the Department of Consumer Affairs’ Consumer Protection Enforcement Initiative.

Attached for your review is the quarterly operations report.
Board of Behavioral Sciences  
Quarterly Statistical Report - as of March 31, 2010

Introduction
This report provides statistical information relating to various aspects of the Board’s business processes. Statistics are grouped by unit. The report relies predominantly on tables with accompanying “sparkbars,” which are small graphs displaying trend over time.

Reading the Report
Items on the report are aggregated by quarter. The top of the column indicates the quarter and the year (Q108 = 1/2008-3/2008; Q208 = 4/2008-6/2008). Common abbreviations for licensees and registrants: LCSW = Licensed Clinical Social Worker; LEP = Licensed Educational Psychologist; MFT = Marriage and Family Therapist; ASW = Associate Clinical Social Worker; PCE = Continuing Education Provider. Other common abbreviations: Proc = Process; Def = Deficiency; CV= Clinical Vignette; AG = Attorney General.

Cashiering Unit
The Board’s Cashiering Unit processes license renewals and applications. The approximately 85% of renewal processing occurs in the Department of Consumer Affairs Central Cashiering Unit.

Renewals Processed In-House
Sparkbars (Current Val) (Low/High)

<table>
<thead>
<tr>
<th></th>
<th>Q208</th>
<th>Q308</th>
<th>Q408</th>
<th>Q109</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processed</td>
<td>1909</td>
<td>1788</td>
<td>1456</td>
<td>1451</td>
<td>1405</td>
<td>1681</td>
<td>1524</td>
<td>1509</td>
<td>12723</td>
</tr>
<tr>
<td>Received</td>
<td>1208</td>
<td>1563</td>
<td>1202</td>
<td>1213</td>
<td>1325</td>
<td>1580</td>
<td>1449</td>
<td>1336</td>
<td>10876</td>
</tr>
<tr>
<td>Proc Time</td>
<td>30</td>
<td>9</td>
<td>7</td>
<td>9</td>
<td>11</td>
<td>9</td>
<td>9</td>
<td>11</td>
<td>12</td>
</tr>
</tbody>
</table>

ATS Cashiering Items (e.g. exam eligibility apps, registration apps, etc)

<table>
<thead>
<tr>
<th></th>
<th>Q208</th>
<th>Q308</th>
<th>Q408</th>
<th>Q109</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Processed</td>
<td>4855</td>
<td>5268</td>
<td>4280</td>
<td>4246</td>
<td>4593</td>
<td>5454</td>
<td>4400</td>
<td>4624</td>
<td>37720</td>
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<tr>
<td>Received</td>
<td>4708</td>
<td>5237</td>
<td>4143</td>
<td>4174</td>
<td>4644</td>
<td>5362</td>
<td>4446</td>
<td>4752</td>
<td>37466</td>
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<tr>
<td>Proc Time</td>
<td>4</td>
<td>4</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>4</td>
<td>6</td>
<td>4</td>
</tr>
</tbody>
</table>

Initial Licenses Issued*

<table>
<thead>
<tr>
<th></th>
<th>Q208</th>
<th>Q308</th>
<th>Q408</th>
<th>Q109</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>LCS</td>
<td>177</td>
<td>200</td>
<td>227</td>
<td>233</td>
<td>265</td>
<td>265</td>
<td>227</td>
<td>195</td>
<td>1789</td>
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<tr>
<td>LEP</td>
<td>26</td>
<td>21</td>
<td>14</td>
<td>13</td>
<td>12</td>
<td>34</td>
<td>21</td>
<td>14</td>
<td>155</td>
</tr>
<tr>
<td>MFT</td>
<td>432</td>
<td>362</td>
<td>332</td>
<td>312</td>
<td>333</td>
<td>305</td>
<td>302</td>
<td>314</td>
<td>2692</td>
</tr>
<tr>
<td>PCE</td>
<td>58</td>
<td>75</td>
<td>50</td>
<td>48</td>
<td>73</td>
<td>72</td>
<td>68</td>
<td>54</td>
<td>498</td>
</tr>
</tbody>
</table>

*For MFT Intern and ASW registration statistics, please reference the Licensing Unit portion of the report
Enforcement Unit
The Board’s Enforcement Unit investigates consumer complaints and reviews prior and subsequent arrest reports for registrants and licensees. **The pending total is a snapshot of all pending items at the close of a quarter.**

### Consumer Complaints
**Sparkbars (Current Val) (Low/High)**

<table>
<thead>
<tr>
<th></th>
<th>Q110</th>
<th></th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>265</td>
<td></td>
<td>265</td>
</tr>
<tr>
<td>Closed without Assignment for Investigation</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
<tr>
<td>Assigned for Investigation</td>
<td>264</td>
<td></td>
<td>264</td>
</tr>
<tr>
<td>Average Days at Intake - to Close or Assigned for Investigation</td>
<td>6</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Pending - Intake</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
</tbody>
</table>

### Convictions/Arrest Reports

<table>
<thead>
<tr>
<th></th>
<th>Q110</th>
<th></th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>259</td>
<td></td>
<td>259</td>
</tr>
<tr>
<td>Closed / Assigned for Investigation</td>
<td>259</td>
<td></td>
<td>259</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>3</td>
<td></td>
<td>3</td>
</tr>
<tr>
<td>Pending - Intake (Convictions, etc.)</td>
<td>0</td>
<td></td>
<td>0</td>
</tr>
</tbody>
</table>

### Desk Investigation

<table>
<thead>
<tr>
<th></th>
<th>Q110</th>
<th></th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Assignment for Desk Investigation</td>
<td>523</td>
<td></td>
<td>523</td>
</tr>
<tr>
<td>Closed</td>
<td>424</td>
<td></td>
<td>424</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>104</td>
<td></td>
<td>104</td>
</tr>
<tr>
<td>Pending</td>
<td>596</td>
<td></td>
<td>596</td>
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</tbody>
</table>

### Field Investigation (BBS Inv.)

<table>
<thead>
<tr>
<th></th>
<th>Q110</th>
<th></th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment for Non-Sworn Field Investigation - Board Inv. Analyst</td>
<td>15</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>Closed</td>
<td>9</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>380</td>
<td></td>
<td>380</td>
</tr>
<tr>
<td>Pending</td>
<td>55</td>
<td></td>
<td>55</td>
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</table>

### Field Investigation (DOI)

<table>
<thead>
<tr>
<th></th>
<th>Q110</th>
<th></th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment for Sworn Field Investigation - Division of Inv.</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>Closed</td>
<td>7</td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>786</td>
<td></td>
<td>786</td>
</tr>
<tr>
<td>Pending</td>
<td>20</td>
<td></td>
<td>20</td>
</tr>
</tbody>
</table>
### All Investigations

<table>
<thead>
<tr>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closed</td>
<td>440</td>
</tr>
<tr>
<td>Average Days to Close</td>
<td>119</td>
</tr>
<tr>
<td>Total Pending</td>
<td>671</td>
</tr>
</tbody>
</table>

### Enforcement Actions

<table>
<thead>
<tr>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>AG Cases Initiated</td>
<td>20</td>
</tr>
<tr>
<td>AG Cases Pending</td>
<td>147</td>
</tr>
<tr>
<td>SOIs Filed</td>
<td>7</td>
</tr>
<tr>
<td>Accusations Filed</td>
<td>12</td>
</tr>
<tr>
<td>Proposed/Default Decisions Adopted</td>
<td>3</td>
</tr>
<tr>
<td>Stipulations Adopted</td>
<td>6</td>
</tr>
</tbody>
</table>

### Disciplinary Orders

<table>
<thead>
<tr>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Orders (Proposed Decisions Adopted, Default Decisions, Stipulations)</td>
<td>9</td>
</tr>
<tr>
<td>Average Days to Complete*</td>
<td>799</td>
</tr>
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</table>

### Citations

<table>
<thead>
<tr>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final Citations</td>
<td>41</td>
</tr>
<tr>
<td>Average Days to Complete*</td>
<td>88</td>
</tr>
</tbody>
</table>

*Average days for enforcement actions are from the date the complaint was received to the effective date of the citation or disciplinary order.

### Licensing Unit

The Board’s Licensing Unit evaluates applications for registration and examination eligibility. This involves verifying educational and experiential qualifications to ensure they meet requirements defined in statute and regulation.

### LCSW Examination Eligibility Applications

<table>
<thead>
<tr>
<th>Q208</th>
<th>Q308</th>
<th>Q408</th>
<th>Q109</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>278</td>
<td>256</td>
<td>289</td>
<td>316</td>
<td>286</td>
<td>312</td>
<td>312</td>
<td>370</td>
</tr>
<tr>
<td>Approved</td>
<td>210</td>
<td>175</td>
<td>291</td>
<td>297</td>
<td>364</td>
<td>279</td>
<td>269</td>
<td>318</td>
</tr>
<tr>
<td>Proc Time</td>
<td>43</td>
<td>75</td>
<td>71</td>
<td>63</td>
<td>51</td>
<td>45</td>
<td>44</td>
<td>50</td>
</tr>
<tr>
<td>Proc Time Less Def Lapse</td>
<td>19</td>
<td>47</td>
<td>48</td>
<td>31</td>
<td>20</td>
<td>17</td>
<td>18</td>
<td>19</td>
</tr>
</tbody>
</table>
### MFT Examination Eligibility Applications

<table>
<thead>
<tr>
<th></th>
<th>Q208</th>
<th>Q308</th>
<th>Q408</th>
<th>Q109</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Total/Avg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Received</td>
<td>502</td>
<td>462</td>
<td>369</td>
<td>436</td>
<td>512</td>
<td>453</td>
<td>436</td>
<td>477</td>
<td>3647.00</td>
</tr>
<tr>
<td>Approved</td>
<td>460</td>
<td>433</td>
<td>361</td>
<td>338</td>
<td>468</td>
<td>270</td>
<td>401</td>
<td>450</td>
<td>3181.00</td>
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<tr>
<td>Proc Time</td>
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<td>44</td>
<td>68</td>
<td>78</td>
<td>80</td>
<td>52.00</td>
</tr>
<tr>
<td>Proc Time Less Def Lapse</td>
<td>12</td>
<td>11</td>
<td>8</td>
<td>12</td>
<td>17</td>
<td>33</td>
<td>50</td>
<td>55</td>
<td>25.00</td>
</tr>
</tbody>
</table>

### LEP Examination Eligibility Applications

<table>
<thead>
<tr>
<th></th>
<th>Q208</th>
<th>Q308</th>
<th>Q408</th>
<th>Q109</th>
<th>Q209</th>
<th>Q309</th>
<th>Q409</th>
<th>Q110</th>
<th>Total/Avg</th>
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</thead>
<tbody>
<tr>
<td>Received</td>
<td>29</td>
<td>34</td>
<td>17</td>
<td>26</td>
<td>52</td>
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<td>24</td>
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<td>56</td>
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<td>Proc Time</td>
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<td>82</td>
<td>43</td>
<td>44</td>
<td>42</td>
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<tr>
<td>Proc Time Less Def Lapse</td>
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<td>32</td>
<td>30</td>
<td>16</td>
<td>16</td>
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### ASW Registration Applications

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<td>473</td>
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<td>Proc Time</td>
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<td>22</td>
<td>27</td>
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</tr>
<tr>
<td>Proc Time Less Def Lapse</td>
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<td>24</td>
<td>27</td>
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### MFT Intern Registration Applications

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<tr>
<td>Received</td>
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<td>26.00</td>
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<tr>
<td>Proc Time Less Def Lapse</td>
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<td>25</td>
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<td>18</td>
<td>13</td>
<td>21</td>
<td>22</td>
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Examination Unit
The Board’s Examination Unit processes complaints and performs other administrative functions relating to the Board’s examination processes.

Exam Administration

<table>
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<tr>
<th></th>
<th>Q208</th>
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<th>Q408</th>
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<th>Q409</th>
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<td>1795</td>
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Customer Satisfaction Survey
The Board maintains a Web based customer satisfaction survey. The average scores are reported on a scale from 1 to 5.

<table>
<thead>
<tr>
<th></th>
<th>Q308</th>
<th>Q408</th>
<th>Q109</th>
<th>Q209</th>
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<th>Q409</th>
<th>Q110</th>
<th>Avg</th>
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<tr>
<td>Overall Satisfaction</td>
<td>3.5</td>
<td>3.6</td>
<td>3.8</td>
<td>3.7</td>
<td>3.7</td>
<td>3.4</td>
<td>3.4</td>
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<td>Courtesy</td>
<td>4.1</td>
<td>4.3</td>
<td>4.1</td>
<td>4.2</td>
<td>4.1</td>
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<td>Accessibility</td>
<td>3.4</td>
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<td>3.5</td>
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<td>3.4</td>
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<tr>
<td>Successful Service</td>
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<td>74</td>
<td>72</td>
<td>74</td>
<td>72</td>
<td>68</td>
<td>61</td>
<td>69</td>
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<tr>
<td>Total Respondents</td>
<td>176</td>
<td>152</td>
<td>210</td>
<td>182</td>
<td>232</td>
<td>188</td>
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To: Board Members  Date: April 22, 2010

From: Laurie Williams  Telephone: (916) 574-7850
Personnel Liaison

Subject: Personnel Update

New Employees:

On January 25, 2010, the Board Members appointed Kim Madsen as Executive Officer. Kim previously served as the Interim Executive Officer and Assistant Executive Officer for the Board.

On March 2, 2010, Tracy Rhine was hired to serve as the Board’s Assistant Executive Officer. Tracy previously held the position of the Board’s Legislative Analyst.

On March 2, 2010, Lynne Stiles was promoted to a Staff Information Systems Analyst. Lynne has been instrumental in the improvement processes and implementation of multiple technology projects for both the Board and Department of Consumer Affairs (DCA). Lynne was recently acknowledged by DCA for her ongoing participation in DCA technology projects.

Rosanne Helms joined the Board on April 12, 2010, as our Legislative/Regulatory Analyst within the Administration Unit. Rosanne transferred to the Board from the DCA Budget Office. Prior to her position with the DCA Budget Office, Rosanne worked for Economic Planning Systems preparing finance plans and fee analysis for local government.

Racquel Pena was promoted to an Associate Governmental Program Analyst effective April 1, 2010. She will continue in her role as an Enforcement Analyst within the Enforcement Unit and will be responsible for the review of the more complex consumer complaints.

Departures:

Lawrence Cheng has accepted a position with the Dept. of Public Health and his last day with the Board will be April 30, 2010. Lawrence was a Student Assistant that worked within the Enforcement Unit.

Vacancies:

The Board currently has no vacancies.
Kim Madsen, Executive Officer

Subject: Department of Consumer Affairs Update

Kimberly Kirchmeyer, Deputy Director of Board and Bureau Relations, will provide an update regarding the Department of Consumer Affairs (DCA) activities.
To: Board Members

Date: April 21, 2010

From: Kim Madsen
Executive Officer

Telephone: (916) 574-7841

Subject: Compliance and Enforcement Committee

The Compliance and Enforcement Committee held its first meeting on March 25, 2010, in Sacramento, California. The meeting provided background and information regarding the Board’s current enforcement process, the Substance Abuse Coordination Committee Uniform Standards, and the Consumer Protection Enforcement Initiative (CPEI). Committee members also reviewed and discussed current legislation related to CPEI.

Future committee meetings will consist of reviewing the Board’s enforcement program for compliance with the CPEI performance measure and discussing enforcement and consumer protection issues.
To: Board Members                                      Date: April 23, 2010

From: Tracy Rhine                                      Telephone: (916) 574-7847
       Assistant Executive Officer

Subject: Senate Bill 1111 (Negrete McLeod)

Senate Bill 1111 creates the Consumer Heath 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 art boards within DCA.

At its March 25, 2010 meeting, the Compliance and Enforcement Committee did not make a position recommendation to the Board on this legislation but instead requested that the Board have further discussion on the policy implementations of the proposed legislation.

However, this bill failed passage in the Senate Business, Professions and Economic Development Committee on April 22, 2010. For reference the bill language and Senate Committee analysis are attached.
An act to amend Sections 27, 116, 125.9, 155, 159.5, 160, 726, 802.1, 803, 803.5, 803.6, and 1005, and 2715 of, to amend and repeal Section 125.3 of, to add Sections 27.5, 125.4, 734, 735, 736, 737, 802.2, 803.7, 1006, 1007, 1699.2, 2372, 2815.6, 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, add Section 12529.8 to 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 amended, 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. Existing law, the Chiropractic Act, enacted by initiative, provides for
the licensure and regulation of chiropractors by the State Board of Chiropractic Examiners.

(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 and the State Board of Chiropractic Examiners 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 licentiate 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, the State Board of Chiropractic Examiners, 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 reasonable costs of the investigation, prosecution, and enforcement of the case, in full, within 30 days of the effective date of an order to pay costs, unless subject to an agreed upon payment plan. 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 and the State Board of Chiropractic Examiners to contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts, upon a final decision, 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 a healing arts board to proceed pursuant to an alternative adjudication process, as specified, provided the board has adopted specified regulations.

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 or an agency of the federal government. The bill would also require a licensee who is arrested or charged with a misdemeanor or felony to inform law enforcement and the court that he or she is a licensee of a healing arts board.

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. Under existing law, the State Board of Chiropractic Examiners has the authority to issue, suspend, revoke a license to practice chiropractic, and to place a licensee on probation for various violations. Existing law requires the State Board of Chiropractic Examiners to employ an executive officer to carry out certain duties.

This bill would authorize the a healing arts board to delegate to its 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 the revocation or surrender of 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 in lieu of 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 5 business days 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 upon a preponderance of the evidence that an imminent risk to the public health, safety, or welfare exists.

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 40 15 days, if a licensee, or 30 days, if a health care facility, 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 submit licensee information to specified national databases, and to search those 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 a healing arts board to automatically suspend the license of any licensee who also has an out-of-state license or a license issued by an agency of the federal government that is suspended or revoked, except as specified.

The bill would authorize the healing arts boards to refuse to issue a license to an applicant if the applicant appears to may 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; or 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. The bill would, except as otherwise specified, make the provisions of paragraph (2) applicable to licensees subject to the jurisdiction of the State Board of Chiropractic Examiners. 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.
(4) Existing law provides in the State Treasury the Professions and Vocations Fund, consisting of the special funds of the healing arts boards, many of which are continuously appropriated.

This bill would establish in the State Treasury the Emergency Health Care Enforcement Reserve Fund, which would be a continuously appropriated fund, and would require that any moneys in a healing arts board fund consisting of more than 4 months operating expenditures be transferred to the fund and would authorize expenditure for specified enforcement purposes, thereby making an appropriation. The bill would require the fund to be administered by the department, and would authorize a healing arts board to loan its surplus moneys in the fund to another healing arts board, thereby making an appropriation.

Existing law requires specified agencies within the Department of Consumer Affairs with unencumbered funds equal to or more than the agency’s operating budget for the next 2 fiscal years to reduce license fees in order to reduce surplus funds to an amount less than the agency’s operating budget, as specified. With respect to certain other boards within the department, existing law imposes various reserve fund requirements.

Under this bill, if a healing arts board’s fund reserve exceeds its statutory maximum, the bill would authorize the board to lower its fees by resolution in order to reduce its fund reserves to an amount below its statutory maximum.

The bill would also authorize the department to request that the Department of Finance augment the amount available for expenditures to pay enforcement costs for the services of the Attorney General’s Office and the Office of Administrative Hearings and the bill would impose specified procedures for instances when the augmentation exceeds 20% of the board’s budget for the enforcement costs for these services. The bill would make findings and statements of intent with respect to this provision.

(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 and the State Board of Chiropractic Examiners 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 Board of Podiatric Medicine, and the Board of Psychology.

This bill would require a healing arts board to utilize the services of 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 or licensing section. 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 licensing unit of the Division of Investigation of the Department of Consumer Affairs, as specified.
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.


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

SECTION 1. This act shall be known and may be cited as the Consumer Health Protection Enforcement Act.

SEC. 2. (a) The Legislature finds and declares the following:

(1) In recent years, it has been reported that many of the healing arts boards within the Department of Consumer Affairs take, on average, more than three years to investigate and prosecute violations of law, a timeframe that does not adequately protect consumers.

(2) The excessive amount of time that it takes healing arts boards to investigate and prosecute licensed professionals who have violated the law has been caused, in part, by legal and procedural impediments to the enforcement programs.

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

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

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

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

27. (a) Every entity specified in subdivision (b) shall provide on the Internet information regarding the status of every license issued by that entity, whether the license is current, expired, canceled, suspended, or revoked, in accordance with the California Public Records Act (Chapter 3.5 of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee’s address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a physical business address or residence address only for the entity’s internal administrative use and not for disclosure as the licensee’s address of record or disclosure on the Internet.

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

1. The Acupuncture Board shall disclose information on its licensees.
2. The Board of Behavioral Sciences shall disclose information on its licensees, including marriage and family therapists, licensed clinical social workers, and licensed educational psychologists.
(3) The Dental Board of California shall disclose information on its licensees.

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

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

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

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

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

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

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

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

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

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

(14) The Board of Registered Nursing shall disclose information on its licensees:

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

(16) The Veterinary Medical Board shall disclose information on its licensees and registrants:

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

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

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

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

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

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

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

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

(c) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(d) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 4. Section 27.5 is added to the Business and Professions Code, to read:

27.5. (a) Each entity specified in subdivision (b) shall provide on the Internet information regarding the status of every license issued by that entity, whether the license is current, expired, canceled, suspended, or revoked, in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the
Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. In providing information on the Internet, each entity shall comply with the Department of Consumer Affairs Guidelines for Access to Public Records. The information may not include personal information, including home telephone number, date of birth, or social security number. The information may not include the licensee’s address, but may include the city and county of the licensee’s address of record.

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

(1) The Board of Registered Nursing shall disclose information on its licensees.
(2) The Board of Vocational Nursing and Psychiatric Technicians of the State of California shall disclose information on its licensees.
(3) The Veterinary Medical Board shall disclose information on its licensees and registrants.
(4) The Physical Therapy Board of California shall disclose information on its licensees.
(5) The California State Board of Pharmacy shall disclose information on its licensees.
(6) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board shall disclose information on its licensees.
(7) The Respiratory Care Board of California shall disclose information on its licensees.
(8) The California Board of Occupational Therapy shall disclose information on its licensees.
(9) The Naturopathic Medicine Committee within the Osteopathic Medical Board of California shall disclose information on its licensees.
(10) The Physician Assistant Committee of the Medical Board of California shall disclose information on its licensees.
(11) The Dental Hygiene Committee of California shall disclose information on its licensees.
(c) “Internet” for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 4.
SEC. 5. Section 116 of the Business and Professions Code is amended to read:

116. (a) The director or his or her designee may audit and review, upon his or her own initiative, or upon the request of a consumer or licensee, inquiries and complaints regarding licensees, dismissals of disciplinary cases, the opening, conduct, or closure of investigations, informal conferences, and discipline short of formal accusation by any of the healing arts boards defined in Section 720. The director may make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, for their consideration.

(b) The director shall report to the Chairpersons of the Senate Business and Professions Committee and the Assembly Health Committee annually regarding his or her findings from any audit, review, or monitoring and evaluation conducted pursuant to this section.

SEC. 5.
SEC. 6. Section 125.3 of the Business and Professions Code, as amended by Section 2 of Chapter 223 of the Statutes of 2006, is amended to read:

125.3. (a) (1) Except as otherwise provided by law, in any order issued in resolution of a penalty or disciplinary proceeding or hearing on a citation issued pursuant to Section 125.9 or regulations adopted pursuant thereto, before any board specified in Section 101, the board or the administrative law judge may direct any licensee or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the actual reasonable costs of the investigation, prosecution, and enforcement of the case.

(2) In an order issued pursuant to paragraph (1) that places a license on probation, the administrative law judge may direct a licensee to pay the board’s actual reasonable costs of monitoring that licensee while he or she remains on probation, if so requested by the entity bringing the proceeding. The board shall provide the administrative law judge with a good faith estimate of the probation monitoring costs at the time of the request.
(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

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

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

(e) In determining reasonable costs pursuant to subdivision (a), the administrative law judge shall only consider the public resources expended pursuant to the investigation, prosecution, and enforcement of the case. The administrative law judge shall provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs were not ordered.

(f) If an order for recovery of costs is made, payment is due and payable, in full, 30 days after the effective date of the order, unless the licensee and the board have agreed to a payment plan. If timely payment is not made as directed in the board’s decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.

(g) In any action for recovery of costs, proof of the board’s decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
(h) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license, reinstate the license, or terminate the probation of any licentiate who has failed to pay all of the costs ordered under this section. This paragraph shall not apply to an administrative law judge when preparing a proposed decision.

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

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

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

(k) This section does not apply to any board if a specific statutory provision in that board’s licensing act provides for broader authority for the recovery of costs in an administrative disciplinary proceeding.

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

(m) For purposes of this chapter, costs of prosecution shall include, but not be limited to, costs of attorneys, expert consultants, witnesses, any administrative filing and service fees, and any other cost associated with the prosecution of the case.
SEC. 6.
SEC. 7. Section 125.3 of the Business and Professions Code, as added by Section 1 of Chapter 1059 of the Statutes of 1992, is repealed.
SEC. 7.
SEC. 8. Section 125.4 is added to the Business and Professions Code, to read:
125.4. (a) Notwithstanding any other provision of law, a board may contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person who owes that money to the board, and, for those purposes, may provide to the collection agency the personal information of that person, including his or her birth date, telephone number, and social security number. The contractual agreement shall provide that the collection agency may use or release personal information only as authorized by the contract, and shall provide safeguards to ensure that the personal information is protected from unauthorized disclosure. The contractual agreement shall hold the collection agency liable for the unauthorized use or disclosure of personal information received or collected under this section.
(b) A board shall not use a collection agency to recover outstanding fees, fines, or cost recovery amounts until the person has exhausted all appeals and the decision is final.
SEC. 8.
SEC. 9. Section 125.9 of the Business and Professions Code is amended to read:
125.9. (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, commission, or committee within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation that may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, commission, or committee where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.
(b) The system shall contain the following provisions:
(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

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

(3) In no event shall the administrative fine assessed by the board, bureau, commission, or committee exceed five thousand dollars ($5,000) for each inspection or each investigation made with respect to the violation, or five thousand dollars ($5,000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, commission, or committee shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.

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

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

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

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

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

(5) (A) If the healing arts board is a board or committee, two members of that board or committee shall hear the appeal and issue a citation decision. One of the two members shall be a licensee of the board.

(B) If the healing arts board is a bureau, the director shall appoint a designee to hear the appeal and issue a citation decision.

(C) A hearing held pursuant to this paragraph is not subject to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(D) A board or committee choosing to utilize the provisions of this paragraph shall first have adopted regulations providing for notice and opportunity to be heard. The regulations shall provide the licensee with due process and describe, in detail, the process for that hearing. Appeal of the citation decision may be made through the filing of a petition for writ of mandate.

(E) A healing arts board may permit the use of telephonic hearings. The decision to have a telephonic hearing shall be at the discretion of the licensee subject to the citation.

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

(c) The system may contain the following provisions:

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

(2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.
(d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.

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

SEC. 9.

SEC. 10. Section 155 of the Business and Professions Code is amended to read:

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

(b) It is the intent of the Legislature that inspectors used by boards, bureaus, or commissions in the department shall not be required to be employees of the Division of Investigation, but may either be employees of, or under contract to, the boards, bureaus, or commissions. Contracts for services shall be consistent with Article 4.5 (commencing with Section 19130) of Chapter 6 of Part 2 of Division 5 of Title 2 of the Government Code. All civil service employees currently employed as inspectors whose functions are transferred as a result of this section shall retain their positions, status, and rights in accordance with Section 19994.10 of the Government Code and the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).

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

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

SEC. 11. Section 159.5 of the Business and Professions Code is amended to read:

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

Except as provided in Section 16 of Chapter 1394 of the Statutes of 1970, all positions for the personnel necessary to provide investigative services, as specified in Section 160 of this code and in subdivision (b) of Section 830.3 of the Penal Code, shall be in the division and the personnel shall be appointed by the director.

SEC. 11.

SEC. 12. Section 160 of the Business and Professions Code is amended to read:

160. (a) The Chief and designated investigators of the Division of Investigation of the department, designated investigators of the Medical Board of California, designated investigators of the Dental Board of California, and designated investigators of the Board of Registered Nursing have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

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

SEC. 12.

SEC. 13. Article 10.1 (commencing with Section 720) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:
Article 10.1. Healing Arts Licensing Enforcement

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

1. The Dental Board of California.
2. The Medical Board of California.
3. The State Board of Optometry.
4. The California State Board of Pharmacy.
5. The Board of Registered Nursing.
6. The Board of Behavioral Sciences.
7. The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
8. The Respiratory Care Board of California.
10. The Board of Psychology.
11. The California Board of Podiatric Medicine.
12. The Physical Therapy Board of California.
13. The Physician Assistant Committee of the Medical Board of California.
14. The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
15. The California Board of Occupational Therapy.
16. The Osteopathic Medical Board of California.
17. The Naturopathic Medicine Committee—within the Osteopathic Medical Board of California.
18. The Dental Hygiene Committee of California.
19. The Veterinary Medical Board.

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

720.2. (a) A healing arts board may delegate to its executive officer or executive director of a healing arts board the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

(b) A healing arts board may delegate to its executive officer or executive director of a healing arts board the
authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts board and the licensee has agreed to surrender the revocation or surrender of his or her license.

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

(b) The settlement shall include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated.

(c) No person who enters a settlement pursuant to this section may petition is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

(d) Any settlement against a licensee executed pursuant to this section shall be considered discipline and a public record and shall be posted on the applicable board’s Internet Web site. Any settlement against an applicant executed pursuant to this section shall be considered a public record and shall be posted on the applicable board’s Internet Web site.

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

(b) (1) The executive officer of the healing arts board shall, to the extent practicable, provide telephonic, electronic mail, message, or facsimile written notice to the licensee of a hearing on the petition at least 24 hours five business days prior to the hearing. The licensee and his or her counsel and the executive officer or his or her designee shall have the opportunity to present oral or written argument before the director. After presentation of the

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evidence and consideration of any arguments presented, the director may issue an order that the licensee cease all practice and activities that require a license by that board when, in the opinion of the director, the action is necessary to protect the public health, safety, or welfare, if, in the director’s opinion, the petitioner has established by a preponderance of the evidence that an imminent risk of serious harm to the public health, safety, or welfare exists, the director may issue an order that the licensee cease all practice and activities that require a license by that board.

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

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

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

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

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

(g) If the position of director is vacant, the chief deputy director
of the department shall fulfill the duties of this section.
(h) Temporary suspension orders shall be subject to judicial
review pursuant to Section 1094.5 of the Code of Civil Procedure
and shall be heard only in the superior court in, and for, the
Counties of Sacramento, San Francisco, Los Angeles, or San
Diego.
(i) For the purposes of this section, “imminent risk of serious
harm to the public health, safety, or welfare” means that there is
a reasonable likelihood that allowing the licensee to continue to
practice will result in serious physical or emotional injury,
unlawful sexual contact, or death to an individual or individuals
within the next 90 days.

720.8. (a) The license of a licensee of a healing arts board
shall be suspended automatically during any time that the licensee
is incarcerated after conviction of a felony, regardless of whether
the conviction has been appealed. The healing arts board shall,
immediately upon receipt of the certified copy of the record of
conviction, determine whether the license of the licensee has been
automatically suspended by virtue of his or her incarceration, and
if so, the duration of that suspension. The healing arts board shall
notify the licensee in writing of the license suspension and of his
or her right to elect to have the issue of penalty heard as provided
in subdivision (d).
(b) Upon receipt of the certified copy of the record of conviction,
if after a hearing before an administrative law judge from the Office
of Administrative Law Hearings it is determined that the felony
for which the licensee was convicted was substantially related to
the qualifications, functions, or duties of a licensee, the board shall
suspend the license until the time for appeal has elapsed, if no
appeal has been taken, or until the judgment of conviction has been
affirmed on appeal or has otherwise become final, and until further
order of the healing arts board.
(c) Notwithstanding subdivision (b), a conviction of a charge
of violating any federal statute or regulation or any statute or
regulation of this state, regulating dangerous drugs or controlled
substances, or a conviction of Section 187, 261, 262, or 288 of the
Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee and no hearing shall be held on this issue. However, upon its own motion or for good cause shown, the healing arts board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of, and confidence in, the practice regulated by the healing arts board.

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

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

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

(f) Any other provision of law setting forth a procedure for the suspension or revocation of a license issued by a healing arts board shall not apply to proceedings conducted pursuant to this section.
720.10. Except as otherwise provided, any proposed decision or decision issued under this article in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that contains any finding of fact that the licensee or registrant engaged in any act of sexual contact, as defined in subdivision (c) of Section 729, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge. Unless otherwise provided in the laws and regulations of the healing arts board, the patient shall no longer be considered a patient of the licensee when the order for medical services and procedures provided by the licensee is terminated, discontinued, or not renewed by the prescribing physician and surgeon.

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

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

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

(3) The healing arts board shall not reinstate or reissue the individual’s license. The healing arts board shall not issue a stay of license denial and nor place the license on probation.

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

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that requires his or her registration as a sex offender.
(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code. However, nothing in this paragraph shall prohibit the healing arts board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee’s conviction under Section 314 of the Penal Code.

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

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

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

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

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

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

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

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

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

(b) Notwithstanding any other provision of law, the Attorney
General and his or her investigative agents, and a healing arts board
and its investigators and representatives may inquire into any
alleged violation of the laws under the jurisdiction of the healing
arts board or any other federal or state law, regulation, or rule
relevant to the practice regulated by the healing arts board,
whichever is applicable, and may inspect documents relevant to
those investigations in accordance with the following procedures:
(1) Any document relevant to an investigation may be inspected,
and copies may be obtained, where patient consent is given.
(2) Any document relevant to the business operations of a
licensee, and not involving medical records attributable to
identifiable patients, may be inspected and copied where relevant
to an investigation of a licensee.
(c) In all cases where documents are inspected or copies of those
documents are received, their acquisition or review shall be
arranged so as not to unnecessarily disrupt the medical and business
operations of the licensee or of the facility where the records are
kept or used.
(d) Where certified documents are lawfully requested from
licensees in accordance with this section by the Attorney General
or his or her agents or deputies, or investigators of any board, the
documents shall be provided within 10 business days of receipt of
the request, unless the licensee is unable to provide the certified
documents within this time period for good cause, including, but
not limited to, physical inability to access the records in the time
allowed due to illness or travel. Failure to produce requested
certified documents or copies thereof, after being informed of the
required deadline, shall constitute unprofessional conduct. A
healing arts board may use its authority to cite and fine a licensee
for any violation of this section. This remedy is in addition to any
other authority of the healing arts board to sanction a licensee for
a delay in producing requested records.
(e) Searches conducted of the office or medical facility of any licensee shall not interfere with the recordkeeping format or preservation needs of any licensee necessary for the lawful care of patients.

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

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

(h) This section shall not apply to a licensee who does not have access to, and control over, certified medical records.

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

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

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to ten thousand dollars ($10,000), unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

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

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to a healing arts board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to one hundred thousand dollars ($100,000) ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

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

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

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

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

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

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

(h) If a board complies with Section 1684.5, 1684.1, 2225.5, or 2969, that board shall not be subject to the requirements of this section.

(i) This section shall not apply to a licensee who does not have access to, or control over, certified medical records.
720.20. (a) Notwithstanding any other provision of law, a state agency shall, upon receiving a request in writing from a healing arts board for records, immediately provide to the healing arts board all records in the custody of the state agency, including, but not limited to, confidential records, medical records, and records related to closed or open investigations.

(b) If a state agency has knowledge that a person it is investigating is licensed by a healing arts board, the state agency shall notify the healing arts board that it is conducting an investigation against one of its licentiates. The notification of investigation to the healing arts board is to include the name, address, and, if known, the professional license type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted for further information about the investigation. The state agency shall cooperate with the healing arts board in providing any requested information.

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

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

(b) For purposes of the section, “suspension or termination for cause” is defined as suspension or termination for cause, or resignation in lieu of suspension or termination for cause, of any health care licensee in its employ within fifteen business days. The report shall not be made until after the conclusion of the review process specified in Section 52.3 of Title 2 of the California Code of Regulations and Skelly v. State Personnel Bd. (1975) 15 Cal.3d 194, for public employees. This required reporting shall not constitute a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and shall not be subject to discovery in civil cases.
suspension, or termination from employment for any of the following reasons:

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

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

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

(4) Falsification of medical records.

(5) Gross negligence or incompetence.

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

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

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

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

(c) As used in this section, the following definitions apply:

(1) “Gross negligence” means a substantial departure from the standard of care, which, under similar circumstances, would have ordinarily been exercised by a competent licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the standard of care.

(2) “Incompetence” means the lack of possession of and the failure to exercise that degree of learning, skill, care, and experience ordinarily possessed by a responsible licensee.

(3) “Willful” means a knowing and intentional violation of a known legal duty.

(d) (1) Willful failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation.
(2) Any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed fifty thousand dollars ($50,000).
(e) Pursuant to Section 43.8 of the Civil Code, no person shall incur any civil penalty as a result of making any report required by this article.
(f) No report is required under this section where a report of the action taken is already required under Section 805.

720.26. (a) Each healing arts board shall report annually to the department and the Legislature, not later than October 1 of each year, the following information:
(1) The total number of consumer calls received by the board and the number of consumer calls or letters designated as discipline-related complaints.
(2) The total number of complaint forms received by the board.
(3) The total number of reports received by the board pursuant to Sections 801, 801.01, and 803, as applicable.
(4) The total number of.coroner reports received by the board.
(5) The total number of convictions reported to the board.
(6) The total number of criminal filings reported to the board.
(7) If the board is authorized to receive reports pursuant to Section 805, the total number of Section 805 reports received by the board, by the type of peer review body reporting and, where applicable, the type of health care facility involved, and the total number and type of administrative or disciplinary actions taken by the board with respect to the reports, and their disposition.
(8) The total number of complaints closed or resolved without discipline, prior to accusation.
(9) The total number of complaints and reports referred for formal investigation.
(10) The total number of accusations filed and the final disposition of accusations through the board and court review, respectively.
(11) The total number of citations issued, with fines and without fines, and the number of public letters of reprimand, letters of admonishment, or other similar action issued, if applicable.
(12) The total number of final licensee disciplinary actions taken, by category.
(13) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(14) The average and median time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

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

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

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

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

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

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

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

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

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

(c) Any felony conviction of a licensee reported to the healing arts board after January 3, 1994.
(d) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, “current accusation” means an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the board unless an appeal of that decision is pending.

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

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

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

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

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

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

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

720.32. (a) Whenever it appears that an applicant for a license, certificate, or permit from a healing arts board may be unable to practice his or her profession safely because the applicant’s ability to practice would may be impaired due to mental illness, or physical illness affecting competency, the healing arts board may order the applicant to be examined by one or more physicians and surgeons or psychologists designated by the healing arts board. The report of the examiners shall be made available to the applicant and may
be received as direct evidence in proceedings conducted pursuant
to Chapter 2 (commencing with Section 480) of Division 1.5.
(b) An applicant’s failure to comply with an order issued under
subdivision (a) shall authorize the board to deny an applicant a
license, certificate, or permit.
(c) A healing arts board shall not grant a license, certificate, or
permit until it has received competent evidence of the absence or
control of the condition that caused its action and until it is satisfied
that with due regard for the public health and safety the person
may safely practice the profession for which he or she seeks
licensure.
720.34. (a) An applicant for a license, certificate, or permit
from a healing arts board who is otherwise eligible for that license
but is unable to practice some aspects of his or her profession
safely due to a disability may receive a limited license if he or she
does both of the following:
(1) Pays the initial licensure fee.
(2) Signs an agreement on a form prescribed by the healing arts
board in which the applicant agrees to limit his or her practice in
the manner prescribed by the healing arts board.
(b) The healing arts board may require the applicant described
in subdivision (a) to obtain an independent clinical evaluation of
his or her ability to practice safely as a condition of receiving a
limited license under this section.
(c) Any person who knowingly provides false information in
the agreement submitted pursuant to subdivision (a) shall be subject
to any sanctions available to the healing arts board.
720.35. (a) Each healing arts board listed in Section 720
shall report to the National Practitioner Data Bank and the
Healthcare Integrity and Protection Data Bank the following
information on each of its licensees:
(1) Any adverse action taken by the board as a result of any
disciplinary proceeding, including any revocation or suspension
of a license and the length of that suspension, or any reprimand,
censure, or probation.
(2) Any dismissal or closure of a disciplinary proceeding by
reason of a licensee surrendering his or her license or leaving the
state.
(3) Any other loss of the license of a licensee, whether by
operation of law, voluntary surrender, or otherwise.
(4) Any negative action or finding by the board regarding a 
licensee.

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

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

720.36. (a) Unless otherwise provided, if a licensee possesses 
a license or is otherwise authorized to practice in any state other 
than California or by any agency of the federal government and 
that license or authority is suspended or revoked outright and is 
reported to the National Practitioner Data Bank, the California 
license of the licensee shall be suspended automatically for the 
duration of the suspension or revocation, unless terminated or 
rescinded as provided in subdivision (c). The healing arts board 
shall notify the licensee of the license suspension and of his or her 
right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, a healing 
arts board may decline to impose or may set aside the suspension 
when it appears to be in the interest of justice to do so, with due 
regard to maintaining the integrity of, and confidence in, the 
specific healing art.

(c) The issue of penalty shall be heard by an administrative law 
judge sitting alone or with a panel of the board, in the discretion 
of the board. A licensee may request a hearing on the penalty and 
that hearing shall be held within 90 days from the date of the 
request. If the order suspending or revoking the license or authority 
to practice is overturned on appeal, any discipline ordered 
pursuant to this section shall automatically cease. Upon a showing 
to the administrative law judge or panel by the licensee that the 
out-of-state action is not a basis for discipline in California, the 
suspension shall be rescinded. If an accusation for permanent 
discipline is not filed within 90 days of the suspension imposed 
pursuant to this section, the suspension shall automatically 
terminate.

(d) The record of the proceedings that resulted in the suspension 
or revocation of the licensee’s out-of-state license or authority to
practice, including a transcript of the testimony therein, may be received in evidence.

(e) This section shall not apply to a licensee who maintains his or her primary practice in California, as evidenced by having maintained a practice in this state for not less than one year immediately preceding the date of suspension or revocation. Nothing in this section shall preclude a licensee’s license from being suspended pursuant to any other provision of law.

(f) This section shall not apply to a licensee whose license has been surrendered, whose only discipline is a medical staff disciplinary action at a federal hospital and not for medical disciplinary cause or reason as that term is defined in Section 805, or whose revocation or suspension has been stayed, even if the licensee remains subject to terms of probation or other discipline.

(g) This section shall not apply to a suspension or revocation imposed by a state that is based solely on the prior discipline of the licensee by another state.

(h) The other provisions of this article setting forth a procedure for the suspension or revocation of a licensee’s license or certificate shall not apply to summary suspensions issued pursuant to this section. If a summary suspension has been issued pursuant to this section, the licensee may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

(i) A board that complies with Section 2310 shall not be subject to the requirements of this section.

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

720.38. (a) The Emergency Health Care Enforcement Reserve Fund is hereby established in the State Treasury, to be administered by the department. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are hereby continuously appropriated and shall be used to support the investigation and prosecution of any matter within the authority
of any of the healing arts boards. The department, upon direction
of a healing arts board, shall pay out the funds or approve such
payments as deemed necessary from those funds as have been
designated for the purpose of this section.

(b) Notwithstanding any other law, the funds of the Emergency
Health Care Enforcement Reserve Fund are those moneys from
the healing arts board’s individual funds, which shall be deposited
into the Emergency Health Care Enforcement Reserve Fund when
the amount within those funds exceeds more than four months
operating expenditures of the healing arts board.

(c) Notwithstanding any other law, the department, with
approval of a healing arts board, may loan to any other board
moneys necessary for the purpose of this section when it has been
established that insufficient funds exist for that board, provided
that the moneys will be repaid.

720.40. Notwithstanding any other provision of law, if a healing
arts board’s fund reserve exceeds its statutory maximum, the board
may lower its fees by resolution in order to reduce its reserves to
an amount below its maximum.

720.42. (a) The Legislature finds that there are occasions
when a healing arts board, as listed in Section 720, urgently
requires additional expenditure authority in order to fund
unanticipated enforcement and litigation activities. Without
sufficient expenditure authority to obtain the necessary additional
resources for urgent litigation and enforcement matters, the board
is unable to adequately protect the public. Therefore, it is the intent
of the Legislature that, apart from, and in addition to, the
expenditure authority that may otherwise be established, the
healing arts boards, as listed in Section 720, shall be given the
increase in its expenditure authority in any given current fiscal
year that is authorized by the Department of Finance pursuant to
the provisions of subdivision (b) of this section, for costs and
services in urgent litigation and enforcement matters, including,
but not limited to, costs for the services of the Attorney General
and the Office of Administrative Hearings.

(b) Notwithstanding any other provision of law, upon the request
of the department, the Department of Finance may augment the
amount available for expenditures to pay enforcement costs for
the services of the Attorney General’s Office and the Office of
Administrative Hearings. If an augmentation exceeds 20% of the
board’s budget for the Attorney General, it may be made no sooner than 30 days after notification in writing to chairpersons of the committees in each house of the Legislature that consider appropriations and the Chairperson of the Joint Legislative Budget Committee, or no sooner than whatever lesser time the chairperson of the Joint Legislative Budget Committee may in each instance determine.

SEC. 13. SEC. 14. Section 726 of the Business and Professions Code is amended to read:

726. (a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, and under any initiative act referred to in this division.

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

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

SEC. 15. Section 734 is added to the Business and Professions Code, to read:

734. (a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances constitutes unprofessional conduct. The record of the conviction is conclusive evidence of the unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.
(b) Discipline may be ordered against a licensee in accordance with the laws and regulations of the healing arts board or the board may order the denial of the license when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

**SEC. 15.**

SEC. 16. Section 735 is added to the Business and Professions Code, to read:

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

SEC. 16.

SEC. 17. Section 736 is added to the Business and Professions Code, to read:

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

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

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

SEC. 17.

SEC. 18. Section 737 is added to the Business and Professions
Code, to read:

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

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

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

SEC. 18.

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

802.1. (a) (1) A licensee of a healing arts board defined under
Section 720 shall submit a written report of listed in Section 720
shall report any of the following to the entity that issued his or her
license:

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

(B) The arrest of the licensee.
(C) The conviction of the licensee, including any verdict of
guilty, or plea of guilty or no contest, of any felony or
misdemeanor.
(D) Any disciplinary action taken by another licensing entity
or authority of this state or of another state or an agency of the
federal government.
(2) The report required by this subdivision shall be made in
writing within 30 days of the date of the bringing of the indictment
or the charging of a felony, the arrest, the conviction, or the
disciplinary action.
(b) Failure to make a report required by this section shall be a
public offense punishable by a fine not to exceed five thousand
dollars ($5,000) and shall constitute
unprofessional conduct.
SEC. 20. Section 802.2 is added to the Business and Professions
Code, to read:
802.2. A licensee of a healing arts board listed in Section 720
shall identify himself or herself as a licensee of the board to law
enforcement and the court upon being arrested or charged with a
misdemeanor or felony. The healing arts boards shall inform its
licensees of this requirement.
SEC. 21. Section 803 of the Business and Professions Code is
amended to read:
803. (a) Except as provided in subdivision (b), within 10 days
after a judgment by a court of this state that a person who holds a
license, certificate, or other similar authority from a healing arts
board-defined listed in Section 720, has committed a crime, or is
liable for any death or personal injury resulting in a judgment for
an amount in excess of thirty thousand dollars ($30,000) caused
by his or her negligence, error or omission in practice, or his or
her rendering unauthorized professional services, the clerk of the
court that rendered the judgment shall report that fact to the agency
that issued the license, certificate, or other similar authority.
(b) For purposes of a physician and surgeon, osteopathic
physician and surgeon, or doctor of podiatric medicine, who is
liable for any death or personal injury resulting in a judgment of
any amount caused by his or her negligence, error or omission in
practice, or his or her rendering unauthorized professional services,
the clerk of the court that rendered the judgment shall report that
fact to the board that issued the license.

SEC. 22. Section 803.5 of the Business and Professions Code
is amended to read:

803.5. (a) The district attorney, city attorney, or other
prosecuting agency shall notify the appropriate healing arts board
defined listed in Section 720 and the clerk of the court in which
the charges have been filed, of any filings against a licensee of
that board charging a felony immediately upon obtaining
information that the defendant is a licensee of the board. The notice
shall identify the licensee and describe the crimes charged and the
facts alleged. The prosecuting agency shall also notify the clerk
court in which the action is pending that the defendant is a
licensee, and the clerk shall record prominently in the file that the
defendant holds a license from one of the boards described above.
(b) The clerk of the court in which a licensee of one of the
boards is convicted of a crime shall, within 48 hours after the
conviction, transmit a certified copy of the record of conviction
to the applicable board.

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

803.6. (a) The clerk of the court shall transmit any felony
preliminary hearing transcript concerning a defendant licensee to
the appropriate healing arts boards defined in Section 720 where
the total length of the transcript is under 800 pages and shall notify
the appropriate board of any proceeding where the transcript
exceeds that length.
(b) In any case where a probation report on a licensee is prepared
for a court pursuant to Section 1203 of the Penal Code, a copy of
that report shall be transmitted by the probation officer to the
appropriate board.

SEC. 23. Section 803.6 of the Business and Professions Code
is amended to read:

803.6. (a) The clerk of the court shall transmit any felony
preliminary hearing transcript concerning a defendant licensee to
the Medical Board of California, the Osteopathic Medical Board
of California, the California Board of Podiatric Medicine, or other
applicable allied health board as applicable, appropriate healing
arts board listed in Section 720 where the total length of the
transcript is under 800 pages and shall notify the appropriate board of any proceeding where the transcript exceeds that length.

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

SEC. 22.

SEC. 24. Section 803.7 is added to the Business and Professions Code, to read:

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

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

Article 15. Healing Arts Licensing Fees

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

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

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

SEC. 24.

SEC. 25. Article 16 (commencing with Section 880) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 16. Unlicensed Practice

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

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

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

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

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

(b) Notwithstanding any other provision of law, any person who
is licensed under this division, but who is not authorized to provide
some or all services of another healing art, who practices or
supervises the practice of those unauthorized services any person
who does not hold a current and valid license to practice a healing
art under this division, is guilty of a public crime, punishable by
imprisonment in a county jail not to exceed one year, or by both
that fine and imprisonment.

SEC. 26. Section 1005 of the Business and Professions Code
is amended to read:

1005. The provisions of Sections 12.5, 23.9, 29.5, 30, 31, 35,
104, 114, 115, 119, 121, 121.5, 125, 125.3, 125.4, 125.6, 125.9,
136, 137, 140, 141, 143, 155, 163.5, 461, 462, 475, 480, 484, 485,
487, 489, 490, 490.5, 491, 494, 495, 496, 498, 499, 510, 511, 512,
701, 702, 703, 704, 710, 716, 720.2, 720.4, 720.8, 720.10, 720.12,
720.14, 720.16, 720.18, 720.20, 720.22, 720.24, 720.28, 720.30,
720.32, 720.35, 720.36, 730.5, 731, and 734, 735, 736, 737, 802.1,
803, 803.5, 803.6, 803.7, 851, and 880 are applicable to persons
licensed by the State Board of Chiropractic Examiners under the
Chiropractic Act.

SEC. 27. Section 1006 is added to the Business and Professions
Code, to read:

1006. (a) Notwithstanding any other provision of law, upon
receipt of evidence that a licensee of the State Board of
Chiropractic Examiners has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, the executive officer may issue a temporary order that the licensee cease all practice and activities that require a license by the board.

(b) Before the executive officer may take any action pursuant to this section, the board shall delegate to the executive officer authority to issue a temporary cease practice order as specified in subdivision (a). The board may, by affirmative vote, rescind the executive officer’s authority to issue cease temporary practice orders pursuant to subdivision (a).

(c) A licensee may appeal the temporary cease practice order decision pursuant to the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Any temporary order to cease practice issued pursuant to this section shall automatically be vacated within 90 days of issuance, or until the board files a petition pursuant to Section 494 for an interim suspension order and the petition is denied or granted, whichever occurs first.

(e) A licensee who fails or refuses to comply with a temporary order of the executive officer to cease practice pursuant to this section shall be subject to disciplinary action to revoke or suspend his or her license and by the board and an administrative fine assessed by the board not to exceed twenty-five thousand dollars ($25,000). The remedies provided herein are in addition to any other authority of the board to sanction a licensee for practicing or engaging in activities subject to the jurisdiction of the board without proper legal authority.

(f) Upon receipt of new information, the executive officer shall review the basis for the interim license suspension order pursuant to subdivision (d) to determine if the grounds for the suspension continue to exist. The executive officer may vacate the suspension order, if he or she believes that the suspension is no longer necessary to protect the public health, safety, or welfare as described in subdivision (a) of Section 494.

(g) Any order to cease practice including an order pursuant to Section 494 shall be displayed on the board’s Internet Web site, except that if the executive officer vacates the suspension order
pursuant to subdivision (e), the petition and order shall be removed
from the respective board’s Internet Web site.

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

(i) For the purposes of this section, “imminent risk of serious
harm to the public health, safety, or welfare” means that there is
a reasonable likelihood that permitting the licensee to continue to
practice will result in serious physical or emotional injury,
unlawful sexual contact, or death to an individual or individuals
within the next 90 days.

SEC. 28. Section 1007 is added to the Business and Professions
Code, to read:

1007. (a) The State Board of Chiropractic Examiners shall
report annually to the Legislature, not later than October 1 of
each year, the following information:

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

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

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

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

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

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

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

(8) The total number of complaints and reports referred for
formal investigation.

(9) The total number of accusations filed and the final
disposition of accusations through the board and court review,
respectively.

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

(11) The total number of final licensee disciplinary actions
taken, by category.
(12) The total number of cases in process for more than six months, more than 12 months, more than 18 months, and more than 24 months, from receipt of a complaint by the board.

(13) The average and median time in processing complaints, from original receipt of the complaint by the board, for all cases, at each stage of the disciplinary process and court review, respectively.

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

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

(16) The total number of petitions for reinstatement, and their dispositions.

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

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

SEC. 29. Section 1699.2 is added to the Business and Professions Code, to read:

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

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

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

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

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

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

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

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

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

SEC. 32. Section 2770.18 is added to the Business and Professions Code, to read:

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

SEC. 33. Section 2815.6 is added to the Business and Professions Code, to read:

2815.6. (a) It is the intent of the Legislature that, notwithstanding Section 128.5, in order to maintain an appropriate fund reserve, and in setting fees pursuant to this chapter, the Board of Registered Nursing shall seek to maintain a reserve in the Board of Registered Nursing Fund of not less than three and no more than six months’ operating expenditures.

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

3534.12. This article shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted
statute, that is enacted before January 1, 2013, deletes or extends
that date.
SEC. 31. Section 4873.2 is added to the Business and Professions
Code, to read:
4873.2. This article shall remain in effect only until January
1, 2013, and as of that date is repealed, unless a later enacted statute,
that is enacted before January 1, 2013, deletes or extends that date.
SEC. 32. Section 12529 of the Government Code, as amended
by Section 8 of Chapter 505 of the Statutes of 2009, is amended
to read:
12529. (a) There is in the Department of Justice the Health
Quality Enforcement Section. The primary responsibility of the
section is to investigate and prosecute proceedings against licensees
and applicants within the jurisdiction of the Medical Board of
California, the California Board of Podiatric Medicine, the Board
of Psychology, any committee under the jurisdiction of the Medical
Board of California, or any other healing arts board, as defined in
Section 720 of the Business and Professions Code, as requested
by the executive officer of that board.
(b) The Attorney General shall appoint a Senior Assistant
Attorney General of the Health Quality Enforcement Section. The
Senior Assistant Attorney General of the Health Quality
Enforcement Section shall be an attorney in good standing licensed
to practice in the State of California, experienced in prosecutorial
or administrative disciplinary proceedings and competent in the
management and supervision of attorneys performing those
functions.
(e) The Attorney General shall ensure that the Health Quality
Enforcement Section is staffed with a sufficient number of
experienced and able employees that are capable of handling the
most complex and varied types of disciplinary actions against the
licensees of the boards.
(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the committees under the jurisdiction of the Medical Board of California, and any other healing arts board, as defined in Section 720 of the Business and Professions Code, with the intent that the expenses be proportionally shared as to services rendered.

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

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

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

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

(c) The Attorney General shall ensure that the Health Quality Enforcement Section is staffed with a sufficient number of experienced and able employees that are capable of handling the most complex and varied types of disciplinary actions against the licensees of the boards.
(d) Funding for the Health Quality Enforcement Section shall be budgeted in consultation with the Attorney General from the special funds financing the operations of the Medical Board of California, the California Board of Podiatric Medicine, the Board of Psychology, the committees under the jurisdiction of the Medical Board of California, and any other healing arts board, as defined in Section 720 of the Business and Professions Code, with the intent that the expenses be proportionally shared as to services rendered.

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

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

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

(b) The Senior Assistant Attorney General of the Health Quality Enforcement Section shall assign attorneys to work on location at the intake unit of the Medical Board of California, the California Board of Podiatric Medicine, or the Board of Psychology, and shall assign attorneys to work on location at the Health Quality Enforcement Unit of the Division of Investigation of the Department of Consumer Affairs to assist in evaluating and screening complaints and to assist in developing uniform standards and procedures for processing complaints.

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

(d) The determination to bring a disciplinary proceeding against a licensee of the boards shall be made by the executive officer of the boards or committees as appropriate in consultation with the senior assistant.
(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

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

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

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

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

(c) The Senior Assistant Attorney General or his or her deputy attorneys general shall assist the boards or committees in designing and providing initial and in-service training programs for staff of the boards or committees, including, but not limited to, information collection and investigation.
(d) The determination to bring a disciplinary proceeding against a licensee of the boards shall be made by the executive officer of the boards or committees as appropriate in consultation with the senior assistant.

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

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

12529.6. (a) The Legislature finds and declares that the healing arts boards, as defined in Section 720 of the Business and Professions Code, by ensuring the quality and safety of health care, perform one of the most critical functions of state government. Because of the critical importance of a board’s public health and safety function, the complexity of cases involving alleged misconduct by health care practitioners, and the evidentiary burden in a healing arts board’s disciplinary cases, the Legislature finds and declares that using a vertical enforcement and prosecution model for those investigations is in the best interests of the people of California.

(b) Notwithstanding any other provision of law, each complaint that is referred to a district office of the Medical Board of California, the California Board of Pediatric Medicine, the Board of Psychology, or the Health Quality Enforcement Unit for investigation shall be simultaneously and jointly assigned to an investigator and to the deputy attorney general in the Health Quality Enforcement Section responsible for prosecuting the case if the investigation results in the filing of an accusation. The joint assignment of the investigator and the deputy attorney general shall exist for the duration of the disciplinary matter. During the assignment, the investigator so assigned shall, under the direction but not the supervision of the deputy attorney general, be responsible for obtaining the evidence required to permit the Attorney General to advise the board on legal matters such as whether the board should file a formal accusation, dismiss the complaint for a lack of evidence required to meet the applicable burden of proof, or take other appropriate legal action.

(c) The Medical Board of California, the Department of Consumer Affairs, and the Office of the Attorney General shall, if necessary, enter into an interagency agreement to implement this section.
(d) This section does not affect the requirements of Section 12529.5 as applied to the Medical Board of California where complaints that have not been assigned to a field office for investigation are concerned.

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

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

(2) Establish and implement a plan to collocate, when feasible, its enforcement staff and the staff of the Health Quality Enforcement Section, in order to carry out the intent of the vertical enforcement and prosecution model.

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

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

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

12529.7. By March 1, 2012, the Department of Consumer Affairs, in consultation with the healing arts boards, as defined in Section 720 of the Business and Professions Code, and the Department of Justice, shall report and make recommendations to the Governor and the Legislature on the vertical enforcement and prosecution model created under Section 12529.6.

SEC. 38. Section 12529.8 is added to the Government Code, to read:

12529.8. (a) Any healing arts board listed in Section 720 of the Business and Professions Code may utilize the model prescribed in Sections 12529 to 12529.6, inclusive, for the investigation and prosecution of some or all of its enforcement actions and may utilize the services of the Department of Justice Health Quality Enforcement Section or the licensing section. If a board elects to proceed pursuant to this section and utilizes the services of the licensing section, the Department of Justice shall
assign attorneys to work on location at the licensing unit of the Division of Investigation of the Department of Consumer Affairs.

(b) The report requirements contained in Section 12529.7 shall apply to any healing arts board that utilizes those provisions for enforcement.

(c) This section shall not apply to any healing arts board listed in subdivision (a) of Section 12529.

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

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

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

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

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

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.
(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

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

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

(h) All investigators of the State Departments of Health Care Services, Public Health, Social Services, Mental Health, and Alcohol and Drug Programs, the Department of Toxic Substances Control, the Office of Statewide Health Planning and Development, and the Public Employees’ Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department or office. Notwithstanding any other provision of law, investigators of the Public Employees’ Retirement System shall not carry firearms.

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

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

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

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

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

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

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

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

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

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

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

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

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

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

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

SEC. 40. (a) It is the intent of the Legislature that the Department of Consumer Affairs shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees. The Legislature intends the system to be designed as an integrated system to support all business automation requirements of the department’s licensing and enforcement functions.
(b) The Legislature also intends the department to enter into contracts for telecommunication, programming, data analysis, data processing, and other services necessary to develop, operate, and maintain the enterprise information technology system.

SEC. 41. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
SUBJECT: Regulatory boards.

SUMMARY: Enacts the Consumer Health Protection Enforcement Act that includes various provisions affecting the investigation and enforcement of disciplinary actions against licensees of healing arts boards.

Existing law:

1) Establishes the Department of Consumer Affairs (DCA) which oversees more than 40 boards, bureaus, committees, commissions and other programs which license and regulate more than 100 businesses and 200 professional categories, including doctors, nurses, dentists, engineers, architects, contractors, cosmetologists and automotive repair facilities, and other diverse industries.

2) Establishes the Office of Attorney General (AG) for the prosecution of cases against licensees of DCA's regulatory boards and bureaus.

3) Establishes the Office of Administrative Hearings charged with hearing administrative law cases, pursuant to the Administrative Procedures Act (APA), brought by the AG's Office on behalf of DCA's regulatory boards and bureaus.

4) Requires specified boards within the DCA to disclose on the Internet information on their respective licensees, including information on the status of every license, suspensions and revocations of licenses issued and other related enforcement actions.

5) Provides under the Medical Practice Act that the Medical Board of California (MBC) shall disclose certain information about physicians and surgeons, including information on whether the licensee is in good standing, subject to a temporary restraining order, interim suspension order, or any other enforcement actions, as specified.

6) Allows the Director of the DCA to audit and review inquiries, complaints, and disciplinary proceedings regarding licensees of the MBC, and the California Board of Podiatric Medicine. Allows the Director to make recommendations for changes to the disciplinary system to the appropriate board, the Legislature, or both, and submit a report to the Legislature on the findings of the audit and review.

7) Allows an administrative law judge 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 the investigation and enforcement of
the case. States that the costs shall include the amount of investigatory and enforcement costs up to the date of the hearing.

8) Prohibits a board from renewing or reinstating the license of a licentiate who failed to pay all of the costs ordered, but allows a board to conditionally renew or reinstate a license for a maximum of one year for financial hardship.

9) Prohibits the MBC from requesting or obtaining from a physician and surgeon, investigation and prosecution costs for a disciplinary proceeding against the licentiate. Allows the MBC to increase fees accordingly to compensate for any losses that may result from their inability to seek cost recovery for investigation and prosecution costs.

10) Allows boards within DCA, except as specified, to establish by regulation, a system for the issuance to a licensee of a citation or an administrative fine for violations of applicable licensing act or regulation. Specifies that in no event shall the fine assessed exceed $5,000 for each violation. Requires that in assessing the fine, the board shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations. Provides that a licensee shall be provided an opportunity to contest the finding of a violation and the assessment of a fine at a hearing conducted in accordance with APA.

11) Establishes within the DCA, the Division of Investigation (DOI), to investigate alleged misconduct by licensees of boards. Allows the Director of the DCA to employ such investigators, inspectors, and deputies as are necessary to investigate and prosecute all violations of any law. States Legislative intent that inspectors used by boards are not required to be employees of the DOI, but may be either employees, or under contract to the boards.

12) Specifies that investigators of the DOI, the MBC and the Dental Board of California (DBC) shall have the authority and status of peace officers. Provides that the Board of Registered Nursing (BRN) may employ personnel as it deems necessary.

13) Allows state departments and agencies to formulate and issue a decision by settlement, pursuant to an agreement of the parties, without conducting an adjudicative proceeding, and specifies that the settlement may be on any terms the parties determine are appropriate. States that in an adjudicative proceeding to determine whether an occupational license should be revoked, suspended, limited, or conditioned, a settlement may not be made before issuance of the agency pleading. A settlement may be made before, during, or after the hearing.

14) States that a board or an administrative law judge may issue an interim suspension order suspending any licentiate or imposing license restrictions, as specified.

15) Requires a physician and surgeon’s certificate to be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed.

16) States that any physician and surgeon, psychotherapist, alcohol and drug abuse counselor or any person holding himself or herself out to be a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor, who engages in an act of sexual intercourse, sodomy, oral copulation, or sexual contact with a patient or client, or with a former patient or client when the relationship was terminated primarily for the purpose of engaging in those acts, unless the physician and surgeon, psychotherapist, or alcohol and drug abuse counselor has referred the patient or client to an independent and objective physician and surgeon, psychotherapist, or alcohol and drug abuse counselor recommended by a third-party
physician and surgeon, psychotherapist, or alcohol and drug abuse counselor for treatment, is guilty of sexual exploitation by a physician and surgeon, psychotherapist, or alcohol and drug abuse counselor. Defines sexual contact as sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse.

17) Establishes the Sex Offender Registration Act which requires specified persons for the rest of his or her life while residing in California, or while attending school or working in California, to register, as specified.

18) Prohibits a physician and surgeon from including, or permitting to include the following in a civil dispute settlement agreement: a provision that prohibits another party to the dispute from contacting or cooperating with the MBC; a provision that prohibits another party to the dispute from filing a complaint with the MBC; and, a provision that requires another party to the dispute to withdraw a complaint he or she has filed with the MBC. States that such provisions are void as against public policy, and its violation is subject to disciplinary action by the MBC.

19) Provides in the Medical Practice Act that the AG's Office and his or her investigative agents, and the MBC or the California Board of Podiatric Medicine may inquire into any alleged violation of the Medical Practice Act or any other federal or state law, and may inspect documents relevant to those investigations according to specified procedures. Requires that the names of any patients on those records that are reviewed to remain confidential. Allows any document relevant to an investigation to be inspected, and copies may be obtained, where patient consent is given.

20) Specifies, for physicians and surgeons, dentists, and psychologists, penalties for failure to produce medical records requested pursuant to a patient's written authorization and a court order mandating release of a record. Specifies penalties for health care facilities that fail to produce medical records.

21) Requires any employer of a vocational nurse, psychiatric technician, or respiratory care therapist to report to the appropriate board the suspension or termination for cause of any licensed vocational nurse, psychiatric technician or respiratory care therapist in its employ. Defines suspension or termination for cause as suspension or termination from employment for any of the following reasons: (a) use of controlled substances or alcohol, as specified; (b) unlawful sale of controlled substances or other prescription items; (c) patient or client abuse, neglect, physical harm, or sexual contact with a patient or client; (d) falsification of medical records; (e) gross negligence or incompetence and (f) theft from patients or clients, other employees, or the employer. Makes failure to report punishable by an administrative fine not to exceed $10,000 per violation.

22) Requires peer review reporting by a peer review body, as defined, of specified actions taken against or undertaken by a physician and surgeon, doctor of podiatric medicine, clinical psychologist, marriage and family therapist, clinical social worker, or dentist.

23) Allows a board to order a licentiate to be examined by one or more physicians whenever it appears that any person holding a license, certificate or permit may be unable to practice his or her
profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency, the licensing agency may order the licentiate to be examined by one or more physicians and surgeons or psychologists designated by the agency. The report of the examiners shall be made available to the licentiate. States that if a licensing agency determines that its licentiate's ability to practice his or her profession safely is impaired because the licentiate is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods: revoking the licentiate's certificate or license; suspending the licentiate's right to practice; placing the licentiate on probation; and taking any other action the licensing agency deems proper.

24) Provides that a hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned shall be initiated by filing an accusation. Defines an accusation as a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged.

25) Establishes the federal Health Care Quality Improvement Act, administered by the U. S. Department of Health and Human Services to manage the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank which collects and releases certain information relating to the professional competence and conduct of health care professionals.

26) Specifies in the Medical Practice Act that the conviction of a charge violating any federal or state statute or regulation regulating dangerous drugs or controlled substance constitutes unprofessional conduct.

27) Requires the clerk of court to report any judgment in excess of $30,000 that is related to rendering unprofessional services by specified licensees; and to transmit felony preliminary hearing transcript against a physician and surgeon.

28) Requires the district attorney, city attorney, or other prosecuting agency to notify the MBC, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners of any filings charging a felony against a licensee, as specified.

29) Establishes a drug diversion program for osteopathic physicians and surgeons, registered nurses, dentists, pharmacists, physical therapists, physician assistants, and veterinarians.

30) Establishes a vertical enforcement and prosecution model for investigations of cases against physician and surgeons and other healing arts licensees.

31) Provides for a listing of general provisions applicable to other boards under the DCA which shall also be applicable to the Chiropractic Board which are not considered inconsistent with the Chiropractic Initiative Act.

This bill:

1) Establishes the Consumer Health Protection Enforcement Act. States Legislative findings and declarations on the need to timely investigate and prosecute licensed health care professionals who have violated the law, and the importance of providing healing arts boards with the regulatory tools and authorities necessary to reduce the timeframe for investigating and prosecuting violations of law by healing arts practitioners between 12 and 18 months.

2) Specifies that the term "healing arts boards" includes all of the following:
a) The Dental Board of California.
b) The Medical Board of California.
c) The State Board of Optometry.
d) The California State Board of Pharmacy.
e) The Board of Registered Nursing.

f) The Board of Behavioral Sciences.
g) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
h) The Respiratory Care Board of California.
i) The Acupuncture Board.
j) The Board of Psychology.

aa) The California Board of Podiatric Medicine.
bb) The Physical Therapy Board of California.
c) The Physician Assistant Committee of the Medical Board of California.
dd) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
e) The California Board of Occupational Therapy.
ff) The Osteopathic Medical Board of California.
gg) The Naturopathic Medicine Committee of the Osteopathic Medical Board of California.
hh) The Dental Hygiene Committee of California.
ii) The Veterinary Medical Board

3) Requires the following entities within DCA to provide on the Internet information regarding the status of every license issued by that entity, whether the license is current, expired, cancelled, or revoked, in accordance with the California Public Records Act.

a) The Board of Registered Nursing.
b) The Board of Vocational Nursing and Psychiatric Technicians.
c) The Veterinary Medical Board of California.
d) The Physical Therapy Board of California.
e) The California State Board of Pharmacy.

f) The Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board.
g) The Respiratory Care Board of California.
h) The California Board of Occupational Therapy.

i) The Naturopathic Medicine Committee of the Osteopathic Medical Board.

j) The Physician Assistant Committee of the Medical Board of California.

aa) The Dental Hygiene Committee of California.

4) Prohibits the information required to be posted in Item #3) above from including personal information, including home telephone number, date of birth, or social security number. Further prohibits boards from including the licensee's address, but may include the city and county of the licensee's address of record.

5) Expands the current authority of the Director of the DCA to audit the MBC, and the California Board of Podiatric Medicine to include all healing arts boards. Clarifies that the recommendations of the Director to the healing arts boards pursuant to the audit and review are for the consideration of the healing arts boards. Allows a designee of the Director to perform the audit and review.

6) Allows an administrative law judge, in an order issued in resolution of a disciplinary proceeding before any board that places a license on probation, to direct a licensee to pay the board's reasonable costs of probation, as specified. Requires a board to provide the administrative law judge with a good faith estimate of the probation monitoring costs.

7) Provides that in determining reasonable costs for purposes of cost recovery, the administrative law judge shall only consider the public resources expended pursuant to the investigation, prosecution and enforcement of the case. Requires an administrative law judge to provide an explanation as to how the amount ordered for reasonable costs was determined if the actual costs were not ordered.

8) Requires that payment for recovery of costs is due and payable in full 30 days after the effective date of the order, unless the licensee and the board have agreed to a payment plan.

9) States that costs of prosecution for purposes of the recovery of costs, shall include, but not be limited to, costs of attorneys, expert consultants, witnesses, any administrative filing, and service fees, and any other costs associated with the prosecution of the case.

10) Authorizes a board to contract with a collection agency for the purpose of collecting outstanding fees, fines, or cost recovery amounts from any person who owes that money to the board. Authorizes a board to provide the collection agency with the personal information of that person, as specified. Prohibits the collection agency from using or releasing personal information for other purposes. Makes the collection agency liable for the unauthorized use or disclosure of personal information received or collected. Prohibits using a collection agency to recover outstanding fees, fines, or cost recovery amounts until the person has exhausted all appeals and the decision is final.

11) Allows healing arts boards or committees, for the issuance of a citation, to hear the appeal for a citation or fine assessment. States that if a healing arts board or committee chooses to hear the appeal, two members of that board or committee shall hear the appeal and issue a citation decision. Requires that one of the two members be a licensee of the healing arts board or committee. Specifies that if the healing arts board is a bureau, the Director of the DCA shall appoint a designee to hear the appeal and issue a citation decision. States that this hearing is not subject to the provisions of the APA. Requires a board or committee that chooses
to utilize this appeal process to first adopt regulations providing for notice and opportunity to be heard. Requires the regulations to provide the licensee with due process, and describe the detailed process of the hearing. States that an appeal of the citation decision may be made through the filing of a Petition for Writ of Mandate. States that a healing arts board may permit the use of telephonic hearings, at the discretion of the person cited.

12) States that investigators used by the healing arts boards shall not be required to be employees of the DOI and the healing arts boards may contract for investigative services provided by the AG.

13) Establishes within the DOI the Health Quality Enforcement Unit to investigate complaints against licensees and applicants within the jurisdiction of the healing arts boards.

14) Allows the BRN to hire designated investigators with the authority and status of peace officers. Allows the DOI, the MBC, the DBC, and the BRN to employ investigators who are not peace officers to provide investigative services.

15) Allows a healing arts board to delegate to its executive officer or executive director the authority to adopt a proposed default decision where an administrative action to revoke a license has been filed and the licensee has failed to file a notice of defense or to appear at the hearing and a proposed default decision revoking the license has been issued.

16) Allows a healing arts board to delegate to its executive officer the authority to adopt a proposed settlement agreement where an administrative action to revoke a license has been filed by the healing arts board and the licensee has agreed to the revocation or surrender his or her license.

17) Allows a healing arts board to enter into a settlement with a licensee or applicant in lieu of the issuance of an accusation or statement of issues against that licensee or applicant. Requires the settlement to include language identifying the factual basis for the action being taken and a list of the statutes or regulations violated. Specifies that a person who enters a settlement is not precluded from filing a petition, in the timeframe permitted by law, to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement. States that any settlement executed against a licensee shall be considered discipline, and a public record to be posted on the applicable board's Internet Website.

18) Allows the executive officer of a healing arts board, upon receipt of evidence that a licensee of a healing arts board has engaged in conduct that poses an imminent risk of serious harm to the public health, safety, or welfare, to petition the Director of the DCA to issue a temporary order that a licensee cease all practice and activities.

19) Requires the executive officer, to the extent practicable, to provide telephonic, electronic mail, message, or facsimile written notice to the licensee of a hearing on the petition at least five business days prior to the hearing. Specifies that all parties have the opportunity to present oral or written argument before the Director. Specifies that after presentation of the evidence, if in the Director's opinion, the petitioner has established, by a preponderance of the evidence that an imminent risk of serious harm
to the public health, safety or welfare exists, the Director may issue an order that the licensee cease all practice and activities that require a license by that board.

20) Provides that a cease practice order issued pursuant to Item #18) above shall be automatically vacated within 90 days of issuance, or until the healing arts board files a petition for an interim suspension order and the petition is denied or granted, whichever occurs first.

21) Indicates that a licensee who fails or refuses to comply with an order of the Director to cease practice pursuant to Item #18) above is subject to disciplinary action to revoke or suspend his or her license by the respective healing arts board, and an administrative fine assessed by the board not to exceed $25,000.

22) States that upon receipt of new information, the executive officer for the healing arts board who requested the temporary suspension order shall review the basis for the license suspension to determine if the grounds for the suspension continue to exist. Requires the executive officer to immediately notify the Director if the executive officer believes that the licensee no longer poses an imminent risk of serious harm to the public health, safety, or welfare. Requires the Director to review the information and may vacate the suspension order, if he or she believes that the suspension is no longer necessary to protect the public health, safety, or welfare.

23) Requires any petition and order to cease practice to be displayed on the Internet Website of the applicable healing arts board, as specified.

24) States that the hearing is not subject to the APA, but allows a licensee whose license has been temporarily suspended to petition for a writ of mandate which shall be heard only in the Superior Court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego.

25) Defines imminent risk of serious harm to the public health, safety, or welfare as a reasonable likelihood that permitting the licensee to continue to practice will result in serious physical or emotional injury, unlawful sexual contact, or death to an individual or individuals within the next 90 days.

26) Requires the automatic suspension of any licensee who is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. Requires the healing arts board to notify the licensee in writing of the suspension and of his or her right to elect to have the issue of penalty heard, as specified.

27) Provides that a decision issued by an administrative law judge that contains a finding that a licensee or registrant has engaged in any act of sexual exploitation, as defined, with a patient, or has committed an act or been convicted of a sex offense as defined, shall contain an order of revocation. Specifies that the revocation shall not be stayed by the administrative law judge.

28) Specifies certain requirements for any applicant or licensee who is required to register as a sex offender.

29) Prohibits a licensee from including the following in settlement agreements for civil disputes arising from his or her practice: prohibiting another party to the dispute from contacting or cooperating with the healing arts board; prohibiting another party to the dispute from filing a complaint with the healing arts board; and requiring another party to the dispute to withdraw a complaint he or she has filed with the healing arts board. Specifies that any settlement agreement that contains any of these provisions is
void as against public policy, and constitutes unprofessional
conduct.

30) Allows the AG and his or her investigative agents, and a healing
arts board and its investigators and representatives to inquire
into any alleged violation of the laws under the jurisdiction of
the healing arts board or any other federal or state law,
regulation, or rule relevant to the practice regulated by the
healing arts board, whichever is applicable, and may inspect
documents relevant to those investigations in accordance with the
following procedures:

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

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

31) Specifies that where certified documents are requested from
licensees in accordance with Item #30) above by the AG, or his or
her agents or deputies, or any board, the documents shall be

provided within 10 business days of receipt of the request, unless
the licensee is unable to provide the certified documents within
this time period for good cause. States that good cause includes,
but not limited to, physical inability to access the records in the
time allowed due to illness or travel. Makes failure to produce
requested certified documents or copies thereof, after being
informed of the required deadline, unprofessional conduct.

32) States that any provision of law making a communication between a
licensee of a healing arts board and his or her patients a
privileged communication shall not apply to investigations or
proceedings conducted by a healing arts board. Requires the names
of any patients whose records are reviewed to be confidential,
unless specified. States that the authority to examine records of
patients in the office of a licensee is limited to records of
patients who have complained to the healing arts board about that
licensee.

33) Specifies that a licensee who fails or refuses to comply with a
request for the certified medical records of a patient, that is
accompanied by that patient's written authorization for release of
records to a healing arts board, within 15 days of receiving the
request and authorization, shall pay to the healing arts board a
civil penalty of up to $1,000 per day for each day that the
documents have not been produced after the 15th day, up to $10,000,
unless the licensee is unable to provide the documents within this
time period for good cause.

34) Requires a health facility to comply with a request for the
certified medical records of a patient that is accompanied by that
patient's written authorization for release of records to a healing
arts board together with a notice citing this section and
describing the penalties for failure to comply with this
requirement. Specifies that failure to provide the authorizing
patient's certified medical records to the healing arts board
within 30 days of receiving the request, authorization, and notice
shall subject the health care facility to a civil penalty, payable
to the healing arts board, of up to one thousand dollars ($1,000)
per day for each day that the documents have not been produced
after the 30th day, up to $10,000, unless the health care facility
is unable to provide the documents within this time period for good
cause. Requires healing arts boards to pay the reasonable costs of
copying the certified medical records, but shall not be required to
make that payment prior to the production of the medical records.

35) States that a licensee who fails or refuses to comply with a court


order, issued in the enforcement of a subpoena, mandating the release of records to a healing arts board, shall pay to the healing arts board a civil penalty of up to $1,000 per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, up to $10,000, unless it is determined that the order is unlawful or invalid. Indicates that any statute of limitations applicable to the filing of an accusation by the healing arts board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals. Indicates that any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to a board is guilty of a misdemeanor punishable by a fine payable to the board not to exceed $5,000, as specified. Indicates that multiple acts by a licensee in violation of this provision is punishable by a fine not to exceed $5,000 or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment. A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the healing arts board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

36) Provides that a health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of patient records to a healing arts board, that is accompanied by a notice citing this requirement and describing the penalties for failure to comply with this section, shall pay to the healing arts board a civil penalty of up to $1,000 per day for each day that the documents have not been produced, up to $10,000, after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Indicates that any health care facility that fails or refuses to comply is guilty of a misdemeanor punishable by a fine payable to the board not to exceed $5,000. Indicates that multiple acts by a health care facility in violation of this provision is punishable by a fine not to exceed $5,000, shall be reported to the State Department of Public Health, and considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

37) States that imposition of civil penalties for failure to provide medical records shall be in accordance with the APA, and that any civil penalties paid to or received by a healing arts board shall be deposited into the fund administered by the healing arts board.

38) Defines "certified medical records" as a copy of the patient's medical records authenticated by the licensee or health care facility, as appropriate, on a form prescribed by the licensee's board.

39) Specifies that the provisions requiring the production of medical records do not apply to a licensee who does not have access to and control over certified medical records.

40) Requires a state agency, upon receiving a request in writing from a healing arts board for records, to immediately provide to the healing arts board all records in the custody of the state agency, including but not limited to confidential records, medical records, and records related to closed or open investigations. Specifies that if a state agency has knowledge that a person it is investigating is licensed by a healing arts board, the state agency shall notify the healing arts board that it is conducting an
investigation against one of its licentiates. Requires the notification of investigation to the healing arts board to include the name, address, and, if known, the professional licensure type and license number of the person being investigated and the name and address or telephone number of a person who can be contacted to cooperate with the healing arts board in providing any requested information.

41) Requires all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and employers of a licensee of a healing arts board to provide records to the healing arts board upon request prior to receiving payment from the board for the cost of providing the records.

42) Requires any employer of a health care licensee to report to the board the suspension or termination for cause, or any resignation in lieu of suspension or termination for cause, of any health care licensee in its employ within 15 business days, as specified. Indicates that this reporting requirement does not constitute a waiver of confidentiality of medical records, and that the information reported or disclosed shall be kept confidential and not subject to discovery in civil cases. States that no person shall incur any civil penalty as a result of making this report.

43) Defines resignation, suspension or termination for cause as any of the following reasons:

a) Use of controlled substances or alcohol to the extent that it impairs the licensee's ability to safely practice.

b) Unlawful sale of a controlled substance or other prescription items.

c) Patient or client abuse, neglect, physical harm, or sexual contact with a patient or client.

d) Gross negligence or incompetence.

e) Theft from a patient or client, any other employee, or the employer.

44) Defines gross negligence for purposes of Item #43) above, as a substantial departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent health care licensee, and which has or could have resulted in harm to the consumer. An exercise of so slight a degree of care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the consumer shall be considered a substantial departure from the above standard of care.

45) Defines incompetence for purposes of Item #43) above, as the lack of possession of and the failure to exercise that degree of learning, skill, care and experience ordinarily possessed by a responsible health care licensee.

46) States that a willful failure of an employer to make a report required in Item #42) above is punishable by an administrative fine not to exceed one hundred thousand dollars ($100,000) per violation. Defines willful as knowing and intentional violation of a known legal duty. States that any failure of an employer, other than willful failure, to make a report required by this section is punishable by an administrative fine not to exceed $50,000.

47) Requires healing arts boards to report annually, by October 1, to the DCA and to 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 or alcohol or drug abuse.

48) Provides that on or after July 1, 2013, every healing arts board

shall post on the Internet specified information in its possession, custody, or control regarding every licensee for which the board licenses, including whether or not the licensee or former licensee is in good standing, subject to a temporary restraining order, subject to an interim suspension order, subject to a restriction or cease practice order, as specified, or subject to any of the enforcement actions, as specified; whether or not the licensee or former licensee has been subject to discipline by the healing arts board or by the board of another state or jurisdiction, as described; any felony conviction of a licensee reported to the healing arts board; all current accusations filed by the AG's Office; and any malpractice judgment or arbitration award.

49) Requires the AG's Office to do the following:

a) Serve, or submit to a healing arts board for service, an accusation within 60 calendar days after receipt from the healing arts board.

b) Serve, or submit to a healing arts board for service, a default decision within five days following the time period allowed for the filing of a notice of defense.

c) Set a hearing date within three days of receiving notice of defense, unless the healing arts board gives the AG's Office instruction otherwise.

50) Provides that whenever it appears that an applicant for a license, certificate, or permit from a healing arts board may be unable to practice his or her profession safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the healing arts board may order the applicant to be examined by one or more physicians and surgeons or psychologists designated by the healing arts board. States that an applicant's failure to comply with the specified order authorizes the board to deny an applicant a license, certificate, or permit. Prohibits a healing arts board from granting a license, certificate, or permit until it has received competent evidence of the absence or control of the condition that caused its action and until it is satisfied that with due regard for the public health and safety the person may safely practice the profession for which he or she seeks licensure.

51) States that an applicant for a license, certificate, or permit from a healing arts board who is otherwise eligible for that license but is unable to practice some aspects of his or her profession safely due to a disability may receive a limited license if he or she does both of the following:

a) Pays the initial licensure fee.

b) Signs an agreement on a form prescribed by the healing arts board in which the applicant agrees to limit his or her practice in the manner prescribed by the healing arts board.
52) Allows a healing arts board to require the applicant described in Item #51 above to obtain an independent clinical evaluation of his or her ability to practice safely as a condition of receiving a limited license. States that any person who knowingly provides false information in the agreement submitted shall be subject to any sanctions available to the healing arts board.

53) Requires a healing arts board to report to the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB) the following information on its licensees:
   a) Any adverse action taken by such licensing authority as a result of any disciplinary proceeding, including any revocation or suspension of a license and the length of that suspension, or any reprimand, censure, or probation.
   b) Any dismissal or closure of the proceedings by reason of a licensee surrendering his or her license or leaving the state.
   c) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.
   d) Any negative action or finding by the board regarding a licensee.

54) Requires each healing arts board to conduct a search on the NPDB and HIPDB prior to granting or renewing a license, certificate, or permit to an applicant. Allows a healing arts board to charge a fee to cover the actual cost to conduct the search.

55) States, unless specified, that if a health care licensee possesses a license or is otherwise authorized to practice in any state other than California or by any agency of the federal government, and that license or authority is suspended or revoked outright and is reported to the NPDB, the California license of the licensee shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded, as provided. Requires a healing arts board to notify the licensee of the license suspension and of his or her right to have the issue of penalty heard, as specified. Allows a healing arts board to set aside the suspension when it appears to be in the interest of justice, as specified.

56) Establishes the Emergency Health Care Enforcement Reserve Fund in the State Treasury, to be administered by the DCA, and provides that any moneys in the fund shall be used to support the investigation and prosecution of any matter within the authority of any of the healing arts boards. States that the DCA, upon direction of a healing arts board, shall pay out the funds or approve such payments as deemed necessary from those funds as have been designated for these purposes. States that the contents of the Emergency Health Care Enforcement Reserve Fund are those moneys from the board's individual funds which shall be deposited into the Emergency Health Care Enforcement Reserve Fund when the amount within those funds exceeds more than four months operating expenditures of the individual board. Allows DCA, with approval of a healing arts board, may loan to another board moneys necessary for the purpose of this section when it has been established that insufficient funds exist for that individual board, provided that the moneys will be repaid.

57) States that if a healing arts board's fund reserve exceeds its statutory maximum, the board may lower its fees by resolution in order to reduce its reserves to an amount below its maximum.

58) States the following Legislative findings that there are occasions when a healing arts board urgently requires additional expenditure authority in order to fund unanticipated enforcement and litigation activities. Without sufficient expenditure authority to obtain the
necessary additional resources for urgent litigation and enforcement matters, the board is unable to adequately protect the public. Therefore, it is the intent of the Legislature that apart from and in addition to the expenditure authority that may otherwise be established, the healing arts boards shall be given the increase in its expenditure authority in any given current fiscal year that is authorized by the Department of Finance, as specified, for costs and services in urgent litigation and enforcement matters, including, but not limited to, costs for the services of the AG and the Office of Administrative Hearings.

59) Provides that upon the request of the DCA, the Department of Finance may augment the amount available for expenditures to pay enforcement costs for the services of the AG's Office and the Office of Administrative Hearings. States that if an augmentation exceeds 20% of the board's budget for the Attorney General, it may be made no sooner than 30 days after notification in writing to chairpersons of the committees in each house of the Legislature that consider appropriations and the Chairperson of the Joint Legislative Budget Committee, or no sooner than whatever lesser time the chairperson of the Joint Legislative Budget Committee may in each instance determine.

60) States that commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed, and under any initiative act, as specified. Specifies that the commission of and conviction for any act of sexual abuse, sexual misconduct, or attempted sexual misconduct, whether or not with a patient, or conviction of a felony requiring registration, as specified, shall be considered a crime substantially related to the qualifications, functions, or duties of a licensee of a healing arts board.

61) Specifies that the following constitutes unprofessional conduct:

a) The conviction of a charge of violating any federal statute or regulation or any statute or regulation of this state regulating dangerous drugs or controlled substances. States that the record of the conviction is conclusive evidence of the unprofessional conduct; and that a plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction. Allows discipline to be ordered against a licensee, as specified.

b) A violation of any federal statute or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs or controlled substances.

c) The use or prescribing for or administering to himself or herself of any controlled substance or the use of any of the dangerous drugs, as specified, or of alcoholic beverages, to the extent or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that the use impairs the ability of the licensee to practice safely; or any misdemeanor or felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination, thereof. States that a violation of this provision is a misdemeanor punishable by a fine of up to $10,000, imprisonment in the county jail of up to 6 months, or both the fine and imprisonment.
62) Makes it **unprofessional conduct** for any licensee for failure to comply with the following:

a) Furnish information in a timely manner, as specified.

b) Cooperate and participate in any investigation or other regulatory or disciplinary proceeding pending against the licensee. States that this provision shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges.

63) Requires a **licensee** of a healing arts board to submit a **written report** of any of the following: The bringing of an indictment or information charging a felony against the licensee; arrest of the licensee; conviction of the licensee, including any felony or misdemeanor; and, any disciplinary action taken by another licensing entity or authority of this state or of another state. Requires the report to be made in writing within 30 days; and that failure to make a report is a public offense punishable by a fine not to exceed $5,000 and shall constitute unprofessional conduct.

64) Requires a licensee of a healing arts board to identify him or herself as a licensee of the board to law enforcement and court officials upon being arrested or charged with a misdemeanor or felony. Requires healing arts boards to inform licensees of this requirement.

65) Requires the **clerk** of the **court** to do the following:

a) Report to a healing arts board any judgment for a crime committed or for any death or personal injury in excess of $30,000, for which the licensee is responsible due to negligence, error or omission in practice, or rendering unauthorized professional services.

b) Transmit any felony preliminary hearing transcript concerning a defendant licensee of a healing arts board.

66) Requires the district attorney, city attorney, other prosecuting agency, or clerk of the court to notify the appropriate healing arts boards if the licensee has been charged with a felony immediately upon obtaining information that the defendant is a licensee of the board.

67) Requires the AG's Office to provide reports within 30 days of subsequent arrests, convictions or other updates of licensees to healing arts boards.

68) Specifies that it is a public offense, punishable by a fine not to exceed $100,000 or imprisonment, to engage in any practice including healing arts practice without a current and valid license. States that this provision applies to a licensee who supervises the practice of any person who does not hold a current and valid license to practice.

69) Sunsets on January 1, 2013, the drug diversion programs of the following boards: Dental Board of California, Osteopathic Medical Board of California, Physical Therapy Board of California, Board of Registered Nursing, Physician Assistant Committee, California State Board of Pharmacy, and Veterinary Medical Board.

70) Allows any healing arts board to utilize the vertical enforcement and prosecution model, as specified, for the investigation and prosecution of some or all of its enforcement actions.

71) States that it is the intent of the Legislature that the DCA shall, on or before December 31, 2012, establish an enterprise information technology system for healing arts license information, as specified.
72) Provides for additional listing of general provisions which are now applicable to the healing arts boards which shall also be applicable to the Chiropractic Board which are not considered as inconsistent with the Chiropractic Initiative Act.

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

COMMENTS:

1. Purpose. According to the Department of Consumer Affairs, the Sponsor of this measure, in recent years, some of DCA’s healing arts boards have been unable to investigate and prosecute consumer complaints in a timely manner. Some boards have taken an average of three years or more to investigate and prosecute these cases. This is an unacceptable timeframe given that the highest priority of these boards is the protection of the public. This bill provides healing arts boards several tools to improve the enforcement process and ensure patient safety.

2. Background. On July 11, 2009, the Los Angeles Times, in conjunction with Pro-Publica, a nonprofit investigative news agency, published an article entitled “When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer,” charging that the BRN, which oversees California's more than 350,000 nurses, often takes years to act on complaints of egregious misconduct. The article indicated that nurses with histories of drug abuse, negligence, violence, and incompetence continue to provide care, and BRN often took more than three years on average to investigate and discipline errant nurses. The article also pointed out that complaints often take a circuitous route through several clogged bureaucracies; the BRN failed to act against nurses who have been sanctioned by others and failed to use its authority to immediately suspend dangerous nurses from practicing; there were failures in the probation monitoring of troubled nurses; there is a lack of reporting requirement for hospitals to report nurses who have been fired or suspended for harming a patient or other serious misconduct similar to what is required of vocational nurses, psychiatric technicians and respiratory care therapists; and, nurses convicted of crimes, including sex offenses and attempted murder continue to be licensed. On July 25, 2009, the LA Times published another article on the failures of BRN’s drug diversion program. This article pointed out that participants in the program continue to practice while intoxicated, stole drugs from the bedridden and falsified records to cover their tracks. Moreover, more than half of those participating in drug diversion did not complete the program, and even those who were labeled as “public risk” or are considered dangerous to continue to treat patients did not trigger immediate action or public disclosure by BRN. The article further pointed out that because the program is confidential, it is impossible to know how many enrollees relapse or harm patients. But the article points out that a review of court and regulatory records filed since 2002, as well as interviews with diversion participants, regulators and experts suggests that dozens of nurses have not upheld their end of the bargain and oversight is lacking. These revelations, including other articles revealing lengthy enforcement timeframes against problem nurses who continue to practice and provide care to the detriment of patients, led Governor Schwarzenegger to replace four members of the BRN and appoint members to two long-time vacancies.

On July 27, 2009, DCA convened a meeting for the purpose of taking testimony and evidence relevant to the BRN enforcement program.
BRN's discussion focused on its proposals that were contained in the "Enforcement Report On the Board of Registered Nursing." The report pointed out several barriers to BRN's enforcement process, but specifically indicated that for the board's diversion program, when a substance abuse case is referred to the diversion program, the investigation is placed on hold while the licensee decides if he/she wants to enter diversion. This practice allows the licensee to delay final disposition of the case. In addition, there is limited communication between the diversion program and the enforcement program which can delay investigation of licensees who are unsuccessfully diverted and are terminated from the program, and that the BRN lacks a number of enforcement tools, including the ability to automatically suspend licensees pending a hearing.

On August 17, 2009, this Committee held an informational hearing entitled "Creating a Seamless Enforcement Program for Consumer Boards" and investigated many of the problems pointed out by the LA Times, as well as others related to the BRN and other healing arts boards. A Background Paper was prepared for the hearing which pointed out many of the existing problems and made specific recommendation for improving the enforcement programs of the healing arts boards. This bill codifies many of the recommendations listed in the Background Paper for the informational hearing and well as others proposed by the Sponsor (DCA).

3. Previous and Similar Legislation.

   a) SB 1172  (Negrete McLeod), pending in this Committee, requires a healing arts board of the DCA to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program; allows a healing arts board to adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations, and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to uniform and specific standards, as specified.

   b) SB 294  (Negrete McLeod), pending in the Assembly Business and Professions Committee contains similar provisions that are in this bill. It is anticipated that the current provisions of SB 294 will be amended out at a later date to deal with a different subject matter.

   c) SB 1441  (Ridley-Thomas, Chapter 548, Statutes of 2008), established within the DCA the Substance Abuse Coordination Committee to formulate by January 1, 2010, uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, whether or not a health care board operates a diversion program.

4. Specific Enforcement Changes for Healing Arts Boards within this Measure.

   a) Information Required to be Posted on the Internet. Requires all healing arts boards to disclose the status of every license, including suspensions and revocations, whether or not the licensee or former licensee is in good standing, or has been subject to discipline by the healing arts board or by the board of another state or jurisdiction.

      i) Justification. Currently there are a number of boards, including healing arts boards, which are required to post the aforementioned information regarding a licensee. According to the Sponsor, there appears to be no reason why all healing arts boards under the DCA should not be subject to the same basic requirements for disclosure over the Internet that other boards and bureaus are currently required to disclose to the public. Much of this information is considered as public information.
One of the issues raised by the LA Times is that the public is unaware of problem licensees, whether they have had prior disciplinary action taken against them, or whether their license is currently in good standing. There were instances in which the LA Times looked up on the Internet or on the BRN's Website and never saw prior disciplinary or criminal convictions of nurses.

ii) Concerns Raised and Response. The American Nurses Association/California (ANA/C), the California Nurses Association (CNA), SEIU, and the United Nurses Associations of California (UNAC) opposes the disclosure of an address of record on the Internet. The recent amendments addressed this concern and removed provisions requiring disclosure of specified health care licensee's address on the Internet. Only the city or county in which they are located will be provided on the Internet.

Additionally, the California Dental Association (CDA) opposes disclosure of pending accusations in which there has not even been a hearing. CDA states that posting such accusations on the Internet is unfair and harmful to the practitioner and may be a violation of their due process rights. This does not appear justified. All other healing arts board within the DCA disclose pending accusations. The lack of disclosure of disciplinary actions is also one of the criticisms labeled by the LA Times against the BRN because the lack of disclosure is inconsistent with public protection. An accusation is a public record under the Public Records Act (PRA). If a consumer made a PRA request to the Dental Board about a particular dentist, DBC would have to disclose any pending accusation. An accusation means that the complaint/report has been fully investigated, the investigation is complete, and the prosecutor (board's EO and the AG's Office) believe that there is "clear and convincing evidence" of a violation that merits disciplinary action. An accusation is not a naked complaint. The filing of the accusation is what turns a confidential investigation into a matter of public record. The MBC has been publicly disclosing accusations since 1993. There is no reason why dentists should be exempted from disclosing accusations that are already public records. Once investigation is completed, and accusations are filed, the public must be made aware of the charges against healing arts licensees.

b) Director's Authority to Audit Enforcement Programs of Health Boards. Existing law authorizes the Director of DCA to audit and review, among other things, inquiries and complaints regarding licensees, dismissals of disciplinary cases, and discipline short of formal accusation by the MBC and the California Board of Podiatric Medicine. This bill will additionally authorize the Director to audit and review the aforementioned activities for any of the healing arts boards.

i) Justification. As indicated by the Sponsor, there does not appear to be any reason why the Director should only be limited to auditing and taking specific actions on behalf of consumers for the MBC and the Podiatric Board. The Director should be authorized to audit and review any healing arts boards as necessary, and allow the Director to make recommendations for changes to the board's disciplinary or enforcement system.

ii) Concerns Raised and Response. ANA/C indicates that it does not support the Director of the DCA making recommendations of changes to the BRN. Recent amendments provide that the recommendations of the DCA Director are for consideration of the boards only and no changes or recommendations are mandated.

c) Cost Recovery for Probation Monitoring and Determination of
Reasonable Costs. Allows healing arts board to recover reasonable costs of probation monitoring for a licensee who is placed on probation by the administrative law judge; and specifies what an administrative law judge shall consider in determining reasonable costs.

i) Justification. Originally this provision changed recovery costs for investigation and prosecution of cases for boards that were successful in their disciplinary cases from "reasonable" to "actual" costs for the boards to collect. Also, it added as an additional cost recovery probation monitoring costs. As indicated by the Sponsor, while some boards have explicit statutory authority to recover costs associated with probation monitoring, not all boards do. Such a requirement can be made a term of probation without statutory authority, but the statutory authority will give boards more explicit authority, lead to quicker resolution of probation terms, and authorize boards to refuse to renew the license of a licensee who has not paid probation costs.

ii) Concerns Raised and Response. ANA/C indicates that adding additional penalties for nurses paying for the prosecution of cases could prevent nurses from returning to practice, or stop nurses from defending themselves since they could not afford to pay for the cost of prosecution and defending themselves. SEIU opposes requiring individual licensees to pay the costs of investigation. CNA opposes the provisions allowing licensees to pay for actual costs of the case and is also concerned about the high costs of probation monitoring.

Additionally, the Hearing Healthcare Providers of California, the American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work, and the National Association of Social Workers (CA Chapter) states that the elimination of a "reasonable" cost standard and substituting "actual" cost is alarming and unreasonable.

It should first be noted that all boards are subject to cost recovery provisions. The only real change, as indicated, involved changing the standard from collecting reasonable costs to "actual costs" and including probation monitoring costs. Recent amendments deleted the term "actual costs" and retains the current "reasonable costs" requirement for cost recovery.

d) Allow Boards to Contract with Collection Agency. Allows a board to contract with a collection service for the purpose of collecting outstanding fees, fines, or cost recovery amounts.

i) Justification. As explained by the Sponsor, all of DCA's boards are authorized to issue administrative citations which may include an administrative fine to licensees for violations of law, and to non-licensees for unlicensed activity. However, most boards come far from ever collecting all administrative fines due to them. In order to improve effectiveness in boards' fine collection efforts, the DCA will procure a contract with a collection agency that can serve all boards. Legislation is needed to allow the DCA the ability to provide the collection agency with social security numbers.
ii) Concerns Raised and Response. CDA supports allowing healing arts boards to contract with collection agencies but collection agencies should expressly be allowed to negotiate plans with practitioners. The Sponsor indicates it would work with CDA to address this concern.

e) Allow Health Boards to Hear Appeals of Citations and Fines. Allows healing arts boards to appoint two members of the board to conduct a hearing to hear an appeal of the citation decision and assessment of a fine. The hearing would not be required to be conducted in accordance with the APA but requires a board that chooses to utilize this process to first adopt regulations providing for notice and opportunity to be heard.

i) Justification. According to the Sponsor, all boards are authorized to issue administrative citations which may include an order of abatement or a fine of up to $5,000 so long as the board has regulations in place establishing a system for the issuance of the citations. Existing law permits a licensee who is issued a citation to appeal the citation and request a hearing pursuant to the APA. However, an administrative hearing can impose a large cost on a board; a board can spend $8,000 on legal costs to uphold a $600 fine. The Sponsor believes that allowing two board members would shorten and streamline the appeals process for citation and fine actions taken against the licensee.

ii) Concerns Raised and Response. ANA/C states that of the two board members which would hear cite and fine appeals, one of the two members should be a licensee. Recent amendments require that one of the members must be a licensee.

CNA and SEIU argue that this bill undermines due process. Additionally, the American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work, and the National Association of Social Workers (CA Chapter) state that these provisions reduce due process standards, and that the hearing should continue to be conducted pursuant to the APA.

Recent amendments were taken to address certain due process concerns, including requiring a board to adopt regulations providing the licensee with due process, including notice and opportunity to be heard. (It should be noted that an appeal of the citation decision by board members is still permitted by allowing the licensee to file a petition for writ of mandate.)

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

i) Justification. The Sponsor believes that health boards should be provided with the greatest flexibility in obtaining investigative services and in completing cases in a timely manner. By allowing health boards to contract with the Department of Justice, or to utilize the investigative services of the DOI, boards will be provided with the broadest opportunity to move cases forward in a more expeditious manner. The AG's Office made this recommendation to the Sponsor since they also believe that more difficult criminal-type cases could be investigated and prosecuted by their Office.

ii) Concerns Raised and Response. This provision originally allowed for boards to also contract for investigative services with the MBC. CNA pointed out that the MBC does not have the expertise or authority necessary to investigate or regulate nurses. Recent amendments removed reference to the MBC.
g) Create Within the Division of Investigation a Health Quality Enforcement Unit. Creates within DOI a special unit titled the "Health Quality Enforcement Unit" to focus on heath care quality cases and to work closely with the AG's Health Quality Enforcement Section in investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

i) Justification. The Sponsor believes that by creating a Health Quality Enforcement Unit to focus on heath care quality cases will create expertise in the investigation and prosecution of complex and varied disciplinary actions against licensees of the various healing arts boards.

ii) No Concerns Raised.

h) Authority of the Board of Registered Nursing to Hire Investigators, Nurse Consultants and Other Personnel. Allows the BRN to hire a certain number of investigators with the authority and status of peace officers.

i) Justification. It is the opinion of the Sponsor and the BRN that the BRN could pursue investigations more quickly if they were able to hire both sworn peace officers and non-sworn investigators, as well as nurse consultants, and not always have to rely on the DCA's Division of Investigation.

ii) No Concerns Raised.

i) New Enforcement Article for all Health Care Boards. Lists all the boards which are considered as a "healing arts boards" within DCA.

i) Justification. Many of the requirements that now only apply to the MBC and the Podiatric Board will now have general application to all healing arts boards by creating a new article in the B&P Code and including those provisions which should apply to all healing arts boards. This article will also include new provisions which will have general application to all healing arts boards.

ii) No Concerns Raised.

j) Authority for Executive Officers to Adopt Default Decisions and Stipulated Settlements. Allows a healing arts board to delegate to the executive officer the authority to adopt a proposed default decision in an administrative action to revoke a license if a licensee fails to file a notice of defense, appear at the hearing, or has agreed to surrender his or her license.

i) Justification. According to the AG's Office, a majority of filed cases settle and the receipt of a Notice of Defense can trigger either settlement discussions or the issuance of a Default Decision. Stipulated settlements are a more expeditious and less costly method of case resolution. The executive officer of the board can provide summary reports of all settlements to the board and the board can provide constant review and feedback to the executive officer so that policies can be established and adjusted as necessary. Also, there have been instances of undue delays between when a fully-signed
settlement has been forwarded to the board's headquarters and when it has been placed on the board's agenda for a vote. Delegating this authority to the executive officer will result in a final disposition of these matters much more quickly. The fact that the BRN, for example, has reduced the number of its annual meetings has only increased the need for this.

According to the Center for Public Interest Law (CPIL), it is taking the AG too long to prepare a proposed default decision. In 2004-2005, it was taking the AG almost 6 months to file a proposed default decision. In 2008-2009 it was down to about 2.5 months. As argued by CPIL, filing a proposed default decision is "not rocket science" and should only take a matter of hours.

ii) Concerns Raised and Response. ANA/C supports the ability of the Executive Officer to revoke a license, but does not agree that the person cannot come back to the board and request reconsideration of the terms and conditions. Licensees should not lose their right to petition for changes just because they stipulated a settlement or because they failed to appear. Additionally, CNA states that the Executive Officer should be explicitly required to report to the board on any actions he or she took to sign default decisions and settlement agreements under this new authority. Lastly, CDA requests clarifying language to ensure that practitioners are still afforded rights they are entitled to following issuance of a default decision, and that the executive officers be given the authority to accept all stipulated settlements on behalf of the board. The Sponsor indicates that it will work with ANA/C, CNA and CDA to address these concerns.

The American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that clarification is needed to ascertain timing and duration of the process, notice to the licensee, and the nature of the process. The Sponsor indicates it will work with the organizations to address their concerns.

aa) Authority for Health Boards to Enter Into Stipulated Settlements Without Filing an Accusation. Authorizes a healing arts board to enter into a settlement with a licensee or applicant prior to the board's issuance of an accusation or statement of issues against the licensee.

i) Justification. According to the Sponsor, the APA requires a board to file an accusation or statement of issues against a licensee before the board can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, boards have experienced licensees who are willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process.

ii) Concerns Raised and Response. The American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) indicate that these provisions raise questions about the possibility and the ability of a board to coerce a settlement and does not allow for any future modifications of the stipulation.

Recent amendments would give notice to licensees by requiring the settlement to include language identifying the factual basis for the action taken, and a list of the statutes or regulations
violated. In addition, the amendments also allow a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation, if probation is part of the settlement.

bb) Director's Authority to Temporarily Suspend License. Authorizes the Director of DCA to issue a temporary order to suspend the license of a licensee for up to 90 days if the Director receives evidence from a board that the licensee has engaged in conduct that poses an *imminent* risk of serious harm to public health, safety, or welfare. This provision previously also allowed for the ability to suspend a license if a licensee failed to comply with a request to inspect medical records.

i) Justification. According to the Sponsor, under existing law, the Interim Suspension Order (ISO) process (Section 494 of the B&P Code) provides boards with an avenue for expedited suspension of a license when action must be taken swiftly to protect public health, safety, or welfare. However, the Sponsor argues that currently the ISO process can take weeks to months to achieve, allowing licensees who pose a serious risk to the public to continue to practice for an unacceptable amount of time. Also the timeframes in which future action against the licensee must be taken, such as 15 days to investigate and file an accusation, are unreasonable and prevents most boards from utilizing the ISO process to immediately suspend the license of a health care practitioner. To ensure the public is protected, the Sponsor is proposing that the Director be given the authority to issue a cease practice or restricted practice order, upon the request of an executive officer.

ii) Concerns Raised and Response. CNA states that allowing suspension by the Director of the DCA without a hearing violates due process. CNA asserts that it is unclear why the bill would grant new powers to the Director when the BRN currently has the authority to temporarily suspend licensees by issuing an ISO. As indicated above, the ISO process can take weeks to months to achieve and the time limits on filing an accusation deter the use of the current ISO process. The order of the Director for a licensee to cease practice would be in effect for up to 90 days, giving the board time to gather further evidence to support a petition for an ISO. This would allow boards to expeditiously remove licensees from practice if necessary to protect the public while the investigation continues forward. The Sponsor indicates, however, that it will continue to work with CNA to address its concerns.

The American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work, and the National Association of Social Workers (CA Chapter) state that the failure to produce records does not justify immediate suspension; the 24-hours hearing notice is insufficient and there is need to specify a standard of evidence. Recent amendments extend the 24-hours notice provision to five business days, establish a preponderance of the evidence as a standard; and define imminent risk of serious harm may address their concerns. Amendments also removed the ability of the Director to suspend a license because the
licensee failed to comply with a request to inspect medical records.

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

i) Justification. The Sponsor notes that existing law allows physicians and surgeons and podiatrists to be suspended while incarcerated and argues that there is no reason why other health professionals should not be subject to the same requirements regarding suspension of their license if they are convicted of a felony and incarcerated. Automatic license suspension is needed to prevent health care professionals from practicing while in prison or while released pending appeal of a conviction. Years may pass before a convicted licensee's license can be revoked. According to the LA Times, "In some cases, nurses with felony records continue to have spotless licenses even while serving time behind bars." The LA Times gave examples of at least five nurses who had felony convictions and yet continued to have a license in good standing.

ii) No Concerns Raised.

dd) Attempt to Assure that BRN's Fund Will Only Be Used for Board Expenditures.

This bill allows a healing arts board to lower licensing fees by resolution if that board's fund reserve exceeds its statutory maximum; allows the Department of Finance, upon the request of the DCA, to augment the amount available for expenditures to pay enforcement costs for the services of the Attorney General's Office and the Office of Administrative Hearings. Further, in its current form, the bill establishes the Emergency Health Care Enforcement Reserve Fund in the State Treasury to be administered by DCA, which would be continuously appropriated to support the investigation and prosecution of any matter within the authority of any of the healing arts boards.

i) Justification. According to the Author, the state of California is experiencing an unprecedented budget crisis, which has affected every aspect of state government. In response, the Governor has issued multiple executive orders instructing state agencies to reduce personnel expenditures by implementing a hiring freeze, eliminating overtime, terminating temporary employees, suspending all personal service contracts, and implementing a mandatory furlough of state employees. BRN and other DCA boards are "special fund" agencies in that they are funded not by the state's General Fund, but by their own "special funds" consisting of fees paid by licensees. These licensing fees flow steadily into each special fund account and are statutorily required to fund the regulatory programs of their respective boards. Even though the special funds exist for the sole purpose of supporting their own specified programs, multiple loans totaling $304.5 million have been taken from DCA's special funds to augment the General Fund and balance the state budget. There are currently 14 DCA special funds with outstanding loans totaling $237.8 million, $159 million of which is due to the Bureau of Automotive Repair. Two of the boards with outstanding loans have recently found it necessary to increase their fees; BRN is seeking to increase its fees effective January 2011, and the Board of Pharmacy implemented a fee increase in January 2010.

BRN alone funded a $14 million loan to the General Fund and is still owed $2 million. This money, as the Author argues, could have been used to augment the BRN's enforcement programs at a time in which resources for the BRN were seriously needed.
Another factor, as indicated by the Author, is that the Budget Change Proposals (BCPs) for additional staff positions, including positions for enforcement, have not been authorized for various boards. (There is, however, no estimate on the number of BCPs that were not authorized.) Because of all of the budget actions to limit program growth, reduce spending, preserve cash reserves and further salary reductions, the effect has been of building up cash reserves for special funds, which could be subject to additional loans in the future. Also, any additional fee increases as anticipated by the BRN would also continue to build up cash reserves unless the BRN is able to spend down their reserves for purposes of increased enforcement efforts as anticipated by this measure. For this reason, the Author considers it critical that this measure address the use of the BRN's funds to deal with increased enforcement costs so that reserve moneys in the BRN's special

fund will not revert back to the General Fund by way of a loan.

ii) No Concerns Raised.

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

i) Justification. The Sponsor argues that the mandatory revocation of a license for acts of sexual exploitation currently applies to physician and surgeons, psychologists, respiratory care therapists, marriage and family therapists, and clinical social workers. Additionally, there is a mandatory revocation for any physician and surgeon, dentist, physical therapist, or psychologist who registers as a sex offender. There is no reason why these provisions should not apply to other healing arts boards.

ii) No Concerns Raised.

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

i) Justification. Currently, physicians and surgeons are prohibited from including gag clauses in civil dispute settlements. AB 249 (Eng, 2007) would have extended this prohibition to all healing arts professionals but was vetoed by the Governor. The Sponsor argues that there is no reason why other health professionals should not be subject to the same prohibition which would prevent them from including a "gag clause" in a malpractice settlement and thus prevent a board from receiving information about a practitioner who may have violated the law. The use of gag clauses still persists. Gag clauses are sometimes used to intimidate injured victims so
they refuse to testify against a licensee in investigations. Gag clauses can cause delays and thwart a board's effort to investigate possible cases of misconduct, thereby preventing the board from performing its most basic function - protection of the public. Gag clauses increase costs to taxpayers, delay action by regulators, and tarnish the reputation of competent and reputable licensed health professionals. California should not allow repeat offenders who injure patients to hide their illegal acts from the authority that grants them their license to practice as a health care professional.

ii) No Concerns Raised.

gg) Access to Medical Records/Documents Pursuant to Board Investigations. Authorizes the AG and his or her investigative agents and healing arts boards to inquire into any alleged violation of the laws under the board's jurisdiction and to inspect documents subject to specified procedures. Imposes civil and criminal penalties for licensees or health facilities for failure to comply with a patient's medical record request or with a court order mandating release of record.

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

ii) Concerns Raised and Response. CNA specifies that licensees should receive the same notice that facilities are entitled to delineating the penalties for failure to provide medical records. The Sponsor will work with CNA to address this issue. Additionally, CNA states that the provision relieving licensees of their duty to turn over certified medical records they do not control, or have access to, is too narrow as there are other documents and records such as timekeeping, payroll, staffing records, and electronic tracking that nurses may not own or control, but may be relevant to an investigation and are requested. Amendments will be made to this measure to address this concern. CNA also points out that the exemptions for communications between licensees and patients from existing legal confidentiality requirements during investigations or proceedings raises HIPAA concerns, and should trigger stronger patient consent requirements. The Sponsor indicates that it will work with CNA to address these concerns.
The American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that this bill permits access to sensitive psychotherapy records in investigations without permission of the patient or express written authorization for waiving confidentiality.

Current law allows the AG's Office or the boards to inspect and copy medical records where there is patient consent. Additionally, the provisions allowing disclosures of privileged communication where patient consent is given currently applies to physicians and surgeons. The Sponsor's intent in applying these provisions to all healing arts boards is to give them consistent tools in obtaining important records and documents pursuant to an investigation of the licensee, and _not_ to change existing legal requirements. Those concerned with the issue of changing the existing legal requirements for obtaining mental health records should pursue a separate bill and the Sponsor will assure that those changes would be double-jointed to this measure.

Additionally, the American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) indicate that the fines and penalties for failure to produce medical records are excessive. Recent amendments reduced the amount of penalties for failure to produce medical records so they are consistent with current law.

hh) Access to Records/Documents from Governmental Agencies. Requires a state agency, upon receiving a request from a board, to provide all records in the custody of the agency including but not limited to confidential reports, medical records and records related to closed or open investigations.

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

  ii) Concerns Raised and Response. The American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that a separate written patient authorization is necessary when seeking information from another state agency. The Sponsor states they are willing to further discuss the consent requirements.

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

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

ii) No Concerns Raised.

jj) Employer of Health Care Practitioner Reporting Requirements. Requires any employer of a healing arts licensee to report to the respective board the suspension or termination for cause, as defined (serious violations of professional practice), of any health care licensee in its employ.

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

ii) Concerns Raised and Response. SEIU is concerned about how employers may use unsubstantiated charges such as falsification of records to terminate employment. Recent amendments deleted falsification of records as a cause for reporting, and defined gross negligence and incompetence for purposes of reporting.

UNAC states that the timeframe of five days to make the report may not allow adequate time to thoroughly review and investigate an incident. The timeframe for making the report has been extended to 15 business days to address this concern.

Lastly, CNA is concerned with the impact that these reporting requirements would have on whistleblowers, and other nurses who are disciplined or terminated by their employers for fulfilling their duties as patient advocates. CNA also points out that the bill currently gives more protection to public employees. Recent amendments provide that no person shall incur a penalty for making the report.

The Author further indicates that she will continue to work on this reporting requirement to ensure that there is fairness in the reporting process.

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

i) Justification. Currently, the MBC reports annually to the DCA and the Legislature certain enforcement actions taken against physicians and surgeons. The Sponsor argues that there
is no reason why other health-related boards should not be
subject to the same requirements in submitting an annual
enforcement report both to the DCA and the Legislature.

ii) No Concerns Raised.

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

i) Justification. According to the Sponsor, there are delays
in the prosecution of cases at the AG's Office that are
contributing to the lengthy enforcement and disciplinary
process that can take on average up to 2 to 3 years. According
to statistics provided by the AG's Office, the average time for
the AG to file an accusation for a board is taking from 5 to 8
months, and to complete prosecution can take on average about
400 days. Concerns have also been raised about the time it
takes the AG to prepare a proposed default decision. The
filing of a default decision is made once a licensee has failed
to file a "notice of defense" when an accusation has been
served on him or her. If the licensee fails to file a notice
of defense within a specified timeframe, he or she is subject
to a default judgment because of a failure to appear or make a
defense of the disciplinary case. In 2004-2005 it was taking

the AG almost 6 months to file a proposed default decision. In
2008-2009 it was down to about 2.5 months. However, the filing
of a proposed default decision is "not rocket science" and
should only take a matter of days.

ii) Concerns Raised and Response. CDA is concerned that the
proposed shortened timeframes may hinder the licensee's ability
to prepare a defense, and questions whether the AG's Office has
the capacity to meet strict timeline. The Sponsor states that
it will work with CDA, and the AG's Office to resolve these
issues.

ccc) Limited License for Mental Illness or Chemical Dependency.
Grants healing arts boards the authority to provide a limited
license, certificate or permit to an applicant who may be unable
to practice his or her profession safely because of mental or
physical illness. Specifies requirements for the provision of
limited license.

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

ii) Concerns Raised and Response. ANA/C and CNA believe it is
not necessary to define limited license in statute and that
there are so many places a nurse can work with a physical
disability. SEIU and CNA states that the limited licensure
provisions violates the Americans with Disabilities Act (ADA).

Existing law allows boards to revoke, suspend, place on probation
or take any other appropriate action against a licensee if the
licensee's ability to practice his or her profession safely is
impaired because of mental illness or physical illness.

affecting competency. According to the Legislative Counsel, the ADA prohibits discrimination against disabled persons by public entities, and that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, including a public entity that administers a licensing program (Hason v. Medical Board of California (2002), 279 F.3d 1167). Instead of denying licensure of individuals who are impaired due to mental illness, or physical illness affecting competency, this bill provides reasonable accommodation through the limited licensure provisions, after specified conditions are met. This limited licensure provision is similar to what currently exists for physicians and surgeons adopted pursuant to AB 1070 (Hill, Chapter 505, Statutes of 2009).

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

Justification. According to the Sponsor there is no reason for boards not to check the NPDB or other national professional or council databases to find out whether applicants or licensees have been sanctioned or disciplined by other states prior to granting or renewing of a license.

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

One of the articles published by the LA Times pointed out that these databanks were missing critical cases, including those who have harmed patients in California. The LA Times asserted that there has been sporadic reporting to these databanks, and state boards, hospitals and other entities could be missing information necessary to ensure the protection of the public.
ii) Concerns Raised and Response. CDA is concerned about the amount and the basis for the fee proposed in this section. The NPDB and the HIPDB databanks are supported by query fees which could range from $4 to $10. The Sponsor indicates it will continue to address the issue on query fees.


i) Justification. Since the provisions in new Article 10.1 relate to similar enforcement provisions within different Practice Acts, a violation of any of these provisions should also be a misdemeanor with specific penalties that would be applicable.

ii) No Concerns Raised.

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

i) Justification. Existing law provides that for physicians and surgeons, dentists and other health professionals, a conviction of sexual misconduct or a felony requiring registration as a registered sex offender is considered a crime substantially related to the qualifications, functions, or duties of a board licensee. The Sponsor argues that there is no reason why other health professionals who have been convicted of sexual misconduct, or have been required to register as a sex offender pursuant to a felony conviction, should not be subject to the same standard and finding that such a crime is substantially related to the qualifications,

functions, or duties of a board licensee.

ii) No Concerns Raised.

ggg) Unprofessional Conduct for Drug Related Offense. Specifies that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct.

i) Justification. The Medical Practice Act provides that a conviction of a charge of violating any federal statutes or regulations or any statute or regulation of this state, regulating dangerous drugs or controlled substances, constitutes unprofessional conduct, and that the record of the conviction is conclusive evidence of such unprofessional conduct. The Sponsor argues that there is no reason why other health professionals should not be subject to the same requirements regarding certain drug related offenses which would be considered as unprofessional conduct on the part of the practitioner.

ii) No Concerns Raised.

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

i) Justification. This requirement was recommended by the AG’s Office. According to the AG, a significant factor preventing the timely completion of investigations is the refusal of some health care practitioners to cooperate with an investigation of the board. This refusal to cooperate
routinely results in significant scheduling problems and delays, countless hours wasted serving and enforcing subpoenas, and delays resulting from the refusal to produce documents or answer questions during interviews. Other states have long required their licensees to cooperate with investigations being conducted by disciplinary authorities. The AG argues that the enactment of a statutory requirement in California would significantly reduce the substantial delays that result of a practitioner's failure to cooperate during a board's investigation.

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ii) Concerns Raised. The American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that the standard in this provision is vague. These provisions were suggested by the AG's Office, and the Sponsor will continue to work with the AG's Office and these stakeholders to clarify these provisions.

iii) Reporting by Licensee of Arrest, Conviction or Disciplinary Action. Requires a healing arts licensee to submit a written report for the following reasons: (1) the bringing of an indictment or information charging a felony against the licensee; (2) arrest of the licensee; (3) conviction of the licensee of any felony or misdemeanor; and, (4) any disciplinary action taken by another healing arts board of this state or of another state or an agency of the federal government.

i) Justification. Existing law requires a physician and surgeon, osteopathic physician and surgeon, and a doctor of podiatric medicine to report to his or her respective board when there is an indictment or information charging a felony against the licensee or he or she been convicted of a felony or misdemeanor. As argued by the Sponsor, there is no reason why all health professionals should not be subject to the same reporting requirements as some of the other health professionals.

ii) Concerns Raised and Response. CNA indicates reporting of arrests and felony charges raises due process concerns. It should be noted that this is information which the board will eventually receive pursuant to fingerprint records maintained by the Department of Justice on health care practitioners. This reporting requirement is intended to serve as an early notification by the licensee to the board so disciplinary action, if necessary, is not delayed.

jjj) Report of Crime or Personal Injury Judgment by Clerk of Court. Requires that the clerk of the court provide notice to a healing arts boards for which the licensee is licensed, if there is a judgment for a crime committed or for any death or personal injury in excess of $30,000, for which the licensee is responsible due to their negligence, error or omission in practice, or his or her rendering unauthorized professional services.

i) Justification. As argued by the Sponsor, there is no reason the clerk of the court should not report a judgment for
a crime or for personal injury to any of the other healing arts boards. Most healing arts boards are currently covered under this provision.

ii) No Concerns Raised.

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

i) Justification. As argued by the Sponsor, there is no reason why all the other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

ii) No Concerns Raised.

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

i) Justification. As argued by the Sponsor, there is no reason why all other healing arts boards should not receive notice that charges of a felony have been filed against the licensee of the board.

ii) No Concerns Raised.

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

i) Justification. According to the Sponsor, while all new fingerprints are performed electronically, not all records at the DOJ are kept electronically for licensees who were fingerprinted in the past. Retrieving non-electronic records adds unnecessary time to investigations. The DCA is not in a position to recommend how exactly the DOJ can reduce the amount of time it takes to complete subsequent arrest and conviction notices, but believes that a benchmark should be set. This would speed up the time it takes to receive some arrest and conviction notices and will allow boards to take action against licensees sooner.

ii) No Concerns Raised.

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

i) Justification. According to the Sponsor, unlicensed practice presents a serious threat to public health and safety. However, it can be difficult for a board to get a district attorney to prosecute these cases criminally because the penalties are often significantly less than the cost to prosecute the case. While district attorneys do prosecute the most egregious cases, the inconsistent prosecution of these cases diminishes the deterrent effect. If the penalty for unlicensed practice is substantially increased, the deterrent will be increased two-fold; not only will the punishment be more severe, but district attorneys will be more likely to prosecute these cases.

ii) No Concerns Raised.

eeee) Sunset Dates for Diversion Programs. Provides for a January 1, 2013 sunset date for the diversion programs of the following
healing arts licensees: dentists, osteopathic physicians and surgeons, physical therapists, registered nurses, physician assistants, pharmacists and veterinarians.

i) Justification. The sunset of diversion programs will provide sufficient opportunity for these programs to be reviewed and audited by the Legislature to assure they are operating properly and monitoring those practitioners who participate in these programs.

ii) Concerns Raised and Response. ANA/C, CNA, SEIU, and UNAC oppose the sunset of the BRN's diversion programs. The American Psychiatric Nurses Association, the California Association of Marriage and Family Therapists, California Psychiatric Association, California Psychological Association, California Society for Addiction Medicine, California Society for Clinical Social Work and the National Association of Social Workers (CA Chapter) states that the sunset provisions should be removed.

According to the Author, there is no intent to eliminate diversion programs by placing a sunset date on these programs to assure that prior to their sunset date that the program is evaluated. It has always been the prerogative of the Legislature to include sunset dates to provide both oversight and a thorough review of programs and agencies under the DCA as a way to provide important changes to these programs or agencies if needed. The continuation of diversion programs and extension of their sunset dates will be included as part of any measure to extend the sunset of their respective boards. This bill will be amended to change the sunset dates of the diversion programs to coincide with the sunset dates of the boards, and allow the Legislature to review the diversion programs in conjunction with the sunset review of the boards.

ffff) Allow Healing Arts Boards to Utilize the Vertical Enforcement and Prosecution Model. Expands the use of the vertical enforcement and prosecution model for cases handled by all other health boards.

i) Justification. According to the Sponsor, allowing healing arts boards to utilize the vertical enforcement and prosecution model that currently applies to physicians and surgeons could be beneficial especially for complex types of actions.

ii) No Concerns Raised.

gggg) Requirement for a New Information Technology System. Provides that it is the intent of the Legislature that the DCA shall, on or before December 31, 2012, establish an enterprise information technology system necessary to electronically create and update healing arts license information, track enforcement cases, and allocate enforcement efforts pertaining to healing arts licensees.

i) Justification. DCA's current licensing and enforcement database systems are antiquated and impede the boards' abilities to meet their program goals and objectives. Over the past 25 years, these systems have been updated and expanded, but system design and documentation have deteriorated to such an extent that it has left the systems unstable and difficult to maintain. These systems have inadequate performance
measurement, data quality errors, an inability to quickly adapt to changing laws and regulations, and a lack of available public self-service options. According to the Sponsor, implementation of a replacement system is needed to support enforcement monitoring, automate manual processes, streamline processes, and integrate information about licensees. The Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-2011.

ii) Concerns Raised and Response. CNA believes a new information technology system is too costly to implement and is concerned about how the system would be funded. However, as indicated the Governor's Budget authorizes DCA to redirect existing funds to begin implementation of this system in FY 2010-2011.

5. Arguments in Support. The California Board of Podiatric Medicine is in support of this bill and believes this bill provides for better government and consumer protection for Californians.

6. Author's Amendments to be Taken in Judiciary Committee.

a) Makes the following Technical Amendments:

i) On page 17, delete lines 18-20 and insert:

"The contractual agreement shall provide that the collection agency shall use or release the personal information only for the purposes of collecting the outstanding fees, fines, or cost recovery amounts, and shall provide safeguards, consistent with the Information Practices Act, to ensure that the personal information is protected from unauthorized disclosure. A collection service shall be liable to an individual for compensatory damages and reasonable attorney's fees and costs sustained as a result of the unauthorized use or disclosure of an individual's personal information received or collection under this section."

ii) On page 25, delete on line 8-10 "in, and for, the Counties of Sacramento, San Francisco, Los Angeles, or San Diego" and insert:

"for the county in which the licensee's address of record is located."

iii) On page 33, line 17, add the following:

"A healing arts board shall maintain the confidentiality of any personally identifying information contained in the records maintained pursuant to this section, and shall not share, sell, or transfer the information to any third party unless it is otherwise authorized by state or federal law."

iv) Remove Section 720.38 (on page 40, delete lines 35-40 and on page 41, delete lines 1-15) to delete the provisions establishing an Emergency Health Care Enforcement Reserve Fund which was inadvertently not removed from the bill in previous amendments.

NOTE: Double-referral to Judiciary Committee (second.)

SUPPORT AND OPPOSITION:
Oppose Unless Amended:

American Psychiatric Nurses Association, California Chapter
California Association of Marriage and Family Therapists
California Dental Association
California Psychiatric Association
California Psychological Association
California Society for Addiction Medicine
California Society for Clinical Social Work
California Nurses Association
National Association of Social Workers (CA Chapter)
Service Employees International Union

Opposition:

None on File as of April 13, 2010

Consultant: Rosielyn Pulmano
To: Board Members

From: Kim Madsen
Executive Officer

Date: April 21, 2010

Subject: Substance Abuse Coordination Committee Uniform Standards Update

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). The SACC is subject to the Bagley-Keene Open Meeting Act.

The SACC is comprised of the Executive Officers of the healing arts boards within DCA, and a designee of the State Department of Alcohol and Drug Programs. The bill required the SACC to develop, by January 1, 2010, uniform and specific standards to address the issue of a substance abusing licensee and ensure public protection. Once approved, all healing art boards are required to follow these standards.

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 consists 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 licensees in diversion programs as well as licensees on probation. The proposed standards were drafted and presented at public meetings to solicit public comment. Following these meetings, the working group reviewed the public comments and prepared the proposed standards to present to the SACC.

On November 16, 2009, the final draft of the Uniform Standards was presented to the SACC and was approved.

Current Status

On April 16, 2010, the SACC met to discuss proposed language changes to four standards as well as any non-substantive edits to all standards. During the meeting additional edits were made to the proposed language changes to provide clarification. These edits were approved by the SACC.

In response to concerns regarding the frequency of drug tests required in Uniform Standard #4, a subcommittee was formed to further discuss this requirement. The subcommittee is also subject to the Bagley-Keene Open Meeting Act and will meet on June 21, 2010.

Attached for your review are the SB 1441 Uniform Standards.
Uniform Standards Regarding Substance-Abusing Healing Arts Licensees

Senate Bill 1441 (Ridley-Thomas)

Implementation by Department of Consumer Affairs, Substance Abuse Coordination Committee

Brian J. Stiger, Director
April 2010 (Corrected Version)

November Corrections shown underlined
December Corrections shown double underlined
April Corrections shown italics and underlined
Substance Abuse Coordination Committee

Brian Stiger, Chair
Director, Department of Consumer Affairs

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

Janelle Wedge
Acupuncture Board

Kim Madsen
Board of Behavioral Sciences

Robert Puleo
Board of Chiropractic Examiners

Lori Hubble
Dental Hygiene Committee of CA

Richard De Cuir
Dental Board of California

Joanne Allen
Hearing Aid Dispensers

Linda Whitney
Medical Board

Heather Martin
Board of Occupational Therapy

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Debi Mitchell, Physical Therapy Board of CA
Carol Stanford, Board of Registered Nursing
Liane Freels, Respiratory Care Board
Amy Edelen, Veterinary Medical Board
Marilyn Kimble, Board of Vocational Nursing & Psychiatric Technicians
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#1 SENATE BILL 1441 REQUIREMENT

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

#1 Uniform Standard

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.

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

1. The clinical diagnostic evaluation shall be paid for by the licensee;
   
   1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
      
      • holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
      
      • has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
      
      • is approved by the board.

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

3. The clinical diagnostic evaluation report shall:
   
   • set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
   
   • set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
   
   • set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee’s rehabilitation and safe practice.
The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

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

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.
#2 SENATE BILL 1441 REQUIREMENT

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

#2 Uniform Standard

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

1. His or her license shall be automatically suspended or placed on inactive status. **The Board shall order the licensee to cease practice** during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.

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

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least one (1) month **30 days** of negative drug tests.

- the license type;
- the licensee’s history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope and pattern of use;
- the treatment history;
- the licensee’s medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.
#3 SENATE BILL 1441 REQUIREMENT

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

#3 Uniform Standard

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.
#4 SENATE BILL 1441 REQUIREMENT

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, 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. The licensee’s license shall be automatically suspended. Place the licensee’s license on inactive status. The board shall order the licensee to cease practice; and

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

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

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

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

1. Consult the specimen collector and the laboratory;

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

3. Communicate with any treatment provider, including group facilitator/s.
#9 SENATE BILL 1441 REQUIREMENT

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

#9 Uniform Standard

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.
#10 SENATE BILL 1441 REQUIREMENT

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

#10 Uniform Standard

Major Violations include, but are not limited to:

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

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

1. Inactivation. Automatic Suspension. *Licensee will be ordered to cease practice.*
   a) the licensee must undergo a new clinical diagnostic evaluation, and
   b) the licensee must test *negative* for at least a month of continuous drug testing before being allowed to go back to work. (, and)

2. Termination of a contract/agreement.

3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.
Uniform Standards

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;
Uniform Standards

April 2010

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.
To:        Board Members               Date:   April 21, 2010
From:     Kim Madsen
          Executive Officer
Telephone: (916) 574-7841

Subject:  Enforcement Performance Measures

Background
The Consumer Protection Enforcement Initiative (CPEI) represents the Department of Consumer
Affairs (DCA) efforts to provide healing art boards with the additional resources to improve the
enforcement process necessary for timely investigation and prosecution of cases. Proposed
changes include requesting additional staff, an improved IT system, as well as legislative
modifications.

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 month all boards are
directed to submit a standardized report to DCA’s Director of Compliance and Enforcement.

Current Status
Prior to CPEI, the Board made changes to its investigation process with the addition of two
Investigative Analysts to conduct field investigations. The Investigative Analysts began working
February 2009.

The Board is realizing significant improvement in reducing the time to complete field investigations
as a result of the work of the Investigative Analysts. Currently, the Board’s Investigative Analysts are
assigned the majority of cases requiring a field investigation. Many of these investigations were
previously assigned to the Division of Investigation (DOI).

A report submitted to the Chairs of the Assembly and the Senate Budget Committees on April 1,
2010, noted that during the time period of February 1, 2009 to March 1, 2010, the Investigative
Analysts received and closed 50 cases. On average the Investigative Analysts completed the field
investigation within 123 days. In comparison, a total of 36 cases that were assigned to DOI and
subsequently closed averaged 529 days to complete.

Currently, the Board enforcement staff is conducting a comprehensive review of the enforcement
process. The review includes analyzing each step in the enforcement process including procedures
and data entry. The goal is to ensure that Board investigations are conducted thoroughly and
efficiently, yet meet the CPEI performance measures. To date, staff has identified and eliminated
several duplicative steps and obsolete procedures. Staff anticipates completing this review by June
30, 2010.

The Board began reporting its enforcement statistics in the new format in January 2010.

Attached for your review are the recent enforcement statistics and report to the legislature.
## ENFORCEMENT PROGRAM STATISTICAL DATA
as of March 1, 2010

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Number of Complaints Processed (closed)</td>
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<td>1388</td>
<td>1341</td>
<td>1122</td>
<td>1800</td>
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<tr>
<td>Investigations Opened - DOI</td>
<td>36</td>
<td>31</td>
<td>15</td>
<td>9</td>
<td>3</td>
</tr>
<tr>
<td>Investigations Opened – Investigative Analysts</td>
<td>n/a</td>
<td>n/a</td>
<td>39</td>
<td>43</td>
<td>48*</td>
</tr>
<tr>
<td><strong>Total Investigations Opened</strong></td>
<td>36</td>
<td>31</td>
<td>46</td>
<td>52</td>
<td>60*</td>
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<tr>
<td>Investigations Closed - Investigative Analysts</td>
<td>n/a</td>
<td>n/a</td>
<td>10</td>
<td>40</td>
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<tr>
<td>Investigations Closed - DOI</td>
<td>25</td>
<td>35</td>
<td>22</td>
<td>14</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total Investigations Closed</strong></td>
<td>25</td>
<td>35</td>
<td>32</td>
<td>44</td>
<td>59</td>
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<tr>
<td>Timeline for disposition – Investigative Analyst</td>
<td>n/a</td>
<td>n/a</td>
<td>119 days</td>
<td>127 days</td>
<td>110 days</td>
</tr>
<tr>
<td>Timeline for disposition – DOI</td>
<td>415 days</td>
<td>415 days</td>
<td>497 days</td>
<td>561 days</td>
<td>520 days</td>
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<tr>
<td>Number of Accusations Filed Investigative Analysts</td>
<td>n/a</td>
<td>n/a</td>
<td>4</td>
<td>3</td>
<td>30</td>
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<tr>
<td>Number of Accusations Filed DOI</td>
<td>9</td>
<td>7</td>
<td>6</td>
<td>0</td>
<td>10</td>
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<tr>
<td><strong>Total Number of Accusations</strong></td>
<td>9</td>
<td>7</td>
<td>10</td>
<td>3</td>
<td>40</td>
</tr>
<tr>
<td>Actual Expenditures Investigative Analysts</td>
<td>n/a/</td>
<td>n/a</td>
<td>$97,767</td>
<td>$159,897</td>
<td>$175,000</td>
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<td>Expenditures DOI</td>
<td>$70,028</td>
<td>$341,690</td>
<td>$289,156</td>
<td>$244,480</td>
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</table>

*Estimated figures based on current monthly averages
FY 2009/2010 figures as of March 1, 2010
April 22, 2010

The Honorable Noreen Evans
California State Assembly
State Capitol, Room 6026
Sacramento, CA 95814

Dear Assemblymember Evans:

Pursuant to the requirements of the 2008 Budget Act (Item 1110-001-3085)*, the California State Board of Behavioral Sciences (Board) is submitting a report regarding its program outcomes and expenditures related to its investigation activities to the Legislature no later than April 1, 2010.

In June 2007, the Board submitted a Budget Change Proposal that requested authorization to establish two Associate Governmental Program Analysts to serve as non-sworn-in-house Investigative Analysts. These analysts would perform the majority of the field investigative work for the Board’s Enforcement Program that was currently sent to the Division of Investigation (DOI).

The Board’s request was in response to the increasing workload in the Enforcement Program, increased delays to complete Board investigations by DOI as a result of higher caseloads and low staffing levels, and the need to complete investigations quickly. The Board was successful in its request for these positions and the Investigative Analysts were hired in January 2009.

Beginning February 1, 2009 to March 1, 2010, a total of 74 cases were assigned to the Investigative Analysts and 24 cases were referred to DOI. A total of 50 cases assigned to the Investigative Analysts have been closed. On average the Investigative Analysts completed the field investigation within 123 days. In comparison, a total of 36 cases assigned to DOI have been closed, averaging 529 days to complete.

Currently, the Board’s Investigative Analysts are assigned the majority of cases requiring a field investigation. Cases that require the expertise of a peace officer are referred to DOI. Based on current statistics, in fiscal year 2010/2011, the Board anticipates that of the 60 projected investigations, less than five will be referred to DOI. The remaining investigations will be assigned to the Investigative Analysts.

The results of the Investigative Analysts’ work demonstrate a significant improvement in time to complete an investigation. Consequently, the final resolution of a case is completed in a timely manner.
The expenditures associated with the use of DOI’s services are currently funded by way of a distributed budget process. Expenditures for DOI services in fiscal year 2008/2009 were reduced by 18%. The Board anticipates that over time an adjustment to this expenditure will occur and will reflect the decrease in referrals.

Enclosed for your review is a chart which details the Board’s investigation activities. If you have any questions or require additional information, please call me at (916) 574-7841.

Sincerely,

Kim Madsen  
Executive Officer

cc: See attached Distribution List

*Board of Behavioral Sciences—In–House Investigations. The Board of Behavioral Sciences shall report by April 1, 2010, to the chair of the budget committee of each house of the Legislature and to the LAO the program outcomes and expenditures related to its investigation activities. For fiscal years 2006–07 through 2010–11 (to date), as well as projected for 2011–12, the board shall at a minimum report on the number of complaints processed, the number of cases investigated, the number of legal actions filed, the time line for disposition of the complaints, as well as actual and proposed expenditures. The board shall also report on its progress in reducing the backlog of investigative cases.
April 22, 2010

The Honorable Denise Ducheny  
California State Senate  
State Capitol, Room 5035  
Sacramento, CA 95814

Dear Senator Ducheny:

Pursuant to the requirements of the 2008 Budget Act (Item 1110-001-3085)*, the California State Board of Behavioral Sciences (Board) is submitting a report regarding its program outcomes and expenditures related to its investigation activities to the Legislature no later than April 1, 2010.

In June 2007, the Board submitted a Budget Change Proposal that requested authorization to establish two Associate Governmental Program Analysts to serve as non-sworn-in-house Investigative Analysts. These analysts would perform the majority of the field investigative work for the Board’s Enforcement Program that was currently sent to the Division of Investigation (DOI).

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## Overview of Enforcement Program Activity

**January 1, 2010 - March 31, 2010**

### Complaint Intake

Complaints Received by the Program. Measured from date received to assignment for investigation or closure without action.

<table>
<thead>
<tr>
<th>Complaints</th>
<th>Jan-10</th>
<th>Feb-10</th>
<th>Mar-10</th>
<th>Apr-10</th>
<th>May-10</th>
<th>Jun-10</th>
<th>Jul-10</th>
<th>Aug-10</th>
<th>Sep-10</th>
<th>Oct-10</th>
<th>Nov-10</th>
<th>Dec-10</th>
<th>YTD</th>
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<tbody>
<tr>
<td>Received</td>
<td>81</td>
<td>88</td>
<td>96</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>265</td>
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<tr>
<td>Closed</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Assign.</td>
<td>81</td>
<td>88</td>
<td>95</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>264</td>
</tr>
<tr>
<td>Average</td>
<td>5</td>
<td>6</td>
<td>10</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>Pending</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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### Convictions/Arrest Reports

Complaints investigated by the program whether by desk investigation or by field investigation.

<table>
<thead>
<tr>
<th>Received</th>
<th>Jan-10</th>
<th>Feb-10</th>
<th>Mar-10</th>
<th>Apr-10</th>
<th>May-10</th>
<th>Jun-10</th>
<th>Jul-10</th>
<th>Aug-10</th>
<th>Sep-10</th>
<th>Oct-10</th>
<th>Nov-10</th>
<th>Dec-10</th>
<th>YTD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closed</td>
<td>68</td>
<td>95</td>
<td>96</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td>259</td>
</tr>
<tr>
<td>Assign.</td>
<td>68</td>
<td>95</td>
<td>96</td>
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<tr>
<td>Average</td>
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<td></td>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>Pending</td>
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<td>0</td>
<td>0</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

### Investigation

Complaints investigated by the program whether by desk investigation or by field investigation.

**Desk Investigation**

Measured by date the complaint is received to the date the complaint is closed or referred for enforcement action. If a complaint is never referred for Field Investigation, it will be counted as ‘Closed’ under Desk Investigation. If a complaint is referred for Field Investigation, it will be counted as 'Closed' under Non-Sworn or Sworn.

<table>
<thead>
<tr>
<th>Desk Investigation</th>
<th>Jan-10</th>
<th>Feb-10</th>
<th>Mar-10</th>
<th>Apr-10</th>
<th>May-10</th>
<th>Jun-10</th>
<th>Jul-10</th>
<th>Aug-10</th>
<th>Sep-10</th>
<th>Oct-10</th>
<th>Nov-10</th>
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<tbody>
<tr>
<td>Initial Assignment</td>
<td>149</td>
<td>183</td>
<td>191</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
<td>523</td>
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<tr>
<td>Closed</td>
<td>84</td>
<td>152</td>
<td>188</td>
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<td></td>
<td></td>
<td></td>
<td>424</td>
</tr>
<tr>
<td>Average Days</td>
<td>94</td>
<td>102</td>
<td>110</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td>104</td>
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<tr>
<td>Pending</td>
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<td>597</td>
<td>596</td>
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<td></td>
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<td></td>
<td></td>
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<td>596</td>
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</table>

**Field Investigation (BBS Inv.)**

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<th>Mar-10</th>
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<th>Jul-10</th>
<th>Aug-10</th>
<th>Sep-10</th>
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<th>Nov-10</th>
<th>Dec-10</th>
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<td></td>
<td></td>
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<tr>
<td>Average Days</td>
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<td>366</td>
<td>426</td>
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<td>49</td>
<td>55</td>
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### Field Investigation (DOI)

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<th>Apr-10</th>
<th>May-10</th>
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<th>Sep-10</th>
<th>Oct-10</th>
<th>Nov-10</th>
<th>Dec-10</th>
<th>YTD</th>
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</thead>
<tbody>
<tr>
<td>Assignment for Sworn Field Investigation - Division of Inv.</td>
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<td>Closed</td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>7</td>
</tr>
<tr>
<td>Average Days to Close</td>
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</table>

### All Investigations

<table>
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<tr>
<th></th>
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<th>Feb-10</th>
<th>Mar-10</th>
<th>Apr-10</th>
<th>May-10</th>
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<th>Nov-10</th>
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<tbody>
<tr>
<td>Closed</td>
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<td>156</td>
<td>196</td>
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<td>440</td>
</tr>
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<td>Average Days to Close</td>
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<td></td>
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<tr>
<td><strong>Total Pending</strong></td>
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<td>668</td>
<td>671</td>
<td></td>
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<td></td>
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<td>671</td>
</tr>
</tbody>
</table>

### Enforcement Actions

This section DOES NOT include subsequent discipline on a license.

Subsequent Discipline data will be captured on Probation Monitoring Performance Measures

<table>
<thead>
<tr>
<th></th>
<th>Jan-10</th>
<th>Feb-10</th>
<th>Mar-10</th>
<th>Apr-10</th>
<th>May-10</th>
<th>Jun-10</th>
<th>Jul-10</th>
<th>Aug-10</th>
<th>Sep-10</th>
<th>Oct-10</th>
<th>Nov-10</th>
<th>Dec-10</th>
<th>YTD</th>
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<tbody>
<tr>
<td>AG Cases Initiated</td>
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<td>9</td>
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<td></td>
<td></td>
<td></td>
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<td></td>
<td>20</td>
</tr>
<tr>
<td>AG Cases Pending</td>
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<td>147</td>
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<td>SOIs Filed</td>
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<td></td>
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<td>7</td>
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<tr>
<td>Accusations Filed</td>
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<td></td>
<td>12</td>
</tr>
<tr>
<td>Proposed/Default Decisions Adopted</td>
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<td>0</td>
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<td></td>
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<td></td>
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<td>Stipulations Adopted</td>
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<tr>
<td><strong>Disciplinary Orders</strong></td>
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*average days for enforcement actions is from the date the complaint was received to the effective date of the citation or disciplinary order.*
To: Board Members

From: Tracy Rhine
Assistant Executive Officer

Subject: Legislative Bill Review

Date: April 28, 2010

Telephone: (916) 574-7847

The following bills may have some affect on the Board, or individuals under its jurisdiction, and therefore have been analyzed and brought before the Board for discussion.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS

BILL NUMBER: AB 612 VERSION: AMENDED JUNE 28, 2009

AUTHOR: BEALL SPONSOR: CENTER FOR JUDICIAL EXCELLENCE AND CALIFORNIA PROTECTIVE PARENTS ASSOCIATION

RECOMMENDED POSITION: OPPOSE

SUBJECT: CHILD CUSTODY INVESTIGATIONS

Existing Law:

1) Requires a mental examination to be performed only by a licensed physician, or by a licensed clinical psychologist who holds a doctoral degree in psychology and has had at least five years of postgraduate experience in the diagnosis of emotional and mental disorders. (Civil Code of Procedures § 2032.020(c))

2) States that health, safety, and welfare of children is the court’s primary concern when determining the best interests of children in child custody and visitation orders. (Family Code § 3020)

3) Permits the court, in a contested custody or visitation proceeding where the court determines it is in the best interests of the child, to appoint a child custody evaluator to conduct a child custody evaluation. (FC § 3111)

4) Requires court connected and private child custody evaluators to complete a described domestic violence and child abuse training program and to comply with other requirements. (FC § 1816)

5) Requires the Judicial Council to adopt standards for child custody evaluations. (FC § 3117)

This Bill:

1) Requires allegations of physical or sexual abuse against a child to be investigated using methods for data collection and analysis consistent with requirements in current provisions of Rule of Court (FC §3027.3(a))

2) Requires the rules of evidence applicable in criminal proceeding shall apply whenever the court considers an allegation of physical or sexual abuse against a child custody proceeding. (FC §3027(b))

3) States that unproven, nonscientific theories, including, but not limited to, alienation theories that assume that a child’s report of physical or sexual abuse by one parent is influenced or fabricated by the other parent, are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. (FC § 3027(c))

April 19, 2010
4) Prohibits a court, in any contested proceeding involving child custody or visitation rights, from relying upon an unproven, unscientific theory by an expert witness or court appointed professional who has relied on an unproven, nonscientific theory that is the basis for that finding. (FC §3027.3(c))

5) States that nothing in this bill shall limit the consideration of actual evidence, behaviors, statements, or conduct by either parent or by the child. (FC § 3027.3(d))

6) Requires the Judicial Counsel to provide training consistent with this legislation. (FC §3027.3(e))

Comment:

1) Author’s Intent. According to the author, this bill would correct instances where child custody evaluations were conducted improperly by using unscientific and unvalidated methods.

2) Nonscientific Theories. This bill prohibits the use of “unproven, nonscientific theories” in making a determination related to a child custody proceeding. There is no definition of “unproven, nonscientific theory” as used in this bill, other than this theory includes “alienation theories that assume that a child’s report of physical or sexual abuse by one parent is influenced or fabricated by the other parent.” Parental alienation syndrome (PAS) and similar terms have been used over the past approximately twenty years to describe a child who has been “brainwashed” by one parent against another parent with little or no justification, and includes “the child’s own contributions to the vilification of the target parent.” It is described as “a disorder that arises primarily in the context of child custody disputes” and does not include true cases of parental abuse/neglect.1

Articles on the topic have appeared in a number of peer-reviewed journals, including the American Journal of Family Therapy and the American Journal of Forensic Psychiatry. Additionally PAS has been recognized in the following court cases:


Despite a growing body of literature, there are controversies regarding PAS, especially by mental health professionals. As stated in the American Journal of Forensic Psychiatry2, “Critics of PAS argue that it:

- Oversimplifies the causes of alienation.
- Leads to confusion in clinical work with alienated children.
- Lacks an adequate scientific foundation to be a “syndrome.”

Additionally, the exclusion of a nonscientific label or diagnosis is consistent with basic California rule for admission of scientific evidence that the scientific basis and reliability must be generally accepted by recognized authorities in the relevant scientific field (People v. Kelly, 17 Cal. 3d 24, 31 (1976)). This is sometimes called the “Kelley/Frye” test. In August of 1999 the California Supreme Court reiterated the basic criteria of the Kelly/Frye test and

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1 Basic Facts About Parental Alienation Syndrome, Richard Gardner, May 31, 2001,
went on to state that courts may consider whether scientists “significant in number and expertise” publicly denounce the technique or theory as unreliable in evaluating the submitted evidence. (People v. Soto, 21 Cal.4th 512, 981 P.2d 958, 88 Cal. Rptr.2d 34 (Ca. 1999))

3) **Limiting Court’s Discretion.** California employs the Kelly/Frye test (see discussion above) which provides a mechanism within the court system to address the concerns of this bill’s proponents. The language in this bill would remove court discretion and it is unclear if, for instance, the court would be allowed to consider an opinion of an evaluator that a child was coached to make false allegations of abuse, even if that evaluator’s opinion was based on an interview with the child in which the child discloses such influence explicitly. It is unclear how a court would determine whether the expert opinion is based solely on the child’s statements or the parent’s behavior, and not based in part upon a prohibited theory.

4) **Previous Legislation and Board Action.** AB 612 (Ruskin) of 2007 was considered by this Committee and the Board. The Committee did not make a recommendation to the Board, and the full Board did not take a formal position on the legislation. In 2009, the Committee reviewed and discussed this bill, AB 612 (Beall) and made a recommendation to the Board to oppose this legislation. However, this bill was amended on May 5, 2009, removing content that affected Board jurisdiction, and therefore, the full Board did not take a position on the bill.

5) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee voted to recommend to the Board an oppose position on this bill.

6) **Support and Opposition. (As of July 14, 2009)**
   - **Support:**  Center for Judicial Excellence (Sponsor)
     California Protective Parents Association (sponsor)
   - **Opposition:** Judicial Counsel
     California Judges Association
     Family Law Section of the State Bar
     Association of Certified Family Law Specialists
     Family Law Section of the Los Angeles County Bar Association
     Association of Family Conciliation Courts
     California Psychological Association
     California Association of Marriage and Family Therapists

7) **History**
   - **2009**
     - July 14  In committee:  Set, first hearing. Hearing canceled at the request of author.
     - July 6   In committee:  Hearing postponed by committee.
     - June 28  From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on JUD.
     - June 11  Referred to Com. on JUD.
     - May 28  In Senate. Read first time. To Com. on RLS. for assignment.
     - May 28  Read third time, passed, and to Senate. (Ayes 80. Noes 0. Page 1739.)
     - May 26  Read second time. To third reading.
     - May 21  From committee: Do pass. (Ayes 15. Noes 0.) (May 20).
     - May 6   Re-referred to Com. on APPR.
May 5   Read second time and amended.
May 4   From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (April 28).
Apr. 23   Re-referred to Com. on JUD.
Apr. 22   From committee chair, with author's amendments: Amend, and re-refer to Com. on JUD. Read second time and amended.
Mar. 31   In committee: Hearing postponed by committee.
Mar. 16   Referred to Com. on JUD.
Feb. 26   From printer. May be heard in committee March 28.
Feb. 25   Read first time. To print.

ATTACHMENTS
An act to add Section 3027.3 to the Family Code, relating to custody and visitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 612, as amended, Beall. Custody and visitation: nonscientific theories.
Existing law governs the determination of child custody and visitation with a child in contested proceedings. Existing law provides for the use of court-appointed investigators, as defined, including court-appointed evaluators directed by the court to conduct a child custody investigation in those proceedings. Existing law authorizes the court to appoint a child custody evaluator if the court determines it is in the best interest of the child. If directed by the court, the evaluator is required to file a written confidential report on his or her evaluation. The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report. Existing law requires all child custody evaluators to have completed specified training relating to domestic violence and child abuse. Existing law requires the Judicial Council to adopt standards for court-connected...
evaluations, investigations, and assessments related to child custody. Existing law also requires the Judicial Council to formulate rules of court that establish education, experience, and training requirements for child custody evaluators and to establish related forms, as specified.

This bill would provide that a child’s expression of significant hostility toward a parent may be admitted as possible corroborating evidence that the parent has abused the child. The bill would prohibit a court from concluding that an accusation of child physical or sexual abuse against a parent is false based solely on the child’s expression of significant hostility toward the parent. The bill would also require that, on and after January 1, 2010, these provisions be included in all training required of child custody evaluators, and would, consequently, require the Judicial Council to revise training standards for child custody evaluators.

allegations of physical or sexual abuse against a child are to be investigated using specified methods of data collection and analysis. The bill would provide that the rules of evidence applicable in criminal proceedings shall apply whenever the court considers an allegation of physical or sexual abuse against a child in a custody proceeding. The bill would also provide that unproven, non-scientific theories, including, but not limited to, alienation theories, as specified, are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The bill would prohibit a court from relying upon an unproven, unscientific theory and from accepting into evidence any finding provided by an expert witness or court appointed professional who has relied on an unproven, non-scientific theory that is a basis for that finding. The bill would require the Judicial Council to provide training consistent with these provisions. The bill would include a statement of legislative intent.


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

SECTION 1. It is the intent of the Legislature that courts strive to protect the safety of children by ensuring that abuse allegations are investigated appropriately and that protecting children from physical and sexual abuse is the highest priority in custody and visitation decisions.

SEC. 2. Section 3027.3 is added to the Family Code, to read:
3027.3. (a) Allegations of physical or sexual abuse against a child are to be investigated using methods of data collection and analysis consistent with the requirements of Section 3118, as further clarified in paragraph (2) of subdivision (e) of Rule of Court 5.220, as it read on January 1, 2009.

(b) The rules of evidence applicable in criminal proceedings shall apply whenever the court considers an allegation of physical or sexual abuse against a child in a proceeding pursuant to this division.

(c) Unproven, nonscientific theories, including, but not limited to, alienation theories that assume that a child’s report of physical or sexual abuse by one parent is influenced or fabricated by the other parent, are not consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards. The court may not rely upon an unproven, unscientific theory and the court may not accept into evidence any finding provided by an expert witness or court appointed professional who has relied on an unproven, nonscientific theory that is a basis for that finding.

(d) Nothing in this section shall limit the consideration of actual evidence, behaviors, statements, or conduct by either parent or by the child.

(e) The Judicial Council shall provide training consistent with this section.

SECTION 1. It is the intent of the Legislature that courts strive to protect the safety and best interest of children in custody matters by ensuring that allegations of physical and sexual abuse are investigated appropriately or referrals are made to the child welfare services agency.

SEC. 2. Section 3027.3 is added to the Family Code, to read:

3027.3. (a) A child’s expression of significant hostility toward a parent may, in the discretion of the court, be admitted as possible corroborating evidence that the parent has abused the child. The court may not conclude that an accusation of child physical or sexual abuse against a parent is false based solely on the child’s expression of significant hostility toward the parent.

(b) On and after January 1, 2010, the provisions of this section shall be included in all training required pursuant to Section 3110.5.
DEFINITION OF THE PARENTAL ALIENATION SYNDROME

In association with this burgeoning of child-custody litigation, we have witnessed a dramatic increase in the frequency of a disorder rarely seen previously, a disorder that I refer to as the parental alienation syndrome (PAS). In this disorder we see not only programming ("brainwashing") of the child by one parent to denigrate the other parent, but self-created contributions by the child in support of the alienating parent's campaign of denigration against the alienated parent. Because of the child's contribution I did not consider the terms brainwashing, programming, or other equivalent words to be sufficient. Furthermore, I observed a cluster of symptoms that typically appear together, a cluster that warranted the designation syndrome. Accordingly, I introduced the term parental alienation syndrome to encompass the combination of these two contributing factors that contributed to the development of the syndrome (Gardner, 1985). In accordance with this use of the term I suggest this definition of the parental alienation syndrome:

The parental alienation syndrome (PAS) is a childhood disorder that arises almost exclusively in the context of child-custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent’s indoctrinations and the child's own contributions to the vilification of the target parent. When true parental abuse and/or neglect is present, the child’s animosity may be justified and so the parental alienation syndrome explanation for the child’s hostility is not applicable.

In the PAS, the alienating parent programs into the child’s brain circuitry ideas and attitudes that are directly at variance with the child's previous experiences. In addition, PAS children frequently add their own scenarios to the campaign of denigration, from the recognition that their complementary contributions are desired by the programmer. The child’s contributions are welcomed and reinforced by the programmer, resulting in even further contributions by the child. The result is an upwardly spiraling campaign of denigration. In mild cases the child is taught to disrespect, disagree with, and even act out antagonistically against the targeted parent. As the disorder progresses from mild to moderate to severe, this antagonism becomes converted and expanded into a campaign of denigration. The PAS diagnosis is based on the symptoms of the child, but the problem is clearly a family problem in that in each case there is one parent who is a programmer, another parent who is the alienated parent, and one or more children who exhibit the symptomatology. PAS children respond to the programming in
such a way that it appears that they have become completely amnesic for any and all positive and loving experiences they may have had previously with the targeted parent.

The term PAS is applicable only when the target parent has not exhibited anything close to the degree of alienating behavior that might warrant the campaign of vilification exhibited by the children. Rather, in typical cases the victimized parent would be considered by most examiners to have provided normal, loving parenting or, at worst, exhibited minimal impairments in parental capacity. It is the exaggeration of minor weaknesses and deficiencies that is the hallmark of the PAS. When bona fide abuse does exist, then the child’s responding alienation is warranted and the PAS diagnosis is not applicable. The term parental alienation would be applicable in such cases and justifiably so. However, without specifying the particular cause of the alienation the term is not particularly informative.

PARENTAL ALIENATION

*Parental Alienation* (PA) refers to the wide variety of symptoms that may result from or be associated with a child’s alienation from a parent. Children may become alienated from a parent because of physical abuse, with or without sexual abuse. Children’s alienation may be the result of parental emotional abuse, which may be overt in the form of verbal abuse or more covert in the form of neglect. (As will be described below PAS, as a form of emotional abuse, is also a type of parental alienation.) Children may become alienated as the result of parental abandonment. Ongoing parental acrimony, especially when associated with physical violence, may cause children to become alienated. Children may become alienated because of behavior exhibited by a parent that would be alienating to most people, e.g., narcissism, alcoholism, and antisocial behavior. Impaired parenting can also bring about children’s alienation. A child may be angry at the parent who initiated the divorce, believing that that parent is solely to blame for the separation. These and many other parental behaviors can produce children’s alienation, but none of them can justifiably be considered PAS.

IS PAS A TRUE SYNDROME?

Some who prefer to use the term *parental alienation* (PA) claim that the PAS is not really a syndrome. This position is especially seen in courts of law in the context of child-custody disputes. A syndrome, by medical definition, is a cluster of symptoms, occurring together, that characterize a specific disease. The symptoms, although seemingly disparate, warrant being grouped together because of a common etiology or basic underlying cause. Furthermore, there is a consistency with regard to such a cluster in that most (if not all) of the symptoms appear together. The term *syndrome* is more specific than the related term *disease*. A disease is usually a more general term because there can be many causes of a particular disease. For example, pneumonia is a disease, but there are many types of pneumonia—e.g., pneumococcal pneumonia and bronchopneumonia—each of which has more
specific symptoms, and each of which could reasonably be considered a syndrome (although common usage may not utilize the term).

The syndrome has a purity because most (if not all) of the symptoms in the cluster predictably manifest themselves together as a group. Often, the symptoms appear to be unrelated, but they actually are because they usually have a common etiology. An example would be Down’s Syndrome, which includes a host of seemingly disparate symptoms that do not appear to have a common link. These include mental retardation, mongoloid facies, drooping lips, slanting eyes, short fifth finger, and atypical creases in the palms of the hands. Down’s Syndrome patients often look very much alike and most typically exhibit all these symptoms. The common etiology of these disparate symptoms relates to a specific chromosomal abnormality. It is this genetic factor that is responsible for linking together these seemingly disparate symptoms. There is then a primary, basic cause of Down’s Syndrome: a genetic abnormality.

Similarly, the PAS is characterized by a cluster of symptoms that usually appear together in the child, especially in the moderate and severe types. These include:

1. A campaign of denigration
2. Weak, absurd, or frivolous rationalizations for the deprecation
3. Lack of ambivalence
4. The "independent-thinker" phenomenon
5. Reflexive support of the alienating parent in the parental conflict
6. Absence of guilt over cruelty to and/or exploitation of the alienated parent
7. The presence of borrowed scenarios
8. Spread of the animosity to the friends and/or extended family of the alienated parent

Typically, children who suffer with PAS will exhibit most (if not all) of these symptoms. However, in the mild cases one might not see all eight symptoms. When mild cases progress to moderate or severe, it is highly likely that most (if not all) of the symptoms will be present. This consistency results in PAS children resembling one another. It is because of these considerations that the PAS is a relatively "pure" diagnosis that can easily be made. Because of this purity, the PAS lends itself well to research studies because the population to be studied can usually be easily identified. Furthermore, I am confident that this purity will be verified by future interrater reliability studies. In contrast, children subsumed under the rubric PA are not likely to lend
themselves well to research studies because of the wide variety of disorders to which it can refer, e.g., physical abuse, sexual abuse, neglect, and defective parenting. As is true of other syndromes, there is in the PAS a specific underlying cause: programming by an alienating parent in conjunction with additional contributions by the programmed child. It is for these reasons that PAS is indeed a syndrome, and it is a syndrome by the best medical definition of the term.

In contrast, PA is not a syndrome, has no specific underlying cause, and the proponents of the term do not claim it is. Actually, PA can be viewed as a group of syndromes, which share in common the phenomenon of the child’s alienation from a parent. To refer to PA as a group of syndromes would, by necessity, lead to the conclusion that the PAS is one of the syndromes subsumed under the PA rubric and would thereby weaken the argument of those who claim that PAS is not a syndrome.

THE PARENTAL ALIENATION SYNDROME AND "PARENTAL ALIENATION"

There are some who use the term parental alienation instead of parental alienation syndrome. Generally, these are individuals who know of the existence of the parental alienation syndrome but want to avoid using it because it may be considered in some circles to be "politically incorrect." But they are basically describing the same clinical entity. There are others who will use the term parental alienation syndrome but strictly avoid mentioning my name in association with it, lest they be somehow tainted. Unfortunately, the substitution of the term parental alienation for parental alienation syndrome can only result in confusion. Parental alienation is a more general term, whereas the parental alienation syndrome is a very specific subtype of parental alienation. Parental alienation has many causes, e.g., parental neglect, abuse (physical, emotional, and sexual), abandonment, and other alienating parental behaviors. All of these behaviors on the part of a parent can produce alienation in the children. The parental alienation syndrome is a specific subcategory of parental alienation that results from a combination of parental programming and the child’s own contributions, and it is almost exclusively seen in the context of child-custody disputes. It is this particular combination that warrants the designation parental alienation syndrome. Changing the name of an entity because of political and other unreasonable considerations generally does more harm than good.

THE PARENTAL ALIENATION SYNDROME IS NOT THE SAME AS PROGRAMMING BRAINWASHING

It has come as a surprise to me from reports in both the legal and mental health literature that the definition of the PAS is often misinterpreted. Specifically, there are many who use the term as synonymous with parental brainwashing or programming. No reference is made to the child’s own contributions to the victimization of the targeted parent. Those who do this have missed an extremely important point regarding the etiology,
manifestations, and even the treatment of the PAS. The term PAS refers only to the situation in which the parental programming is combined with the child’s own scenarios of disparagement of the vilified parent. Were we to be dealing here simply with parental indoctrination, I would have simply retained and utilized the terms brainwashing and/or programming. Because the campaign of denigration involves the aforementioned combination, I decided a new term was warranted, a term that would encompass both contributory factors. Furthermore, it was the child’s contribution that led me to my concept of the etiology and pathogenesis of this disorder. The understanding of the child’s contribution is of importance in implementing the therapeutic guidelines described in this book.

THE RELATIONSHIP BETWEEN THE PARENTAL ALIENATION SYNDROME AND BONA FIDE ABUSE AND/OR NEGLECT

Unfortunately, the term parental alienation syndrome is often used to refer to the animosity that a child may harbor against a parent who has actually abused the child, especially over an extended period. The term has been used to apply to the major categories of parental abuse: physical, sexual, and emotional. Such application indicates a misunderstanding of the PAS. The term PAS is applicable only when the target parent has not exhibited anything close to the degree of alienating behavior that might warrant the campaign of vilification exhibited by the child. Rather, in typical cases the victimized parent would be considered by most examiners to have provided normal, loving parenting or, at worst, exhibited minimal impairments in parental capacity. It is the exaggeration of minor weaknesses and deficiencies that is the hallmark of the PAS. When bona fide abuse does exist, then the child’s responding alienation is warranted and the PAS diagnosis is not applicable.

Programming parents who are accused of inducing a PAS in their children will sometimes claim that the children’s campaign of denigration is warranted because of bona fide abuse and/or neglect perpetrated by the denigrated parent. Such indoctrinating parents may claim that the counteraccusation by the target parent of PAS induction by the programming parent is merely a "cover-up," a diversionary maneuver, and indicates attempts by the vilified parent to throw a smoke screen over the abuses and/or neglect that have justified the children’s acrimony. There are some genuinely abusing and/or neglectful parents who will indeed deny their abuses and rationalize the children’s animosity as simply programming by the other parent. This does not preclude the existence of truly innocent parents who are indeed being victimized by an unjustifiable PAS campaign of denigration. When such cross-accusations occur—namely, bona fide abuse and/or neglect versus a true PAS—it behooves the examiner to conduct a detailed inquiry in order to ascertain the category in which the children’s accusations lie, i.e., true PAS or true abuse and/or neglect. In some situations, this differentiation may not be easy, especially when there has been some abuse and/or neglect and the PAS has been superimposed upon it, resulting thereby in much more deprecation than would be justified in this situation. It is for this reason that
detailed inquiry is often crucial if one is to make a proper diagnosis. Joint interviews, with all parties in all possible combinations, will generally help uncover "The Truth" in such situations.

THE PARENTAL ALIENATION SYNDROME AS A FORM OF CHILD ABUSE

It is important for examiners to appreciate that a parent who inculcates a PAS in a child is indeed perpetrating a form of emotional abuse in that such programming may not only produce lifelong alienation from a loving parent, but lifelong psychiatric disturbance in the child. A parent who systematically programs a child into a state of ongoing denigration and rejection of a loving and devoted parent is exhibiting complete disregard of the alienated parent’s role in the child’s upbringing. Such an alienating parent is bringing about a disruption of a psychological bond that could, in the vast majority of cases, prove of great value to the child—the separated and divorced status of the parents notwithstanding. Such alienating parents exhibit a serious parenting deficit, a deficit that should be given serious consideration by courts when deciding primary custodial status. Physical and/or sexual abuse of a child would quickly be viewed by the court as a reason for assigning primary custody to the nonabusing parent. Emotional abuse is much more difficult to assess objectively, especially because many forms of emotional abuse are subtle and difficult to verify in a court of law. The PAS, however, is most often readily identified, and courts would do well to consider its presence a manifestation of emotional abuse by the programming parent.

Accordingly, courts do well to consider the PAS programming parent to be exhibiting a serious parental deficit when weighing the pros and cons of custodial transfer. I am not suggesting that a PAS-inducing parent should automatically be deprived of primary custody, only that such induction should be considered a serious deficit in parenting capacity—a form of emotional abuse—and that it be given serious consideration when weighing the custody decision. In this book, I provide specific guidelines regarding the situations when such transfer is not only desirable, but even crucial, if the children are to be protected from lifelong alienation from the targeted parent.

"THE PARENTAL ALIENATION SYNDROME DOES NOT EXIST BECAUSE IT IS NOT IN DSM-IV"

There are some, especially adversaries in child-custody disputes, who claim that there is no such entity as the PAS, that it is only a theory, or that it is "Gardner’s theory." Some claim that I invented the PAS, with the implication that it is merely a figment of my imagination. The main argument given to justify this position is that it does not appear in DSM-IV. The DSM committees justifiably are quite conservative with regard to the inclusion of newly described clinical phenomena and require many years of research and publications before considering inclusion of a disorder, and this is as it should be. The PAS exists! Any lawyer involved in child-custody disputes will attest to that fact. Mental health and legal professionals involved in such disputes must
be observing it. They may not wish to recognize it. They may give it another name (like "parental alienation"). But that does not preclude its existence. A tree exists as a tree regardless of the reactions of those looking at it. A tree still exists even though some might give it another name. If a dictionary selectively decides to omit the word tree from its compilation of words, that does not mean that the tree does not exist. It only means that the people who wrote that book decided not to include that particular word. Similarly, for someone to look at a tree and say that the tree does not exist does not cause the tree to evaporate. It only indicates that the viewer, for whatever reason, does not wish to see what is right in front of him (her). To refer to the PAS as "a theory" or "Gardner’s theory" implies the nonexistence of the disorder. It implies that it is a figment of my imagination and has no basis in reality. To say that PAS does not exist because it is not listed in DSM-IV is like saying in 1980 that AIDS does not exist because it is not listed in standard diagnostic medical textbooks. The PAS is not a theory, it is a fact. My ideas about its etiology and psychodynamics might very well be called theory. The crucial question then is whether my theory regarding the etiology and psychodynamics of the PAS is reasonable, and whether my ideas fit in with the facts. This is something for the readers of this book to decide.

But why this controversy in the first place? With regard to whether PAS exists, we generally do not see such controversy regarding most other clinical entities in psychiatry. Examiners may have different opinions regarding the etiology and treatment of a particular psychiatric disorder, but there is usually some consensus about its existence. And this should especially be the case for a relatively "pure" disorder such as the PAS, a disorder that is easily diagnosable because of the similarity of the children’s symptoms when one compares one family with another. Over the years, I have received many letters from people who have essentially said: "Your PAS book is uncanny. You don’t know me and yet I felt that I was reading my own family's biography. You wrote your book before all this trouble started in my family. It’s almost like you predicted what would happen." Why, then, should there be such controversy over whether or not PAS exists?

One explanation lies in the situation in which the PAS emerges and in which the diagnosis is made: vicious child-custody litigation. Once an issue is brought before a court of law—in the context of adversarial proceedings—it behooves one side to take just the opposite position from the other, if one is to prevail in that forum. A parent accused of inducing a PAS in a child is likely to engage the services of a lawyer who may invoke the argument that there is no such thing as a PAS. And if this lawyer can demonstrate that the PAS is not listed in DSM-IV, then the position is considered "proven." The only thing this proves to me is that DSM-IV has not yet listed the PAS. It also proves the low levels to which members of the legal profession will stoop in order to zealously support their client’s position, no matter how ludicrous their arguments and how destructive they are to the children.

An important factor operative in the PAS not being listed in DSM-IV relates to political issues. Things that are "hot" and "controversial" are not likely to get the consensus that more neutral issues enjoy. As I will elaborate upon below,
the PAS has been dragged into the political-sexual arena, and those who would support its inclusion in DSM-IV are likely to find themselves embroiled in vicious controversy and the object of scorn, rejection, and derision. The easier path, then, is to avoid involving oneself in such inflammatory conflicts, even if it means omitting from DSM one of the more common childhood disorders.

The PAS is a relatively discrete disorder and is more easily diagnosed than many of the other disorders in DSM-IV. At this point, articles are coming forth and it is being increasingly cited in court rulings. Articles about PAS in the scientific literature will be cited throughout the course of this book. Court rulings in which the PAS is cited are also appearing with increasing frequency. I continue to list these on my website as they appear (http://www.rgardner.com/refs). My hope is that by the time committees are formed for the preparation of DSM-V, the committee(s) evaluating for inclusion will see fit to include the PAS and have the courage to withstand those holdouts who, for whatever reason, need to deny the reality of the world. It may interest the reader to note that if PAS is ultimately included in the DSM, its name will be changed to include the term disorder, the current label utilized for psychiatric illnesses that warrant inclusion. It might very well have its name changed to parental alienation disorder.

"PEOPLE WHO DIAGNOSE PARENTAL ALIENATION SYNDROME ARE SEXIST"

Another reason for the controversy regarding the existence of the PAS relates to the fact that in the vast majority of families it is the mother who is likely to be the primary programmer and the father the victim of the children’s campaign of denigration. My own observations since the early 1980s, when I first began to see this disorder, has been that in 85–90 percent of all the cases in which I have been involved, the mother has been the alienating parent and the father has been the alienated parent. For simplicity of presentation, then, I have often used the term mother to refer to the alienator, and the term father to refer to the alienated parent. I recently conducted an informal survey among approximately 50 mental health and legal professionals whom I knew were aware of the PAS and deal with such families in the course of their work. I asked one simple question: What is the ratio of mothers to fathers who are successful programmers of a PAS? The responses ranged from mothers being the primary alienators in 60 percent of the cases to mothers as primary alienators in 90 percent of the cases. Only one person claimed it was 50/50, and no one claimed it was 100 percent mothers. In the 1998 edition of my book The Parental Alienation Syndrome (especially Chapter Five) I discuss this gender difference in greater detail and provide references in the scientific literature confirming the preponderance of mothers over fathers in inducing successfully a PAS in their children.

In recent years it has become "politically risky" and even "politically incorrect" to describe gender differences. Such differentiations are acceptable for such disorders as breast cancer and diseases of the uterus and ovaries. But once
one moves into the realm of personality patterns and psychiatric disturbances, one is likely to be quickly branded a "sexist" (regardless of one's sex). And this is especially the case if it is a man who is claiming that a specific psychiatric disorder is more likely to be prevalent in women. My observations that PAS inducers are much more likely to be women than men has subjected me to this criticism. The fact that most other professionals involved in child-custody disputes have had the same observation still does not protect me from the criticism that this is a sexist observation. The fact that I recommend that most mothers who are inducing a PAS should still be designated the primary custodial parent does not seem to protect me from this criticism.

My basic position regarding custodial preference has always been that the primary consideration in making a custodial recommendation is that the children should be preferentially assigned to that parent with whom they have the stronger, healthier psychological bond. Because the mother has most often been the primary caretaker, and because the mother is more often available to the children than the father (I am making no comments as to whether this is good or bad, only that this is what is), she is most often designated the preferable primary custodial parent by courts of law. Somehow this position has been converted by some critics into sexism against women.

THE PARENTAL ALIENATION SYNDROME AND SEX-ABUSE ACCUSATIONS

A false sex-abuse accusation is sometimes seen as a derivative or spin-off of the PAS. Such an accusation may serve as an extremely effective weapon in a child-custody dispute. Obviously, the presence of such false accusations does not preclude the existence of bona fide sex abuse, even in the context of a PAS.

In recent years, some examiners have been using the term PAS to refer to a false sex-abuse accusation in the context of a child-custody dispute. In some cases the terms are used synonymously. This is a significant misperception of the PAS. In the majority of cases in which a PAS is present, the sex-abuse accusation is not promulgated. In some cases, however, especially after other exclusionary maneuvers have failed, the sex-abuse accusation will emerge. The sex-abuse accusation, then, is often a spin-off, or derivative, of the PAS but is certainly not synonymous with it. Furthermore, there are divorce situations in which the sex-abuse accusation may arise without a preexisting PAS. Under such circumstances, of course, one must give serious consideration to the possibility that true sex abuse has occurred, especially if the accusation antedated the marital separation.

Another factor operative in the need to deny the existence of the PAS, and relegate it to the level of being only a "theory," is its relationship to sex-abuse accusations. I mention frequently throughout the course of this book that a sex-abuse accusation is a possible spin-off or derivative of the PAS. My experience has been that the sex-abuse accusation does not appear in the vast majority of PAS cases. There are some, however, who equate the PAS
with a sex-abuse accusation, or a false sex-abuse accusation. My experience has been that when a sex-abuse accusation emerges in the context of a PAS—especially after the failure of a series of exclusionary maneuvers—the accusation is far more likely to be false than true. Claiming that a sex-abuse accusation may be false also has potentially been politically risky in recent years and not "politically correct." Those of us who have stood up and made such claims, both within and outside of the realm of the PAS, have subjected ourselves to enormous criticism—often impassioned and irrational. My experience has been that sex-abuse accusations that arise within the context of PAS situations are more likely to be directed toward men than women. Accordingly, in sex-abuse cases in the context of custody disputes I am more likely to testify in support of the man. This somehow proves me "sexist." The fact that I have most often testified in support of women to be designated the primary custodial parent—even when there has been a sex-abuse accusation—does not seem to dispel this myth.

RECOGNITION OF PAS IN COURTS OF LAW

Some who hesitate to use the term PAS claim that it has not been accepted in courts of law. This is not so. Although there are certainly judges who have not recognized the PAS, there is no question that courts of law with increasing rapidity are recognizing the disorder. My website (www.rgardner.com/refs) currently cites 51 cases in which the PAS has been recognized. By the time this article is published, the number of citations will certainly be greater. Furthermore, I am certain that there are other citations that have not been brought to my attention.

It is important to note that on January 30, 2001, after a two-day hearing devoted to whether the PAS satisfied Frye Test criteria for admissibility in a court of law, a Tampa, Florida court ruled that the PAS had gained enough acceptance in the scientific community to be admissible in a court of law (Kilgore v. Boyd, 2001). This ruling was subsequently affirmed by the District Court of Appeals (February 6, 2001). In the course of those two days of testimony, I brought to the court’s attention the more than 100 peer-reviewed articles (there are 106 at the time of this writing) by approximately 100 other authors and over 40 court rulings (there are 50 at the time of this writing) in which the PAS had been recognized (www.rgardner.com/refs). I am certain that these publications played an important role in the judge’s decision. This case will clearly serve as a precedent and facilitate the admission of the PAS in other cases—not only in Florida, but elsewhere.

Whereas there are some courts of law that have not recognized PAS, there are far fewer courts that have not recognized PA. This is one of the important arguments given by those who prefer the term PA. They do not risk an opposing attorney claiming that PA does not exist or that courts of law have not recognized it. There are some evaluators who recognize that children are indeed suffering with a PAS, but studiously avoid using the term in their reports and courtroom, because they fear that their testimony will not be
admissible. Accordingly, they use PA, which is much safer, because they are protected from the criticisms so commonly directed at those who use PAS. Later in this article I will detail the reasons why I consider this position injudicious.

Many of those who espouse PA claim not to be concerned with the fact that their more general construct will be less useful in courts of law. Their primary interest, they profess, is the expansion of knowledge about children’s alienation from parents. Considering the fact that the PAS is primarily (if not exclusively) a product of the adversary system, and considering the fact that PAS symptoms are directly proportionate to the intensity of the parental litigation, and considering the fact that it is the court that has more power than the therapist to alleviate and even cure the disorder, PA proponents who claim unconcern for the long-term legal implications of their position is injudicious and, I suspect, specious.

WHICH TERM TO USE IN THE COURTROOM: PA OR PAS?

Many examiners, then, even those who recognize the existence of the PAS, may consciously and deliberately choose to use the term parental alienation in the courtroom. Their argument may go along these lines: "I fully recognize that there is such a disease as the PAS. I have seen many such cases and it is a widespread phenomenon. However, if I mention PAS in my report, I expose myself to criticism in the courtroom such as, 'It doesn't exist,' 'It's not in DSM-IV' etc. Therefore, I just use PA, and no one denies that." I can recognize the attractiveness of this argument, but I have serious reservations about this way of dealing with the controversy—especially in a court of law.

As mentioned earlier, there are many causes of parental alienation, e.g., physical abuse, emotional abuse, sexual abuse, neglect, and a wide variety of other parental behaviors that will justifiably alienate children. But there is another reason why children can become alienated from a parent, namely, being programmed into a campaign of denigration by an alienating parent. The disorder so produced, parental alienation syndrome, is also a form of parental alienation. In short, the PAS is one subtype of parental alienation. To call PAS PA cannot but produce confusion because it equates a pure clinical entity (PAS) with a generic term (PA) under which is subsumed a wide variety of clinical entities. One reason why medicine has progressed is that we have become ever more discriminating regarding the various subtypes that exist for any particular disease. One of the reasons why Hippocrates is known as "The Father of Medicine" is that he was one of the first to make such differentiations. Prior to his time people suffered with "fits." It was he who recognized that there were different kinds of fits, each requiring a different form of treatment. One form of fits he referred to as epilepsy. Another he referred to as hysteria. His group was astute enough to recognize the differences between these different kinds of fits and provided different kinds of treatment. Three hundred years ago people suffered with "heart disease." Now, we know that there are many different kinds of heart disease, each
requiring its own form of treatment. One would not want to go to a doctor today who makes the diagnosis of fits and heart disease and does not go any further. We want specifics. Similarly, saying that a child has "parental alienation" gives very little information. Anyone can observe that—the clients, the mother, the father, both lawyers, the guardian ad litem, and the judge. We want to define specifically the type of the alienation, and PAS is just one possible type. We are then in a far better position to provide specific treatment. Those who eschew the term PAS, for whatever reason, but embrace the term PA, are equivalent to those who would diagnose fits and heart disease without identifying the specific subtype with which the patient is suffering. Accordingly, using PA does not represent progression, it represents regression.

Using the term PAS identifies a specific programmer. In contrast, using PA clearly indicates that the children are alienated and that either parent could have exhibited behavior that could have resulted in the alienation. The term, then, removes the court's focus away from the alienator and redirects attention to what might be only minor parental deficiencies exhibited by the alienated parent. Substituting PA for PAS is, therefore, a disservice to the targeted parent. If the examiner is a mental health professional (most often the case), then the utilization of PA under these circumstances is an abrogation of one’s professional responsibilities to do what is best for the patient or client. Using PA is basically a terrible disservice to the PAS family because the cause of the children’s alienation is not properly identified. It is also a compromise in one’s obligation to the court, which is to provide accurate and useful information so that the court will be in the best position to make a proper ruling. Using PA is an abrogation of this responsibility; using PAS is in the service of fulfilling this obligation.

Furthermore, evaluators who use PA instead of PAS are losing sight of the fact that they are impeding the general acceptance of the term in the courtroom. This is a disservice to the legal system, because it deprives the legal network of the more specific PAS diagnosis that could be more helpful to courts for dealing with such families. Moreover, using the PA term is shortsighted because it lessens the likelihood that some future edition of DSM will recognize the subtype of PA that we call PAS. This not only has diagnostic implications, but even more importantly, therapeutic implications. The diagnoses included in the DSM serve as a foundation for treatment. The symptoms listed therein serve as guidelines for therapeutic interventions and goals. Insurance companies (who are always quick to look for reasons to deny coverage) strictly refrain from providing coverage for any disorder not listed in the DSM. Accordingly, PAS families cannot expect to be covered for treatment. Elsewhere (Gardner, 1998) I describe additional diagnoses that are applicable to the PAS, diagnoses that justify requests for insurance coverage. Examiners in both the mental health and legal professions who genuinely recognize the PAS, but who refrain from using the term until it appears in DSM, are lessening the likelihood that it will ultimately be included because widespread utilization is one of the criteria that DSM committees consider. Such restraint, therefore, is an abrogation of their responsibility to contribute to the enhancement of knowledge in their professions. The PAS manifests the
kind of specificity that is one of the hallmarks of the expansion of knowledge and progression. PA clouds specificity, which is one of the hallmarks of intellectual stagnation and even regression.

There is, however, a compromise. I use PAS in all those reports in which I consider the diagnosis justified. I also use the PAS term throughout my testimony. However, I sometimes make comments along these lines, both in my reports and in my testimony:

"Although I have used the term PAS, the important questions for the court are: Are these children alienated? What is the cause of the alienation? and What can we then do about it? So if one wants to just use the term PA, one has learned something. But we haven't really learned very much, because everyone involved in this case knows well that the children have been alienated. The question is what is the cause of the children's alienation? In this case the alienation is caused by the mother's (father's) programming and something must be done about protecting the children from the programming. That is the central issue for this court in this case, and it is more important than whether one is going to call the disorder PA or PAS, even though I strongly prefer the PAS term for the reasons already given."

I wish to emphasize that I do not routinely include this compromise, because whenever I do so I recognize that I am providing support for those who are injudiciously eschewing the term and compromising thereby their professional obligations to their clients and the court.

Richard A. Gardner, M.D.
May 31, 2001
CURRENT CONTROVERSIES REGARDING PARENTAL ALIENATION SYNDROME

Richard A. Warshak, Ph.D.

Despite a growing literature, the term parental alienation syndrome (PAS) continues to stir controversy in child custody matters. This article draws on the relevant literature to examine the main controversies surrounding the use of the term PAS by mental health professionals. The focus is on controversies regarding the conceptualization of the problem of alienated children, the reliability and validity of PAS, and the treatment of PAS. Some attention is given to issues relevant to the admissibility of expert testimony on PAS, such as the use of the term "syndrome," the question of whether PAS has passed peer review, and whether PAS enjoys general acceptance in the relevant professional community.

Despite a growing literature, the term parental alienation syndrome (PAS) continues to stir controversy in child custody matters (1, 2). Proponents of the term believe it: 1) accurately describes a subset of children whose unreasonable alienation from a parent results, in large measure, from the influence of the other parent; 2) assists in recognizing, understanding, and treating this group of children; and 3) describes a cluster of behaviors displayed by these children which warrants the designation “syndrome.” They regard the term as helpful to courts in deciding the best interests of children and believe that testimony regarding PAS should be admissible.

Critics of PAS argue that it: 1) oversimplifies the causes of alienation, 2) leads to confusion in clinical work with alienated children, and 3) lacks an adequate scientific foundation to be considered a syndrome. They argue that the term is misused in court and that testimony regarding this diagnosis, its course, and its treatment should be inadmissible.

This article examines the main controversies surrounding the use of the term PAS by mental health professionals. It focuses on controversies in the mental health profession, including conceptualization, empirical research, and treatment issues. The article gives some attention to certain issues relevant to the admissibility of expert testimony on PAS, such as the use of the term “syndrome” and the issues of peer review and general acceptance among clinicians, but this article does not purport to provide a comprehensive treatment of this area.

WHAT IS PARENTAL ALIENATION SYNDROME?

Parental alienation syndrome refers to a disturbance whose primary manifestation is a child’s unjustified campaign of denigration against, or rejection of, one parent, due to the influence of the other parent combined with the child’s own contributions (3, 4). Note three essential elements in this definition: 1) rejection or denigration of a parent that reaches the level of a campaign, i.e., it is persistent and not merely an occasional episode; 2) the rejection is unjustified, i.e., the alienation is not a reasonable response to the alienated parent’s behavior; and 3) it is a partial result of the non-alienated parent’s influence. If either of these three elements is absent, the term PAS is not applicable.

Some of the controversy over PAS results from the failure to consider the second and third elements as integral aspects of the concept. Attorneys, therapists, and parents may falsely...
conclude that a child suffers from PAS based only on the first element—the child’s negative behavior. This reflects an inadequate understanding of the concept. Some critics of PAS make the same mistake (5-8; see 9 for Gardner’s rebuttal). They equate PAS with only the first element, attack this straw man concept, and conclude that PAS leads to confusion and misuse when they are themselves confused about the concept. Before concluding that PAS is present, in addition to the child’s alienation, it must be established that the alienation is irrational, and is influenced by the favored parent. Properly understood, a clinician using the term PAS does not automatically assume that the favored parent has influenced a child’s alienation from the other parent. Rather, the term PAS is used to describe only those children who are 1) alienated, 2) irrationally, 3) under the influence of the favored parent. PAS does not apply in the absence of evidence for all three elements.

Child psychiatrist Richard A. Gardner, M.D. introduced the term in 1985, but he was not the first to describe this phenomenon (10). In 1949, psychoanalyst Wilhelm Reich wrote about parents who seek “revenge on the partner through robbing him or her of the pleasure in the child” (11; p. 265). And in 1980, Wallerstein and Kelly described children in their research project who “were particularly vulnerable to being swept up into the anger of one parent against the other. They were faithful and valuable battle allies in efforts to hurt the other parent. Not infrequently, they turned on the parent they had loved and been very close to prior to the marital separation” (12; p.77).

Despite these earlier descriptions, it was Gardner’s detailed account of the origin, course, and manifestations of the phenomenon, along with his guidelines for intervention by courts and therapists, that captured the attention of the mental health and legal professions and stimulated the growing literature on the topic (for a review see 1, 2, 13; for a comprehensive list of publications see 14). Along with the study and elucidation of PAS, controversy remains about how to conceptualize, label, and treat this phenomenon.

CONCEPTUALIZING PAS

To establish a new diagnostic category, we must establish that: 1) the phenomenon exists; 2) it is a disturbance or deviation from the norm; and 3) its symptoms warrant a separate diagnosis and cannot more reasonably be subsumed under a previously existing category.

Most mental health and legal professionals agree that some children whose parents divorce develop extreme animosity toward one parent that is not justified by that parent’s behavior and, to some extent, is promulgated or supported by the other parent. That such children exist is not a point of contention in the social science literature. At issue is whether we should regard this type of disturbance as abnormal, and if so, whether a separate diagnosis for these children provides significant benefits beyond already existing labels, and whether PAS is the best way to conceptualize and label this disturbance.

Is a Child’s Unreasonable Alienation Normal?

Though it might seem an obvious point, not everyone agrees that a child’s unreasonable denigration and rejection of a parent should be considered an abnormal development worthy of professional attention. One author believes it is possible that parental alienation is a normal part of growing up (15). She argued that we have no basis for regarding parental alienation as abnormal because we lack normative data from intact and low-conflict divorced families, i.e., we lack research on the prevalence of this phenomenon.

The position that it might be normal for children to be alienated from their parents is inconsistent
with the scientific literature. It overlooks research on children’s adjustment in divorced families and on healthy parent-child relations in intact families.

The literature on the effects of parent conflict on children documents the harm to children who are caught in the middle of the conflict, as in situations where they are encouraged to side with one parent against the other (16). Studies of children’s attitudes about their parents’ divorce consistently reveal that most children long for more time with each parent and wish their parents would reunite (12, 17-19). One study, for example, reported that regardless of custodial status, 84% of children longed for their divorced parents’ reconciliation (17; p. 41). The desire to be with a parent is normative, not the desire to avoid a parent.

Regarding intact families, the research is clear that the type of denigration, hatred and fear characteristic of PAS is foreign to most intact families and would be considered a symptom worthy of treatment (20). Even in clinical samples with children who are enmeshed with one parent, usually the mother, the children still tolerate their father. I am unaware of any reports in the literature, nor any therapeutic programs, in which a parent in an intact family, who is not guilty of child abuse or gross mistreatment, is advised to cut off contact with the children in response to conflicted parent-child relationships. Instead, articles and books on treatment suggest strategies for helping the family understand and heal ruptured parent-child relationships.

Alternative Models of the Problem of Alienated Children

The consensus that a child’s unreasonable alienation from a parent is a problem does not extend to the issue of how to conceptualize the problem. Wallerstein finds the term PAS unnecessary and believes that the problem is subsumed under her concept of “overburdened children” who must attend to the needs of disturbed parents at the expense of their own psychological development (2, 21). She does, however, introduce the term “Medea Syndrome” to refer to vindictive parents who destroy their child’s relationship with the ex-spouse (21). Other authors conceptualize the phenomenon as a vulnerable child’s maladaptive reaction to a high conflict divorce (22). This “high conflict model” accepts the utility of a separate classification for alienated children. It uses terms such as “unholy alliances” and “extreme forms of parent alienation” in place of PAS (23; pp. 174, 202). The high conflict model differs from Gardner’s conceptualization in that greater emphasis is placed on the child’s psychological vulnerabilities and the contributions of the entire family system to the child’s alienation. By contrast, some authors place greater emphasis on the behavior of alienating parents and distinguish their destructive behavior (labeled “parent alienation”) from PAS which is one possible outcome of such behavior (24).

Kelly and Johnston expressed concern that PAS oversimplifies the causes of alienation and that Gardner’s formulation leads to confusion and misuse in litigation (25). To remedy these flaws, they drew on their considerable clinical and mediation experience with divorced families to propose a reformulation of PAS which they call “the alienated child” (hereinafter referred to as the AC model).

The AC model defines an alienated child as one who “expresses, freely and persistently, unreasonable negative feelings and beliefs (such as anger, hatred, rejection, and/or fear) toward a parent that are significantly disproportionate to the child’s actual experience with that parent” (25). This definition retains two of the three essential elements in the concept of PAS. The free and persistent expression of negative feelings corresponds to the campaign of denigration. And the unreasonableness of the feelings corresponds to the alienation being unjustified. The third element of PAS, the influence of the alienating parent, is not part of the definition of an alienated child. The omission is deliberate. The AC model notes that the manipulations of one parent are
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insufficient to explain alienation because some children resist attempts to undermine their affection for a parent. Thus, other factors must play a role, and this model emphasizes the importance of multiple interrelated factors in the etiology of alienation. The AC model organizes these “alienating processes” into background factors that directly or indirectly affect the child, and intervening variables that influence the child’s response to the background factors. Examples of background factors are a history of the parents involving the children in severe marital conflict, the circumstances surrounding the separation and divorce, and the child’s cognitive capacity and temperament. Examples of intervening variables are each parent’s behavior, sibling relationships, and the child’s vulnerabilities.

Comparison of Parental Alienation Syndrome and the Alienated Child Model

In their critique, Kelly and Johnston characterize PAS as focusing almost exclusively on the alienating parent as the cause of the child’s alienation. This characterization is not entirely accurate. Even the definition of PAS refers to the influence of the other parent combined with the child’s own contributions. Gardner discusses several factors within children that lead to their joining with one parent in denigrating the other. To a lesser extent he discusses why some children are able to resist an alienating parent’s influence and maintain affection for both parents.

In addition to the contributions of the child, the literature on PAS has repeatedly and clearly identified contributions of people in addition to the alienating parent, including the alienated parent, new partners, therapists, custody evaluators, and relatives (2, 3, 26-32). Particularly in his earlier work, though, Gardner did give less emphasis to the role of the alienated parent. His recent work elaborates on the contributing behaviors of alienated parents, particularly in terms of their passivity, but he continues to regard alienating parents’ contributions as primary (33). In some respects, Gardner, who is a physician, has cast PAS in a medical model. By contrast, Kelly, a psychologist, and Johnston, a sociologist, prefer a family systems approach which gives more detailed attention to a wider range of factors without labeling any as primary.

The reformulation of PAS was also a response to its misuse in litigation. Specific concerns are that children are diagnosed with PAS who are not truly alienated or whose alienation is warranted by the history of their relationship to the alienated parent (3; pp. xx, xxviii, 13, 25, 30, 34, 35).

In some cases alienation is confused with situations in which a child prefers, or feels more comfortable with, one parent, or is significantly aligned with one parent, but still seeks to maintain a relationship with the other (25). In other cases a child may resist spending time with a parent, but is neither alienated nor acting under the influence of the other parent (13, 30, 34, 35). Such a child may exhibit hostility and apparent rejection of a parent that: 1) is temporary and short-lived rather than chronic, 2) is occasional rather than frequent; 3) occurs only in certain situations, 4) coexists with expressions of genuine love and affection, and 5) is directed at both parents (35). Situations that meet these criteria include some “normal reactions to divorce, developmentally normal separation anxiety, the behavior of difficult or troubled children, attempts to avoid exchanges that occur in an explosive climate, a concern about a parent’s emotional state when left alone, and situation specific reactions, such as a teenager who refuses to be around a new stepparent (34, 35).

Alienation may be justified in cases where a child is physically or sexually abused; witnesses domestic violence, frightening displays of rage, or the aftermath of violence; or suffers severe emotional abuse, neglect, abandonment, or very poor treatment by a chronically angry, rigidly punitive, extremely self-centered, or substance-abusing parent (25, 34, 35).
Gardner is clear that such situations do not constitute PAS (3). He gives considerable attention to distinguishing between PAS and alienation that is a response to parental abuse or neglect (36). And, without going into detail, he recognizes that children resist contact with a parent for a variety of reasons other than PAS, and that PAS is not the same as the situation where a child aligns with one parent without participating in a campaign of denigration against the other parent. The AC model gives much more specific attention to these categories than does Gardner, although articles by other authors working within the PAS framework have addressed these categories (13, 30, 34).

The AC model provides a detailed and organized description of behaviors which clarifies the distinction between alienated children and non-alienated children who show an affinity for, or strongly align with, one parent, while still maintaining a relationship with the other parent (25). In addition, the AC model gives examples of factors that can lead children to develop such affinities and alignments. By introducing specific terms to denote the categories of behavior that resemble and may be mistaken for PAS, and delineating the behaviors of children in each of these categories, the AC model may facilitate a welcome reduction in the incidence of PAS misdiagnosis and misuse. This would represent a substantial contribution that results in wiser clinical and judicial decisions.

What is unclear, however, is whether the term “alienated child” provides significant advantages over PAS. Until Gardner’s initial work on PAS, the divorce research literature made only occasional mention of children alienated from, or rejecting, a parent. The term, PAS, has proved useful in facilitating communication among clinicians and fostering numerous publications in peer-review journals. At last count there were 108 publications that focused significantly or exclusively on PAS and alienated children. Most of these were in peer-review journals, some were book chapters, and a very few were by authors who have subsequently withdrawn their support for the term PAS. Because of space considerations; the reader is referred elsewhere for a list of PAS reference citations in addition to those cited in this article (1, 2, 14).

It is possible to adopt a family systems theory of PAS, and to differentiate the various reasons for children’s rejection of parents, while retaining the familiar term PAS to denote children whose denigration and rejection goes beyond “alignment” and is not a reasonable response to the rejected parent’s behavior (30, 34).

Dropping the term “syndrome” when referring to irrationally alienated children, and limiting oneself to behavioral descriptions, does avoid legal issues surrounding the admissibility of expert testimony on PAS. But it is not clear how changing the term from PAS to “alienated child” would lead to fewer misidentifications of children who are unreasonably alienated from a parent. As with PAS, the term “alienated child” can be misapplied to children who are not alienated, or whose alienation is warranted.

In one respect, the terms proposed in the AC model may result in more confusion. Kelly and Johnston use the term “estrangement” to refer to alienation that is a realistic response to parental behavior, such as occurs in cases of parental abuse. They contrast this with “alienation” that is not a realistic response. This may be confusing because the terms “estrange” and “alienate” are synonyms. The first definition in the dictionary under the entry “alienate” is “to make indifferent or averse; estrange” and the entry offers this sentence as an illustration: “He has alienated his entire family” (37; p. 37). The dictionary entry for “alienation of affections” is: “Law, the estrangement by a third person of one spouse from the other” (37; p.37). The first entry for “estranger” is “to turn away in feeling or affection; alienate the affections of” (37; p. 488). And the definition of
“estranged” is “displaying or evincing a feeling of alienation; alienated” (37; p. 488). The use of synonyms to describe these two distinct types of alienation (reasonable versus unreasonable) invites confusion, particularly as the concepts leave the arena of mental health professionals and are used in legal circles and the popular press. Though intended to draw a clear distinction, the synonymous terms may inadvertently obscure the difference. It would be useful to have a label to refer to children whose alienation from a parent is reasonable, but “estranged” is probably not the best candidate.

Before leaving this discussion, it should be noted that neither Gardner nor Kelly and Johnston have proposed a term to refer to children whose severe alienation is not warranted by the rejected parent’s behavior, but who have come to be alienated in the absence of manipulations by the favored parent. Some aligned parents of alienated children agree that the other parent has done nothing to warrant the child’s extreme rejection, but they also deny having contributed to the alienation and profess great concern over their child’s disturbed behavior toward the rejected parent. For the sake of conceptual clarity, it makes sense to designate a term to describe this phenomenon. A possible candidate is the phrase “child-driven alienation” which has been used to describe children whose unreasonable rejection of a parent is a misguided way of coping with difficult feelings (35). The absence of a separate term for these children may be less of a problem for the AC model because it would apparently categorize such a child as alienated, with no particular assumption about the contributing factors. According to the definition of PAS, however, without the contributions of the alienating parent such a child would not fit the category of PAS.

On balance, the two formulations appear more similar than different. Both agree that some children become alienated without adequate justification, and both regard this phenomenon as a disturbance rather than a type of normal development. Both agree on how to recognize this disturbance and on how to distinguish it from alienation that is a realistic response to parental mistreatment.

Despite using different terms, both agree on the behaviors which characterize aligned parents and pathologically alienated children. In fact, the list of symptoms is nearly identical. They differ on the name given to the phenomenon, and on the relative contributions of the aligned parent. The AC model sees a greater role played by the alienated parent and the child, while recognizing the contributions of the aligned parent. According to Kelly (personal communication, 2000), this model does not regard the behavior of an alienating parent as necessary to create an alienated child, although it recognizes that it is often present. The PAS formulation sees a greater role played by the parent who is fostering the alienation, while recognizing the contributions of the child and, to a much lesser extent, the alienated parent. Both formulations rule out pathological alienation when the contributions of the rejected parent are substantial enough to warrant the child’s alienation. Overall, I believe the difference between the models is one of emphasis, and not a fundamental distinction, although this is open to dispute. Kelly (personal communication, 2000) indicated that the final version of her article with Johnston (25) will sharpen the distinctions between their model and PAS.

Both models are based on clinical experience. Both find support in the literature for some aspects of their formulation, while neither has large-scale empirical research to validate its conceptual superiority. There are substantial differences in the treatment approaches each advocates, but diagnostic terms are independent of the discovery or proposal of new treatments.

An advantage of the AC formulation is that it provides a differentiated view of the processes, factors, and behaviors in the entire family system which result in a child’s unreasonable alienation from a parent. Also, it clarifies the distinction between what is and is not alienation. An
advantage of PAS is that the concept is widely known and has stimulated a clinical literature that has elucidated and refined our understanding of this disturbance. Abandoning the term would impede integration of the existing literature with future work. Also, the term PAS has the virtue of parsimony: It clearly denotes a circumscribed group of alienated children—those whose alienation is not warranted by the history of the child’s relationship with the rejected parent. By contrast, the phrase “alienated child” is ambiguous with respect to the reasonableness of the alienation, and thus requires additional descriptors (e.g., “pathological”) to distinguish it from what the AC model calls “estrangement.”

A final caveat: Kelly (personal communication, 2000) indicated that the manuscript in press was being edited and that the final version would include revisions and refinements which address some of the points raised in the present article. Also scheduled for publication in the same journal issue (edited by Johnston and Kelly) are three articles elaborating this model’s approach to case management, custody evaluations, and therapeutic interventions. The reader is encouraged to consult these articles for the most complete and recent statement of this model.

Future work will undoubtedly result in further refinements of the AC model as well as PAS. It remains to be seen whether the AC reformulation will gain general acceptance among clinicians working with divorced families and among experts witnesses, and replace PAS, or whether future additions to the literature will support, or be compatible with, the retention and utility of the concept PAS.

**RELIABILITY**

The misidentification and misuse of PAS raises the issue of its reliability. Reliability, in the social sciences, means something different than legal reliability. For scientists, reliability refers to the degree to which a statistical measurement, test result, or diagnosis, is consistent on repeated trials or among different observers. A proposed syndrome, such as PAS, has high reliability if different clinicians, examining the same children, reach a high rate of agreement on which children do or do not have the syndrome. Naturally, it is not necessary for clinicians to reach one hundred percent agreement in order to qualify as having reached a scientifically acceptable level of reliability. Two doctors often disagree on a diagnosis; that is why we get second opinions. But, if the symptoms of the proposed diagnosis are too imprecise and ambiguous, or require an excessively high degree of inference on the part of the observer, the rates of disagreement may be unacceptably high. In such cases, the proposed syndrome should undergo further refinement (such as more precise definitions of symptoms) before it gains general acceptance.

The description of PAS symptoms (3), and the description of the behaviors seen in the alienated child (25), appear on the surface to be clear-cut and intelligible. We await empirical research, however, which tests the ability of clinicians to apply these symptoms to case material and agree on whether or not a particular symptom is present in a particular child. For example, Gardner lists “weak, absurd, or frivolous rationalizations for the deprecation” of a parent as one symptom of PAS. Kelly and Johnston list “trivial or false reasons used to justify hatred” as a behavior seen in an alienated child (note the close similarity between the two models). Can different observers agree on what constitutes frivolous or trivial justifications? Or is this symptom so inherently ambiguous that, after examining the same children, clinicians will disagree to a significant extent on which children’s reasons for rejecting a parent are reasonable and which should be dismissed as trivial?

To date, no study has directly measured the extent to which different examiners, with the same data, can agree on the presence or absence of PAS (or, for that matter, alienation in a child). Until a sufficiently high rate of agreement on the presence or absence of PAS is established
through systematic research, the diagnosis will not attain the empirical support which is probably necessary to achieve acceptance on a par with the disorders recognized in the American Psychiatric Association’s official description of diagnoses (38). And, until such data exist, the reliability of PAS cannot be supported by reference to scientific literature. This does not mean that the diagnosis lacks reliability, any more than it meant that the diagnosis of AIDS lacked reliability prior to the publication of empirical research on the syndrome.

VALIDITY

The validity of the concept PAS is a more complex issue than reliability. It relates to some of the issues explored in the earlier discussion of conceptualization. The central question is whether PAS accurately, adequately, and usefully describes a disturbance suffered by some children.

As is true of most, if not all, newly proposed syndromes, Gardner based his identification and description of PAS on his clinical experience. The same is true of all existing formulations of the problem of alienated children. To establish the validity of PAS, the scientific literature must demonstrate that the clinical observations that formed the basis for the initial formulation are representative of a wider population of children. There are generally two stages in this process. First, other clinicians report on their experiences related to the phenomenon, supplementing and refining the initial proposal. These reports are either anecdotal accounts of a few cases, or reports of a larger volume of cases, organized and analyzed in some systematic fashion. Second, empirical research with larger samples of subjects, standardized and systematic measures, and appropriate scientific controls tests hypotheses drawn from the clinical reports in the literature. The field of PAS study is just beginning to enter the second stage with studies in progress.

The descriptions of PAS in the clinical literature have struck a chord of recognition among divorcing parents, attorneys and mental health professionals. As we have seen, even alternative formulations of the phenomenon agree that unjustified parental alienation sometimes accompanies custody battles and that the favored parent sometimes contributes to this alienation. The concept of PAS has served to organize a volume of articles on the appropriate identification and treatment of a child suffering with this problem (1, 2). The frequency of reports in the clinical literature, and the close similarity of reported cases to Gardner’s descriptions, lends support to the validity of PAS. Reality is not determined by popular vote, but the burgeoning literature is evidence of the utility of the PAS concept, at least as experienced by practitioners in the field. As discussed below, this is relevant to the admissibility of PAS testimony.

Kopetski published two reports on severe PAS in a sample of 413 court-ordered custody evaluations conducted by the Family and Children’s Evaluation Team in Colorado (39, 40). Prior to learning of Gardner’s work, the team identified 84 cases of severe alienation that led them “independently to conclusions that were remarkably similar to Gardner’s conclusions regarding the characteristics of the syndrome.” Independent identification of the same cluster of symptoms would generally be considered strong support for the validity of a newly proposed syndrome.

Dunne and Hedrick found Gardner’s criteria useful in differentiating 16 cases of severe PAS from other cases with other post-divorce disturbances (41). Other clinicians have also found the PAS concept useful in organizing their impressions of alienated children (30-32, 42-45). Common experience and clinical cases, however, must be corroborated by systematic empirical investigations.

A 12-year study of 700 divorce families, commissioned by the American Bar Association Section on Family Law, is the one large-scale study which has delineated the phenomenon in which divorced and divorcing parents program and manipulate their children to turn against the other
This study provides some empirical support for the validity of PAS. As an early study in the field, it is heavily descriptive and the description of procedures does not make clear exactly how the data were analyzed and what procedures were used to ensure the reliability of the results. Nevertheless, because of the wealth of experience reflected in the large number of families studied, and the detailed and sophisticated analysis of the problem, this study’s observations and conclusions merit significant weight. Gold-Bikin offers this view: “This treatise is based on years of experience counseling families in divorce and evaluating children during custody litigation. It should provide guidance to the bar, bench, and mental health professionals in ascertaining whether a child has been intentionally brainwashed or alienated from one parent by the other parent...” (46; p. ix).

There is considerable scientific research which supports the conclusions of the ABA-sponsored study and validates key facets of PAS. Chief among these are the bodies of literature on children exposed to parental conflict (16), on programming and brainwashing (47, 48), and on children’s suggestibility (49). Numerous methodologically sophisticated studies have established that children are susceptible to accepting suggestions that an innocent adult did harmful or illegal things and then repeating these suggestions as if they were true (49). Children will even provide elaborate details of events that never occurred. Research findings on programming, brainwashing, stereotype induction, and children’s suggestibility help to explain how one parent could exert enough influence over a child to cause that child to lose affection and respect for the other parent.

Systematic empirical research is lacking when it comes to validating the specific cluster of symptoms that characterizes PAS. There is, as yet, no specification of which symptoms and how many are necessary for the diagnosis. It should be noted, however, that many of the diagnoses in DSM-IV also lack research which empirically verifies the appropriate number of symptoms necessary to make the diagnosis (50).

As discussed earlier, some clinicians believe that Gardner’s formulation of the causes of PAS oversimplifies the situation and places undue emphasis on the alienating parent. This is explored in a later section. If this criticism is correct, it may modify our understanding of the etiology of PAS, but may not undermine the validity of the PAS phenomenon itself. Gardner himself expects that the concept of PAS will be refined and elaborated by future investigators (3).

**PAS AS A SYNDROME**

The use of the term “syndrome” in reference to alienated children has sparked heated debate. A syndrome is “a grouping of signs and symptoms based on their frequent co-occurrence, that may suggest a common underlying pathogenesis, course, familial pattern, or treatment selection.” This seems descriptive of PAS.

Some have argued that PAS does not qualify as a syndrome because not every child who is exposed to alienating behavior by one parent develops the same distinct disorder (25). This reasoning is not compelling. In medicine, including psychiatry, it is well-recognized that the same pathological agent can produce different outcomes in different individuals. This generally does not invalidate the syndrome or disorder. For example, rape may, but does not always, result in a posttraumatic stress disorder (PTSD—originally termed a syndrome). The fact that some victims survive traumas without developing PTSD does not disqualify PTSD as a proper diagnostic entity. Another example is adjustment disorder. Two children may experience the death of a parent or a divorce. One develops an adjustment disorder and the other escapes any diagnosable mental disorder. The American Psychiatric Association, which acknowledges that most of its official diagnostic categories are syndromes, specifically assumes that some disorders will “result
mainly from an interplay of psychological, social, and biological factors” (51; p. xxiii). This seems to allow for a multi-factored approach to understanding. PAS, while retaining the term “syndrome.”

A greater concern is that the medical designation “syndrome” conveys an established stature and legitimacy that may be more appropriate following more rigorous empirical research. In court, the term “syndrome” may strengthen confidence in the scientific basis of the witness’ testimony and, by implication, in the value and reliability of that testimony.

An additional concern about syndrome evidence is that expert witnesses sometimes offer a collection of symptoms as a test to prove the existence of one particular causal agent, even in the absence of independent verification of the cause. In the case of PAS this would mean that, after determining that a child has the behaviors characteristic of alienated children, the expert assumes that the existence of alienation supports a claim that the favored parent must have fostered the alienation. This is clearly a misuse of PAS; by definition, the manipulations of the favored parent must be identified in order to diagnose PAS.

Mosteller has proposed that the purpose for which syndrome evidence is used should govern its admissibility (52). When an expert proffers syndrome evidence as a test of whether certain conduct has occurred, such as child sexual abuse, “the science must be of the highest quality and should satisfy the standards set out in Daubert v. Merrell Dow Pharmaceuticals, Inc.” (52; p. 468). Mosteller argues that less exacting scientific standards should apply when the expert relies on syndrome evidence “to correct human misunderstandings of the apparently unusual and therefore suspicious reactions of a trial participant” (52; p. 467).

Although PAS testimony should not be used as a test of whether the aligned parent promulgated the child’s alienation, it can provide the court with an alternative explanation of a child’s negative or fearful conduct and attitudes. Also, PAS testimony can assist the court in evaluating a child’s ability to perceive, recollect, or communicate. When PAS has been misdiagnosed, as in the case of children who are not alienated, or whose alienation is justified by the rejected parent’s behavior, expert testimony on PAS may be proffered in rebuttal.

Testimony by an expert knowledgeable about the strategies that parents use to promulgate and support alienation, the extent to which children can be manipulated to reject and denigrate a parent, the extent to which children are suggestible, the mechanics of stereotype induction, and the psychological damage associated with involving children in parental hostilities, may assist the court in determining the proper amount of weight to give a child’s explicitly stated preferences and statements regarding each parent. The expert can demonstrate that a child’s statement of preference, even when executed in an affidavit, does not necessarily reflect the history of that child’s relationship with the non-preferred parent, particularly when the child totally rejects the non-preferred parent.

Lund regards this as one of the most important benefits of PAS (30). In their study, Clawar and Rivlin determined that 80 percent of the children in their sample wanted the brainwashing detected and terminated, and there was often a substantial difference between children’s expressed opinions and their real desires, needs and behaviors (29).

**PAS UNDER DAUBERT**

The U.S. Supreme Court decision in Daubert v. Merrell Dow Pharmaceuticals, Inc. (53) provided a non-exclusive list of criteria for federal courts to consider in judging the admissibility of scientific expert testimony. Subsequent decisions, such as the Supreme Court cases of General
Electric Co. v. Joiner (54) and Kuhmo Tire Co. v. Carmichael (55), and the Texas Supreme Court cases of E.L du Pont Nemours and Co. v. Robinson (56) and Gammill v. Jack Williams Chevrolet, Inc. (57) have built upon the principles of the Daubert analysis.

The application and significance of Daubert to mental health expert testimony is the subject of considerable speculation. Some commentators suggest that the Daubert decision spells the end of psychological and psychiatric testimony (58). This has not occurred. Slobogin sees little impact of Daubert on psychological testimony in criminal cases, including the admissibility of battered women and rape trauma syndrome evidence (59). In custody cases it is not clear whether trial court judges are using Daubert criteria to evaluate expert testimony on the best interest of a particular child (60).

Shuman and Sales note the difficulty of applying Daubert’s pragmatic considerations, developed for scientific testimony, to clinical testimony (61). These authors suggest that when clinically based testimony is proffered, courts “are limited to judging the qualifications of the experts and the acceptability of that testimony to other similar practitioners, resulting in nearly identical pre- and post-Daubert admissibility decisions” (61; p. 10). General acceptance in the relevant scientific community is one of the Daubert factors and is the familiar criterion originated in Frye v. United States for science-based testimony (62).

Many courts, though, exempt psychological syndrome testimony from a Frye analysis (59). With respect to syndrome testimony in criminal trials, Slobogin argues for a formulation of the Frye test that would admit testimony “that a sizeable group of professionals find plausible, based on their specialized knowledge” (59; p. 113). PAS would pass this test. Indeed, it already has (63). There is another index of the general acceptance of PAS in addition to the growing professional literature on PAS in peer-review journals. The American Psychological Association concludes its Guidelines for Child Custody Evaluations in Divorce Proceedings with a highly selective reference section titled “Pertinent Literature” (64). Three of the 39 references are books by Gardner; one is titled “The Parental Alienation Syndrome” and the other two include discussions about PAS. This could be taken to imply APA recognition of PAS as pertinent to child custody proceedings.

Zervopoulos draws on post-Daubert decisions to offer two guides for assessing the reliability of testimony that does not seem to fit the Daubert criteria (65). His analysis may be applicable to syndrome testimony. The first guide he refers to as “the applicable professional standards test” citing the decision in Gammill, which in turn quotes from Watkins v. Telmith, Inc. (66): “The court should assure that the opinion comports with applicable professional standards outside the courtroom and that it ‘will have a reliable basis in the knowledge and experience of [the] discipline’” (57; pp. 725-726). Proffering PAS testimony under the “applicable professional standards test” might involve introducing the wide body of clinical literature regarding alienated children, and the similar observations noted in the various clinical reports.

The second guide is “the analytical gap test,” drawing on the Joiner decision: “(N)ething in either Daubert or the Federal Rules of Evidencerequires a district court to admit opinion evidence which is connected to existing data only by the ipse dixitof the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered” (54; p. 146). Zervopoulos explains how the “analytical gap test” might apply to syndrome testimony: “If elements of the proposed syndrome can be supported by research, those elements should pass muster under a Daubert/Robinson/Gammill analysis” (65). A similar approach is suggested by Shuman and Sales, “Kuhmo Tire and Daubert probably will raise the level of scrutiny given to the proffers of clinical information to determine if there is science that could have been used by the clinician” (61; p. 10).

Applying this type of analysis to PAS, one could bridge the “analytic gap” with the literature on
stereotype induction and on children’s suggestibility (49). An element of PAS is the persuasive influence of the alienating parent which results in a child forming an unwarranted negative opinion of the other parent. This element is supported by the literature on stereotype induction which demonstrates how children can be manipulated to form negative stereotypes and will subsequently confabulate stories about bad things the target person has done (49). Gould makes a similar point: “If parent-child verbal exchanges in alienating families can be construed as a form of suggestive interviewing, then the evaluator may attempt to identify how the parent has used specific suggestive interview techniques to alter the child’s perception of his or her father or mother” (67; p. 173).

PAS AND PEER REVIEW

One of the Daubert factors, and a key means of satisfying Frye’s general acceptance test, is whether the science has been subjected to peer review. The meaning and legal significance of peer review of clinical publications is debatable (61). But, it would seem fairly straightforward to determine whether or not PAS passes this criterion. Not so. Some critics imply that PAS has not passed standards of peer review because Gardner’s books on parental alienation are published by his own press (5, 6, 8). These critics also discount the peer-review status of some of Gardner’s published articles on the subject and imply that none of his work on PAS has passed peer review. These same critics omit from their analyses the many peer-reviewed publications on PAS by authors other than Gardner. An examination of the entire literature on PAS fails to support the contention that PAS has not passed peer review, and in fact strongly supports the opposite conclusion.

Although Gardner’s books are not peer-reviewed, neither are most books. He has had eleven articles on PAS pass the peer-review process in social science publications (10, 36, 68-76), two articles in legal journals (77, 78), and one invited chapter in a prestigious psychiatric reference volume whose board of editors includes many of the world’s leading experts in child psychiatry (79). Critics have tried to discount Gardner’s publications in The Academy Forum, arguing mistakenly that it does not rely on peer review (6, 8); the status of his other peer-reviewed publications has not been disputed.

In addition to Gardner’s work on PAS, there are currently 94 publications that focus significantly or exclusively on PAS and alienated children (14). Though some may question the value of peer review, or of the Frye test, as an index of the admissibility of syndrome research, there are no reasonable grounds for maintaining that PAS has not passed peer review.

DOES THE PAS CONCEPT UNFAIRLY BLAME ONE PARENT FOR FAMILY DYSFUNCTION?

According to Gardner’s formulation, alienated parents are innocent of any behavior that justifies their children’s total alienation from them. If a parent’s behavior does warrant the children’s alienation, this is not a case of PAS.

When a child suffers from PAS, Gardner holds the alienating parent and the child primarily responsible. Similarly, although Kelly has clearly revised her thinking on this topic, her earlier work emphasized the contributions of the aligned parent, “The most extreme identification with the parent’s cause we have called an ‘alignment’- a divorce-specific relationship that occurs when a parent and one or more children join in a vigorous attack on the other parent. It is the embattled parent, often the one who opposes the divorce in the first place, who initiates and fuels the alignment” (12; p. 77).
Some critics argue that Gardner’s position on the etiology of PAS is incomplete, simplistic, and perhaps erroneous (6-8, 23, 25, 31). Such critics believe that the concept of PAS overemphasizes the pathological contributions of the alienating parent while overlooking other possible causes of the child’s denigration and rejection of a parent. In some cases, when the author faults Gardner for not recognizing that genuine abuse, neglect, or violent behavior can cause behavior identified as PAS, the criticism clearly reflects an inadequate understanding of Gardner’s formulation (6-9). Gardner recognizes that poor parental behavior can cause a child’s alienation; but he reserves the label PAS for the type of alienation that is not warranted by the parent’s behavior and which results from the combination of the alienating parent’s influence and the child’s own contributions.

As discussed earlier, other clinicians believe that Gardner’s formulation overlooks the importance of family dysfunction in which neither parent can be said to be psychologically healthier than the other. Lund captures this opinion: “The PAS cases that end up in therapists’ offices after a court hearing usually do not have one parent who is much more psychologically healthy than the other. From a ‘Family Systems’ perspective, the blame for PAS lies less with psychopathology of one parent than it does with the usually very high conflict between both parents and both parents’ psychopathology” (30; p. 309). Other authors concur, “Usually, PAS is not just the work of the alienating parent...It is a family dynamic in which all of the family members play a role, have their own motives, and have their own reasons for resisting the efforts of others at correction” (31).

Johnston and Roseby believe that a particular type of family dynamic is responsible for certain severe alienation cases: “Rather than seeing this syndrome as being induced in the child by an alienating parent, as Gardner does, we propose that these ‘unholy alliances’ are a later manifestation of the failed separation-individuation process [the process by which a child develops psychological independence from the parents] in especially vulnerable children who have been exposed to disturbed family relationships during their early years” (23; p. 202). These authors regard the child’s vulnerability to the alienating parent as the most important aspect of some of these cases, rather than “conscious, pernicious brainwashing” by an angry parent.

In contrast, mental health professionals working with families involved in custody litigation often report clear evidence that the alienating parent is deliberately and knowingly manipulating the child (1, 2, 28, 29). Even when the manipulation is subtle, or outside the immediate awareness of the parent doing the manipulating, because of the power imbalance between parent and child. Clawar and Rivlin view the process as driven by the alienating parent (29). Kopetski’s research supports this and she regards PAS as parental exploitation of the child (39, 40). Although Kelly and Johnston do not regard the behavior of the favored parent as necessary to create the child’s irrational alienation, when such behavior is present, they too regard it as emotional abuse of the child regardless of whether the alienator consciously intends to negatively influence the child (25).

Garbarino and Scott also regard PAS as a form of psychological mistreatment of children and believe that all mistreatment of children is more likely to occur in families where the atmosphere is one of stress, tension, and aggression (80). Nicholas surveyed custody evaluators “and found significant correlations between symptoms of alienation and behaviors on the part of the alienating parent, but few links between the child’s alienation and the target parent’s behavior. This lends support to the position that the core problem in PAS is between the alienating parent and the child. This study, however, was merely exploratory and has a number of methodological limitations including a small sample of 21 completed surveys (81). Other studies report that target parents tend to be less disturbed than alienating parents, but these studies all relied on populations in which false accusations of sex abuse were present; these results may not...
generalize to the majority of PAS cases which do not include such allegations (82-85).

A central issue in assigning responsibility for a child’s unwarranted alienation is whether, absent the support of the favored parent, the child would have become alienated. If, for example, the flaws of the rejected parent would not normally result in the child’s total estrangement, then it may be more accurate to describe these flaws as having played a role in the child’s ambivalence rather than having caused the alienation (35). If PAS symptoms arise only after the favored parent begins to manipulate his children’s affections, and the rejected parent has not altered her treatment of the children in any significant way, this increases the likelihood that the manipulations have played a key role in the alienation; other explanations, though, are possible, such as the child exhibiting a maladaptive reaction to the divorce.

Several authors have identified how other parties, such as relatives and professionals, contribute to the alienation (2, 3, 22, 25-32). These authors have drawn attention to the damage caused by psychotherapists and custody evaluators whose intervention and recommendations reflect an inadequate understanding of PAS. Such professionals may accept as valid the children’s criticisms of the target parent, and thus the professional may perpetuate and foster PAS.

Different opinions about PAS etiology lead to different treatment recommendations. Some support the idea of conducting psychotherapy while allowing children to live with an alienating parent to whom they are pathologically tied (22). Others recommend placing the child with the parent who has the best potential for fostering the child’s healthy psychological development (3, 33, 39, 40).

Future research should help clarify which explanation gives a better account of the genesis of unreasonable parental alienation: an emphasis on the aligned parent’s behavior, or an approach which considers multiple interrelated factors without assigning priority to the behavior of any one person in the system. As our understanding of these phenomena expands, we will probably find that no one explanation can best account for every case; in some cases the contributions of the aligned parent will be paramount, while in other cases a sufficient understanding of the disturbance will require an analysis of the complex interplay of the behavior of the child, the alienated parent, and the aligned parent, along with the contributions of other people (such, a new partners, other family members, and therapists) and circumstances.

SHOULD CHILDREN BE FORCED TO SPEND TIME WITH THE TARGET PARENT?

By far the most controversial issue in the PAS literature is the recommendation of enforced access between children and their alienated parents and reduction of access between the children and the parent promulgating the alienation.

In the majority of cases of moderate PAS, Gardner recommends that the court award primary custody to the alienating parent, appoint a therapist for the family, and enforce the child’s contact with the target parent through the threat and imposition (if necessary) of sanctions applied to the alienating parent (33). Such sanctions are similar to those the court would use against a parent who is in contempt for failure to pay court-ordered alimony or child support. The sanctions include a continuum from requiring the posting of a bond, fines, community service, probation, house arrest, to short-term incarceration. Some states grant courts the power to suspend a contemnor’s driver’s license or order public service duty. Turkat notes that the absence of such sanctions has allowed parents to interfere with visitation and flaunt court orders with impunity (86).

The goals of therapy with children suffering from moderate PAS are to foster healthy contact
with the target parent and to assist children in developing and maintaining differentiated views of their parents as opposed to polarized views of one parent as all good and the other as all bad. One way to get children involved with the rejected parent is to take the decision about contact out of the children’s hands, reminding them of the possible sanctions against the preferred parent for resisting court-ordered contact, and thereby giving them an excuse to spend time with the target. The therapist also tries to help the children appreciate that their animosity has been influenced by programming which has undermined their ability to reach conclusions on the basis of their own direct experiences with the target. Some authors compare this aspect of treatment with the “deprogramming” that is used with cult victims to help counteract the effects of indoctrination (29, 33).

In some cases of moderate PAS, when the parent is more intensively programming the children and there is a high risk of the alienation becoming more severe, Gardner recommends a different legal approach. In such cases he recommends that courts consider awarding primary custody to the alienated parent and extremely restricted contact between the alienating parent and child, in order to prevent further indoctrination. Similarly, in the most severe cases of PAS (which, in Gardner’s experience, comprise about 5-10 percent of all PAS cases), Gardner recommends that the court remove the children from the home of the alienating parent.

Because children with severe PAS will not generally comply with court orders, and the programming parent cannot be relied upon to facilitate contact with the target parent, and because courts are reluctant to place children with a parent they appear frightened of, Gardner recommends temporary placement of the children in a transitional site before reintegrating the children in the home of the target parent. Possible transitional sites range from least restrictive to most restrictive, depending on the amount of control necessary to ensure the children’s cooperation and the alienating parent’s compliance with court orders. Such sites include the home of a relative or friend, a foster home, a community shelter, or a hospital. Gardner makes a good case for the transitional program, but he has had little direct experience with it, mainly due to courts’ general hesitance to implement it (3). Rand, however, describes some success with it (2).

In addition to serving as transitional sites, the threat of temporary placement in a foster home, community shelter, or juvenile detention center may induce children to cooperate with court-ordered visitation. With older children (ages 11-16) who refuse visits with the alienated parent, Gardner suggests the possibility of finding the child in contempt of court (4). This recommendation has met with the most opposition.

One author who objects to enforced visitation argued that a contempt finding for a child who refuses visitation is strictly punitive in nature and counterproductive (87). The concern is that such actions will reinforce the child’s hatred of the alienated parent. Instead, this author recommends that the court examine why a child resists contact with a parent and rely on family counseling and supervised visitation as a first step in repairing the child’s relationship with the alienated parent: “Instead of punishing them for their feelings, we need to work with them to help them understand the value of a relationship with their parent” (87; p. 95). Gardner, on the other hand, warns against unnecessary indulging of children’s visitation refusal (3). He believes that the best way to reverse alienation is to provide a child with direct experiences which can counteract negative programming and correct the child’s distorted perceptions of the target parent.

One problem with supervised visitation is the message it can send to a child: It can suggest that the child’s fears of the target parent are rational and that the court agrees that the child needs some sort of protection from the alienated parent. Thus, rather than increase the child’s security around that parent, it may reinforce the child’s uneasiness. The AC model makes a similar point
The importance of separating the child from the alienating parent, and ensuring the child’s exposure to the target parent, is consistent with treatment methods for victims of brainwashing, including prisoners of war and members of cults. Clawar and Rivlin report on the similarities between the methods used by cult leaders to control their followers and the manipulations of alienating parents (29). Brainwashing scholars have identified the victim’s dependence on the programmer and isolation from the target as critical conditions for successful indoctrination. These conditions must be removed for effective deprogramming to take place.

The results of the ABA-sponsored study support a firmer approach to enforcing parent-child contact. The study reported, “One of the most powerful tools the courts have is the threat and implementation of environmental modification. Of the approximately four hundred cases we have seen where the courts have increased the contact with the target parent (and in half of these, over the objection of the children), there has been positive change in 90 percent of the relationships between the child and the target parent, including the elimination or reduction of many social-psychological, educational, and physical problems that the child presented prior to the modification” (29; p. 150).

Gardner’s recent follow-up study of 99 children diagnosed with PAS found a strong association between environmental modification and reduction in PAS symptoms (76). In 22 instances, the alienated child’s contact with the rejected parent was increased and contact with the alienating parent was decreased. In all 22 cases, PAS symptoms were reduced or eliminated. By contrast, only 9% of the children (7 out of 77) whose contact with the rejected parent was not increased by the court, showed a reduction in PAS symptoms. This study also provides a beginning understanding of the factors that lead alienated children to initiate their own reconciliation with the rejected parent. Further study along these lines may assist decision-makers in determining which children might not require environmental modification in order to recover from PAS. The large sample and the statistical test of significance allowed by this size sample make this an important study. Nevertheless, its limitations must be noted, chiefly that the children were not interviewed, the only informant for the follow-up was the rejected parent, and the interviews were conducted by a clinician who had formulated the hypothesis being tested.

Other treatment approaches to severe PAS have been reported in the clinical literature, but in general such approaches have met with failure. Dunne and Hedrick published a clinical study of 16 severe PAS cases (41). The court ordered a custody change and/or strict limitation of contact between the alienating parent and the children in only three of these cases. In all three cases PAS was eliminated. The other 13 cases were treated with various, less restrictive interventions, ranging from individual or conjoint therapy for the parents, therapy for the children with either the alienating parent or target parent, or the assignment of a Guardian Ad Litem. In none of these cases was the PAS eliminated. Two cases showed “some” or “minimal” improvement, nine showed no improvement, and two were worse after the interventions.

This study has significant limitations. The sample size is small. Details are not provided about the methods used to analyze clinical case material. As is typical in clinical research with small samples, no statistical analyses were conducted to document that the findings were not due to chance. Nevertheless, the 100% correspondence between elimination of severe PAS and transfer of custody does provide some evidence in support of this intervention.

Lampel analyzed clinical case studies on 18 families, out of which seven children were described as rejecting a father who had no objectively noted parental dysfunction (48). Such children could be classified as moderately to severely alienated. The therapists conceptualized the children’s
rejection of the father as a phobia with hysterical features and tried two different approaches commonly used to treat phobias.

The first approach, used with six children, included individual therapy sessions with the child followed by gradually increasing times with the father both in and out of the therapist’s office. Sessions were also held for the mother, both individually and jointly with the child, for the father, and for both parents and child jointly. This approach is similar to Gardner’s recommended treatment for moderate PAS cases.

The second approach, used with one child, is similar to Gardner’s recommendation for severe PAS. The child was placed with the father for six to eight weeks while the therapist provided individual therapy sessions for the child and parents, and joint sessions with the child and father. This child was the only one of the seven children whose symptoms reduced markedly. The children whose treatment did not include placement with the rejected father experienced results varying from minor improvement to deterioration. In three cases the treatment was regarded as a clear failure. Lampel attributed the failures to the mothers’ “collusive involvement” with their children. Again, although this is a very small sample, the results support the effectiveness of placing the child with the alienated parent.

Naturally, treatment approaches to PAS will benefit from more and higher quality research. Given the limitations in the available studies, some might dismiss the current professional literature as too inadequate to serve as an authoritative guide to decisions for alienated children. But no study is free of limitations. The issue is whether the limitations render the study useless. The peer review process, though no guarantee of a study’s lasting value, is designed to weed out studies whose flaws outweigh their contributions.

Courts and clinicians face decisions about alienated children on a daily basis. These decisions can draw on the best available information, while duly noting its limitations, and thereby benefit from the experience of the families reflected in the published reports. Or the decisions can ignore this information. At this point in time, all the published findings on treatment outcomes support the effectiveness of enforcing contact between the child and alienated parent and no findings oppose this policy. When all available studies point to the same conclusion, it makes sense to pay attention to that conclusion, while allowing for the possibility that the circumstances of any single case may dictate an alternative treatment approach. Indeed, an emerging consensus among mental health professionals supports the idea that “court orders for continued contact are the cornerstone for treatment” of PAS cases (30; p. 309). Similarly, Stahl refers to “general agreement” that recommendations should include “forced consistent time between the child and the alienated parent” (88; p. 6).

But no consensus has been reached on the proposal for courts to consider a transfer of custody (as opposed to enforced contact) in severe PAS cases. Some have expressed the concern that alienated children are ill-equipped to cope with the change in custody, and that they could be seriously harmed (23). Although this possibility must be entertained, if this were a likely outcome, one would expect to see reports in the professional literature; to date there is no published documentation of such harm. Some allegations that harm has resulted from custody transfer may actually be misrepresentations promulgated by embittered litigants. Nevertheless, some clinicians advise parents of severely alienated children to accept the loss of their children while maintaining hope for future reconciliation (88).

Based on their ABA-sponsored study, Clawar and Rivlin conclude, “Caution must be exercised in judging that the point of no return has been reached. We have seen numerous cases where children have been successfully deprogrammed by making radical changes in their living
arrangements—often with appropriate legal interventions” (29; p. 144). As they explain it, “There are risks incumbent in any process; however, a decision has to be made as to what is the greater risk. It is usually more damaging socially, psychologically, educationally, and/or physically for children to maintain beliefs, values, thoughts, and behaviors that disconnect them from one of their parents (or from telling the truth, as in a criminal case) compared to getting rid of the distortions or false statements” [emphasis in the original] (29; p. 141).

Large scale, objectively measured, long-term outcome studies on the effectiveness of different interventions with PAS have not yet been conducted. Until such scientific evidence is available, controversy will probably continue concerning the proper treatment of children and parents when PAS is present. And until more courts implement the proposed treatment recommendations, it is not likely that investigators will have large enough samples to conduct large-scale outcome studies.

CONCLUSION

The concept of parental alienation syndrome has received much attention in the professional literature, including articles appearing in peer-review journals which elaborate on Gardner’s original formulations. Mental health professionals and courts agree that children can suffer estrangement from a parent following divorce that is not warranted by the history of the parent-child relationship. This observation can be useful to courts dealing with a child’s visitation refusal or determining how much weight to assign a child’s stated preferences regarding custody. Although empirical research is at an early stage, the available published studies support the importance of enforcing contact between a child and an alienated parent, when the child’s alienation is not justified by that parent’s behavior.

Controversy exists, however, in conceptualizing the problem of alienated children and in using the term PAS. Those favoring the term believe it assists in understanding and treating a well-recognized phenomenon. Those opposing the term believe that it lacks an adequate scientific foundation to be considered a syndrome and that courts should not admit testimony on PAS. Critics argue that PAS is either an unnecessary or potentially damaging label for normal divorce-related behavior, that it oversimplifies the etiology of the symptoms it subsumes, and that it may result in custody decisions which fail to promote children’s welfare.

Given the volume of published references to PAS, we can expect that it will continue to be raised in custody and access litigation. Future empirical research should help resolve some of the current controversies by providing data on the reliability and validity of PAS, the effectiveness of various interventions, and the long-term course of parental alienation.

Topics for study include: 1) the ability of clinicians to reach agreement on the presence or absence of each PAS symptom and the presence or absence of PAS; 2) the factors that enable children to resist or to recover from alienation; 3) the psychological attributes of favored and rejected parents; 4) prospective studies of children who have been exposed to systematic attempts to undermine their relationship with a parent; 5) the link between unwarranted alienation and the personality and behavior of the rejected parent; 6) the incidence of unwarranted alienation in the absence of documented attempts by the favored parent to alienate; 7) comparisons of different treatment methods using adequate scientific controls, such as samples initially matched on relevant variables, raters who are kept unaware of which treatment the children received, and statistical analyses of results.

The results of such studies will yield information that should help refine and enhance our understanding of how best to help families with alienated children.
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Existing Law:

1. Establishes within the Office of Statewide Health Planning and Development (OSHPD) the Health Care Workforce Clearinghouse, which is responsible for the collection analysis, and distribution of information on the educational and employment trends for health care occupations in the state. (Health and Safety Code § 128050)

2. Requires OSHPD to work with the Employment Development Department's (EDD) Labor Market Information Division state licensing boards, and state higher education entities to collect, to the extent available, all of the following data:
   - (a) The current supply of health care workers, by specialty.
   - (b) The geographical distribution of health care workers, by specialty.
   - (c) The diversity of the health care workforce, by specialty, including, but not necessarily limited to, data on race, ethnicity, and languages spoken.
   - (d) The current and forecasted demand for health care workers, by specialty.
   - (e) The educational capacity to produce trained, certified, and licensed health care workers, by specialty and by geographical distribution, including, but not necessarily limited to, the number of educational slots, the number of enrollments, the attrition rate, and wait time to enter the program of study. (Health and Safety Code § 128051)

3. Requires OSHPD to prepare an annual report to the California State Legislature that does all of the following:
   - (a) Identifies education and employment trends in the health care profession.
   - (b) Reports on the current supply and demand for health care workers in California and gaps in the educational pipeline producing workers in specific occupations and geographic areas.
   - (c) Recommends state policy needed to address issues of workforce shortage and distribution. (Health and Safety Code § 128052)

This Bill:

1. Requires specific healing arts boards in the Department of Consumer Affairs (DCA) to collect the following information from persons licensed, certified, registered, or otherwise subject to the regulation of the Board:
a) Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
b) Birth date and place of birth.
c) Sex.
d) Race and ethnicity.
e) Location of high school.
f) Number of hours per week spent at primary practice location, if applicable.
g) Description of primary practice setting, if applicable.
h) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.
i) Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP Code, and county. (Business and Professions Code § 857 (a))

2. Provides that personally identifiable information collected pursuant to the provisions of this bill shall be confidential and not subject to public inspection. (BPC §857(c))

3. States that the collection of information required by this bill shall not be a condition of license renewal and no adverse affects shall be taken against a licensee for failure to report information. (BPC §857(d))

4. Requires the Board to collect information pursuant to the provisions of this bill in a manner that minimizes any fiscal impact. (BPC §857(e))

5. Requires OSHPD in consultation with the Healthcare Workforce Development Division, to select a database to store the information and transfer the data collected to that database. (Health and safety Code Section 128051.5(a))

6. Requires the Health Care Workforce Clearinghouse to prepare a written report based on the findings of the data no later than March 1 of any year, beginning March 1, 2012. (Health and safety Code Section 128051.5(b))

7. The following boards would be subject to the provisions of this bill:
   a. The Acupuncture Board
   b. The Dental Hygiene Committee of California
   c. The Dental Board of California
   d. The Medical Board of California
   e. The Bureau of Naturopathic Medicine
   f. The California Board of Occupational Therapy
   g. The State Board of Optometry
   h. The Osteopathic Medical Board of California
   i. The California State Board of Pharmacy
   j. The Physical Therapy Board of California
   k. The Physician Assistant Committee, Medical Board of California
   l. The California Board of Podiatric Medicine
   m. The Board of Psychology
   n. The Board of Registered Nursing
   o. The Respiratory Care Board of California
   p. The Speech-Language Pathology and Audiology Board
   q. The Board of Vocational Nursing and Psychiatric Technicians of the State of California
Board of Behavioral Sciences (§857(c))

Comment:

1) **Author’s Intent.** According to the author, this bill will provide OSHPD and the Health Care Workforce Clearinghouse with the information it needs to carry out its requirements set forth in statute.

2) **Status of the Health Care Workforce Clearinghouse:** According to the OSHPD Web site, the Clearinghouse is still in its early development stages. A review of past OSHPD focus group meetings relating to the creation of the database revealed a tentative development period of 18-24 months.

A centralized and accessible database will facilitate an increase in research and policy analysis relating to health care workforce trends. Currently, a research gap exists in the study of workforce trends for some health care professions, including marriage and family therapists and clinical social workers.

3) **Necessity of Regulation Changes:** The content of some BBS forms is outlined in regulation; thus, a change to some forms would require a regulation change, which is typically a lengthy process.

4) **Overlap with Current Procedures:** The BBS already tracks some of the proposed mandatory fields:
   - First name, middle name, and last name.
   - Complete mailing address.
   - Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
   - Birth date

5) **Technology Issues:** The databases currently used to track information related to applicants, registrants, and licensees are not equipped to capture all the proposed mandatory fields. Revisions to existing technology would need to be altered to capture the following fields:
   - Place of birth.
   - Gender.
   - Ethnicity.
   - Location of high school.
   - Description of primary practice setting, if applicable.
   - Number of hours per week spent at primary practice location, if applicable.
   - Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP code, and county.
   - Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP code, and county.

6) **Cost Concerns:** If required to significantly change or update current technology to capture the mandatory fields, the BBS may incur substantial cost.
7) **Previously Suggested Amendments and Board Action:** At its May 22, 2009 meeting the Board voted to support the bill if the following amendments were taken by the author’s office:

1. Staff recommends using language similar to what is included in SB 43 (Alquist) in including a definition of “board” as any healing arts board, division, or examining committee that licenses, certifies, or regulates health professionals pursuant to Division 2 (Healing Arts) of the Business and Professions Code.

2. Mandating the collection of this information on an initial license or renewal application limits the discretion of the board. In some instances, obtaining the information on an initial license application or renewal might not make sense. Staff suggests altering the language to provide the board with some level of discretion as to the method of collecting the data.

3. Staff feels the implied requirement to submit data to the Health Care Workforce Clearinghouse annually beginning on January 1, 2011 is unrealistic given the changes to applications and potential database construction/revision needed. In staff’s opinion, such changes can require significant time and resources. Before including such a deadline in the bill, staff suggests consulting with the Office of Information Services at the DCA to assess the necessity for technology changes, and if needed, how long it would take to implement the needed changes.

All the above changes were made to this bill.

8) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee voted to recommend to the Board a support position on this bill.

9) **Support and Opposition.**
- **Support:** None on file.
- **Opposition:** None on file.

10) **History**

**2009**
- Aug. 27 In committee: Held under submission.
- Aug. 17 In committee: Placed on Appropriations suspense file.
- July 20 In committee: Hearing postponed by committee.
- July 7 From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 8. Noes 1.) (July 6).
- June 29 From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on B., P. & E.D.
- June 18 Referred to Com. on B., P. & E.D.
- June 3 In Senate. Read first time. To Com. on RLS. for assignment.
- June 2 Read second time and amended. Ordered returned to second reading. Read third time, passed, and to Senate. (Ayes 78. Noes 0. Page 1981.)
- June 1 From committee: Amend, and do pass as amended. (Ayes 17. Noes 0.) (May 28).
- Apr. 29 In committee: Set, first hearing. Referred to APPR. suspense file.
- Apr. 15 From committee: Do pass, and re-refer to Com. on APPR. with

Apr. 13 Re-referred to Com. on B. & P.

Apr. 2 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.

Mar. 31 Referred to Com. on B. & P.

Mar. 2 Read first time.

Mar. 1 From printer. May be heard in committee March 30.

Feb. 27 Introduced. To print.
ASSEMBLY BILL No. 1310

Introduced by Assembly Member Hernandez

February 27, 2009

An act to add Section 857 to the Business and Professions Code, and to add Section 128051.5 to the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

Existing law provides for the licensure and regulation of various healing arts professions and vocations by boards within the Department of Consumer Affairs. Under existing law, there exists the Healthcare Workforce Development Division within the Office of Statewide Health Planning and Development (OSHPD) that supports health care accessibility through the promotion of a diverse and competent workforce and provides analysis of California’s health care infrastructure. Under existing law, there is also the Health Care Workforce Clearinghouse, established by OSHPD, that serves as the central source for collection, analysis, and distribution of information on the health care workforce employment and educational data trends for the state.

This bill would require the Medical Board of California and the Board of Registered Nursing, certain healing arts boards to add and label as “mandatory” specified fields on an application for initial licensure or
A renewal form for applicants applying to those boards collect specified information from their licensees and would require those boards and the Department of Consumer Affairs to, as much as practicable, work with OSHPD to transfer that data to the Health Care Workforce Clearinghouse. The bill would further require the Department OSHPD, in consultation with the division and the clearinghouse department, to select a database and to also add some of the collected data collected in these applications and renewal forms to the database and to submit the data to the clearinghouse annually on or before January 1. The bill would require the clearinghouse to prepare a written report relating to the data and to submit the report annually to the Legislature no later than March 1, commencing March 1, 2012.


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

SECTION 1. Section 857 is added to the Business and Professions Code, to read:

857. (a) Each healing arts board specified in subdivision (c) shall add and label as “mandatory” the following fields on an application for initial licensure or renewal for a person applying to that board:

(1) First name, middle name, and last name.
(2) Last four digits of social security number.
(3) Complete mailing address.

(f) shall, in a manner deemed appropriate by the board, collect the following information from persons licensed, certified, registered, or otherwise subject to regulation by that board:

(1) Educational background and training, including, but not limited to, degree, related school name and location, and year of graduation, and, as applicable, the highest professional degree obtained, related professional school name and location, and year of graduation.
(2) Birth date and place of birth.
(3) Sex.
(4) Race and ethnicity.

(8) Location of high school.

(9) Mailing address of primary practice, if applicable.

(10) Number of hours per week spent at primary practice location, if applicable.

(11) Description of primary practice setting, if applicable.

(12) Primary practice information, including, but not limited to, primary specialty practice, practice location ZIP Code, and county.

(13) Information regarding any additional practice, including, but not limited to, a description of practice setting, practice location ZIP Code, and county.

(b) The department, in consultation with the Healthcare Workforce Development Division and the Health Care Workforce Clearinghouse, shall select a database and shall add the data specified in paragraphs (5) to (13), inclusive, of subdivision (a) to that database.

(c) The following boards are subject to subdivision (a):

(1) The Medical Board of California.

(2) The Board of Registered Nursing.

(d) (1) The department shall collect the specified data in the database pursuant to subdivision (b) and shall submit that data to the Health Care Workforce Clearinghouse annually on or before January 1.

(2) The Health Care Workforce Clearinghouse shall prepare a written report containing the findings of this data and shall submit the written report annually to the Legislature no later than March 1, commencing March 1, 2012.

(b) The information collected pursuant to this section shall be used for the purpose of measuring and evaluating the state’s health care workforce development needs. For this purpose, the department and the boards specified in subdivision (f) shall, as much as practicable, work with the Office of Statewide Health Planning and Development to transfer the data collected pursuant to this section to the Health Care Workforce Clearinghouse.
(c) Personally identifiable information collected pursuant to this section shall be confidential and not subject to public inspection.

(d) A board that collects information pursuant to this section shall state in a conspicuous manner that reporting the information is not a condition of license renewal, and that no adverse action will be taken against any licensee that does not report any information.

(e) A board that collects information pursuant to this section shall do so in a manner that minimizes any fiscal impact, which may include, but is not limited to, sending the request for information in a renewal notice, a regular newsletter, via electronic mail, or posting the request on the board’s Internet Web site, and by allowing licensees to provide the information to the board electronically.

(f) The following boards are subject to this section:

(1) The Acupuncture Board.
(2) The Dental Hygiene Committee of California.
(3) The Dental Board of California.
(4) The Medical Board of California.
(6) The California Board of Occupational Therapy.
(7) The State Board of Optometry.
(8) The Osteopathic Medical Board of California.
(9) The California State Board of Pharmacy.
(10) The Physical Therapy Board of California.
(11) The Physician Assistant Committee, Medical Board of California.
(12) The California Board of Podiatric Medicine.
(13) The Board of Psychology.
(14) The Board of Registered Nursing.
(15) The Respiratory Care Board of California.
(16) The Speech-Language Pathology and Audiology Board.
(17) The Board of Vocational Nursing and Psychiatric Technicians of the State of California.
(18) The Board of Behavioral Sciences.

SEC. 2. Section 128051.5 is added to the Health and Safety Code, to read:

128051.5. (a) The Office of Statewide Health Planning and Development shall, in consultation with the Healthcare Workforce
Development Division and the Department of Consumer Affairs, select a database and shall add the data collected pursuant to Section 857 of the Business and Professions Code to that database.

(b) The Health Care Workforce Clearinghouse shall prepare a written report containing the findings of this data and shall submit the written report annually to the Legislature no later than March 1, commencing March 1, 2012.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2028  VERSION: AMENDED APRIL 13, 2010
AUTHOR: HERNANDEZ  SPONSOR: CALIFORNIA ASSOCIATION FOR MARRIAGE AND FAMILY THERAPISTS

RECOMMENDED POSITION: SUPPORT

SUBJECT: CONFIDENTIALITY OF MEDICAL INFORMATION: DISCLOSURE

Existing Law:

1) Prohibits, with specified exemptions, a health care provider from releasing information that specifically relates to a patient’s participation in outpatient treatment with a psychotherapist unless the requester submits a written request, signed by the requester, that includes all the following information: (Civil Code § 56.104(a))
   a) The specific information relating to patient’s participation in outpatient treatment and the intended use or uses of the information;
   b) The length of time during which the information will be kept before being destroyed or disposed of;
   c) A statement that the information will not be used for any other purpose other than its intended use; and,
   d) A statement that the person or entity requesting the information will destroy the information after the specified length of time.

2) Allows a psychotherapist to disclose medical information, if the psychotherapist in good faith believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. (CC § 56.10(c)(19))

3) Exempts a psychotherapist from the written request provision and allows that psychotherapist to provide information requested by law enforcement or by the target of a threat subsequent to disclosure, if that additional information is clearly necessary to prevent that serious and imminent threat disclosed originally. (CC § 56.104(e)(2))

4) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act (Act) and as such, he or she must submit a report to law enforcement whenever, in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code §§11165.7(a)(21) – (25) and §11166(a))

April 19, 2010
5) Makes the failure to report an incident of known or reasonably suspected child abuse or neglect by a mandated reporter a misdemeanor punishable by up to six months confinement in a county jail or by fine of one thousand dollars or by both that imprisonment and fine. (PC §111666(c))

6) Makes the failure to report an incidence of abuse of an elder or dependent adult a misdemeanor punishable by not more than six months in county jail, by a fine of not more than one thousand dollars, or both a fine and imprisonment. (Welfare and Institutions Code § 15630(h))

This Bill: Allows a psychotherapist to disclose information relevant to an incident of child abuse or neglect, or an incident of elder or dependent adult abuse, without complying with the written request provision specified in current law.

Comment:

1) Author’s Intent. According to the author, this bill will clarify in the Confidentiality of Medical Information Act (CMIA) that psychotherapists and other health care providers who report suspected child abuse or neglect, or elder or dependent adult abuse or neglect, are allowed to provide information to those who are investigating the report. Additionally, this bill provides an exemption for this type of information disclosure from the written request requirements specified in law, in order to expedite the sharing of information in child, elder or dependent adult abuse or neglect investigations.

2) Mandated Reporting of Child Abuse or Neglect. Licensees of the Board are required to submit a report to law enforcement whenever, in their professional capacity, they have knowledge of, or observe a child, elder or dependent adult who is known, or reasonably suspected to have been, a victim of abuse or neglect. The sponsors of this bill believe it is important to clarify that a mandated reporter of child, elder or dependent adult abuse is permitted, without the prior written authorization of the patient, to cooperate with the investigator of the reported suspect or known abuser. The Act requires practitioners to report child, elder or dependent adult abuse or neglect but does not require that psychotherapists subject to the Act to comply with the Civil Code provisions requiring prior written authorization. Additionally, it appears that requiring prior written authorization to report child, elder or dependent adult abuse or neglect would be in direct conflict with the intent of the Act. Failure to report suspected child, elder or dependent adult abuse or neglect by a mandated reporter is a misdemeanor.

3) Previous Related Legislation.
AB 681, Chapter 464, Statutes of 2009, permitted a health care provider to release otherwise confidential medical information about a patient’s participation in outpatient treatment with a psychotherapist when the psychotherapist has disclosed otherwise confidential medical information pursuant to an existing exception relating to preventing or lessening a serious imminent threat to the health and safety of a reasonably foreseeable victim or victims and when clearly necessary to prevent serious and imminent harm. This disclosure must be pursuant to a request for information from law enforcement or the target of the threat subsequent to the disclosure. The Board took a support position on this legislation.

AB 1178 (Hernandez), Chapter 506, Statutes of 2007, permitted a provider of health care to disclose medical information when a psychotherapist had reasonable cause to believe that the patient was in such a mental or emotional condition as to be dangerous to himself or herself or to the person or property of another and that disclosure was necessary to prevent
the threatened danger. The Board took a support position on this legislation.

4) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee voted to recommend to the Board a support position on this bill.

5) **Support and Opposition (As of April 5, 2010).**  
*Support:* California Association of Marriage and Family Therapists (sponsor)  
Disability Rights California (if amended)

*Opposition: None on file*

6) **History**

2010  
Apr. 14 Re-referred to Com. on APPR.  
Apr. 13 Read second time and amended.  
Apr. 12 From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 9. Noes 0.) (April 6).  
Mar. 24 From committee: Do pass, and re-refer to Com. on JUD. Re-referred. (Ayes 17. Noes 0.) (March 23).  
Mar. 11 Re-referred to Com. on HEALTH.  
Mar. 10 From committee chair, with author’s amendments: Amend, and re-refer to Com. on HEALTH. Read second time and amended.  
Mar. 4 Referred to Coms. on HEALTH and JUD.  
Feb. 18 From printer. May be heard in committee March 20.  
Feb. 17 Read first time. To print.
An act to amend Sections 56.10 and 56.104 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL’S DIGEST

AB 2028, as amended, Hernandez. Confidentiality of medical information: disclosure.

Existing law specifies certain agencies to which mandated reports of suspected child abuse or neglect shall be made. Existing law authorizes information relevant to the incident of child abuse or neglect to be given to an investigator from an agency that is investigating the case, as provided. Existing law also authorizes information relevant to the incident of elder or dependent adult abuse to be given to an investigator from an agency investigating the case, as provided.

Existing law, the Confidentiality of Medical Information Act, prohibits a health care provider, a contractor, or a health care service plan from disclosing medical information, as defined, regarding a patient of the provider or an enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. Existing law makes a violation of the act that results in economic loss or personal injury to a patient a misdemeanor.

This bill would authorize a health care provider or a health care service plan to disclose information relevant to the incident of child abuse or
neglect, or to the incident of elder or dependent adult abuse, that may be given to an investigator from an agency investigating the case, including the investigation report and other pertinent materials that may be given to the licensing agency. By changing the definition of a crime, the bill would impose a state-mandated local program.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to a patient’s participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor. However, existing law excepts from those provisions specified disclosures that are made for the purpose of diagnosis or treatment of a patient or that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

This bill would also except from these provisions disclosures that are specifically authorized by law, including, but not limited to disclosures made to the federal Food and Drug Administration of adverse events related to drug products or medical devices or disclosures that authorize a health care provider or a health care service plan to disclose information relevant to the incident of child abuse or neglect, or to the incident of elder or dependent adult abuse, in the report that may be given to an investigator from an agency investigating the case.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement. This bill would provide that no reimbursement is required by this act for a specified reason.


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

SECTION 1. Section 56.10 of the Civil Code is amended to read:

56.10. (a) No provider of health care, health care service plan, or contractor shall disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a
health care service plan without first obtaining an authorization, except as provided in subdivision (b) or (c).

(b) A provider of health care, a health care service plan, or a contractor shall disclose medical information if the disclosure is compelled by any of the following:

(1) By a court pursuant to an order of that court.

(2) By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.

(3) By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.

(4) By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(5) By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

(6) By a search warrant lawfully issued to a governmental law enforcement agency.

(7) By the patient or the patient’s representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

(8) By a coroner, when requested in the course of an investigation by the coroner’s office for the purpose of identifying the decedent or locating next of kin, or when investigating deaths that may involve public health concerns, organ or tissue donation, child abuse, elder abuse, suicides, poisonings, accidents, sudden infant deaths, suspicious deaths, unknown deaths, or criminal deaths, or when otherwise authorized by the decedent’s representative. Medical information requested by the coroner under this paragraph shall be limited to information regarding the patient who is the decedent and who is the subject of the investigation and shall be disclosed to the coroner without delay upon request.

(9) When otherwise specifically required by law.
A provider of health care or a health care service plan may disclose medical information as follows:

1. The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. This includes, in an emergency situation, the communication of patient information by radio transmission or other means between emergency medical personnel at the scene of an emergency, or in an emergency medical transport vehicle, and emergency medical personnel at a health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

2. The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or any other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made. If (A) the patient is, by reason of a comatose or other disabling medical condition, unable to consent to the disclosure of medical information and (B) no other arrangements have been made to pay for the health care services being rendered to the patient, the information may be disclosed to a governmental authority to the extent necessary to determine the patient’s eligibility for, and to obtain, payment under a governmental program for health care services provided to the patient. The information may also be disclosed to another provider of health care or health care service plan as necessary to assist the other provider or health care service plan in obtaining payment for health care services rendered by that provider of health care or health care service plan to the patient.

3. The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities specified in paragraph (2). However, information so disclosed shall not be further disclosed by the recipient in a way that would violate this part.

4. The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards
review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.

(5) The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan. However, no patient-identifying medical information may be removed from the premises except as expressly permitted or required elsewhere by law, nor shall that information be further disclosed by the recipient in a way that would violate this part.

(6) The information may be disclosed to the county coroner in the course of an investigation by the coroner’s office when requested for all purposes not included in paragraph (8) of subdivision (b).

(7) The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes. However, no information so disclosed shall be further disclosed by the recipient in a way that would disclose the identity of a patient or violate this part.

(8) A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee’s employer that part of the information that:

(A) Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that
information may only be used or disclosed in connection with that proceeding.

(B) Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient’s fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

(9) Unless the provider of health care or a health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.

(10) The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan. Medical information shall not otherwise be disclosed by a health care service plan except in accordance with this part.

(11) This part does not prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all of the requirements for obtaining the information pursuant to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

(12) The information relevant to the patient’s condition, care, and treatment provided may be disclosed to a probate court investigator in the course of an investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining
the need for an initial guardianship or continuation of an existing guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, “tissue bank” and “tissue” have the same meanings as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems, or to disclosures made pursuant to subdivisions (b) and (c) of Section 11167 of the Penal Code.

(15) Basic information, including the patient’s name, city of residence, age, sex, and general condition, may be disclosed to a state-recognized or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in a way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service plan’s contractors to monitor or administer care of enrollees for a covered benefit, if the disease management services and care are authorized by a treating physician, or (B) to a disease management organization, as defined in Section 1399.900 of the Health and Safety Code, that complies fully with the physician authorization requirements of Section 1399.902 of the Health and Safety Code, if the health care service plan or its contractor provides or has provided a description of the disease management services to a treating physician or to the health care service plan’s or contractor’s
network of physicians. This paragraph does not require physician
authorization for the care or treatment of the adherents of a
well-recognized church or religious denomination who depend
solely upon prayer or spiritual means for healing in the practice
of the religion of that church or denomination.

(18) The information may be disclosed, as permitted by state
and federal law or regulation, to a local health department for the
purpose of preventing or controlling disease, injury, or disability,
including, but not limited to, the reporting of disease, injury, vital
events, including, but not limited to, birth or death, and the conduct
of public health surveillance, public health investigations, and
public health interventions, as authorized or required by state or
federal law or regulation.

(19) The information may be disclosed, consistent with
applicable law and standards of ethical conduct, by a
psychotherapist, as defined in Section 1010 of the Evidence Code,
if the psychotherapist, in good faith, believes the disclosure is
necessary to prevent or lessen a serious and imminent threat to the
health or safety of a reasonably foreseeable victim or victims, and
the disclosure is made to a person or persons reasonably able to
prevent or lessen the threat, including the target of the threat.

(20) The information may be disclosed as described in Section
56.103.

(21) (A) The information may be disclosed to an employee
welfare benefit plan, as defined under Section 3(1) of the Employee
Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)),
which is formed under Section 302(c)(5) of the Taft-Hartley Act
(29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare
benefit plan provides medical care, and may also be disclosed to
an entity contracting with the employee welfare benefit plan for
billing, claims management, medical data processing, or other
administrative services related to the provision of medical care to
persons enrolled in the employee welfare benefit plan for health
care coverage, if all of the following conditions are met:

(i) The disclosure is for the purpose of determining eligibility,
coordinating benefits, or allowing the employee welfare benefit
plan, or the contracting entity, to advocate on the behalf of a patient
or enrollee with a provider, a health care service plan, or a state
or federal regulatory agency.
(ii) The request for the information is accompanied by a written
authorization for the release of the information submitted in a
manner consistent with subdivision (a) and Section 56.11.
(iii) The disclosure is authorized by and made in a manner
consistent with the Health Insurance Portability and Accountability
Act of 1996 (Public Law 104-191).
(iv) Any information disclosed is not further used or disclosed
by the recipient in any way that would directly or indirectly violate
this part or the restrictions imposed by Part 164 of Title 45 of the
Code of Federal Regulations, including the manipulation of the
information in any way that might reveal individually identifiable
medical information.
(B) For purposes of this paragraph, Section 1374.8 of the Health
and Safety Code shall not apply.
(22) Information may be disclosed pursuant to subdivisions (b)
and (d) of Section 11167 of the Penal Code or subdivision (a) of
Section 15633.5 of the Welfare and Institutions Code.
(d) Except to the extent expressly authorized by a patient or
enrollee or subscriber or as provided by subdivisions (b) and (c),
a provider of health care, health care service plan, contractor, or
corporation and its subsidiaries and affiliates shall not intentionally
share, sell, use for marketing, or otherwise use medical information
for a purpose not necessary to provide health care services to the
patient.
(e) Except to the extent expressly authorized by a patient or
enrollee or subscriber or as provided by subdivisions (b) and (c),
a contractor or corporation and its subsidiaries and affiliates shall
not further disclose medical information regarding a patient of the
provider of health care or an enrollee or subscriber of a health care
service plan or insurer or self-insured employer received under
this section to a person or entity that is not engaged in providing
direct health care services to the patient or his or her provider of
health care or health care service plan or insurer or self-insured
employer.
SEC. 2. Section 56.104 of the Civil Code is amended to read:
56.104. (a) Notwithstanding subdivision (c) of Section 56.10,
extcept as provided in subdivision (e), no provider of health care,
health care service plan, or contractor may release medical
information to persons or entities who have requested that
information and who are authorized by law to receive that
information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient’s participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

1. The specific information relating to a patient’s participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.
2. The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.
3. A statement that the information will not be used for any purpose other than its intended use.
4. A statement that the person or entity requesting the information will destroy the information and all copies in the person’s or entity’s possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this section to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, “psychotherapist” means a person who is both a “psychotherapist” as defined in Section 1010 of the Evidence Code and a “provider of health care” as defined in subdivision (i) of Section 56.05.

(d) This section does not apply to the disclosure or use of medical information by a law enforcement agency or a regulatory agency when required for an investigation of unlawful activity or...
for licensing, certification, or regulatory purposes, unless the
disclosure is otherwise prohibited by law.

(e) This section shall not apply to either of the following:

(1) Information authorized to be disclosed pursuant to paragraph
(1) of subdivision (c) of Section 56.10.

(2) Information requested by law enforcement or by the target
of the threat subsequent to a disclosure authorized by paragraph
(19) of subdivision (c) of Section 56.10, in which the additional
information is clearly necessary to prevent the serious and
imminent threat disclosed under that paragraph.

(3) Information relevant to an incident of child abuse or neglect
authorized to be disclosed by a psychotherapist pursuant to
paragraph (14) of subdivision (c) of Section 56.10.

(f) Nothing in this section shall be construed to grant any
additional authority to a provider of health care, health care service
plan, or contractor to disclose information to a person or entity
without the patient’s consent.

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

BILL ANALYSIS

BILL NUMBER: AB 2086  VERSION: AMENDED APRIL 7, 2010

AUTHOR: COTO  SPONSOR: ED VOICE

RECOMMENDED POSITION: NONE

SUBJECT: PUBLICATION OF LICENSE EXAMINATION PASSAGE RATES

Existing Law:

1) Under existing law, the Ortiz-Pacheo-Poochigian-Vasconcellos Cal Grant Program establishes the Cal Grant awards and establishes the eligibility requirements for these awards for participating students attending qualifying institutions. (Education Code §§69430-69433.9)

2) Sets parameters for defining a qualifying institution. (Education Code §69432.7(l))

This Bill:

1) Requires that in order to be defined as a qualifying institution, an institution of higher education must meet existing parameters, and also annually publish license examination passage rates for the most recent available year from graduates of programs leading to employment for which passage of a state licensing examination is required, if that data is available from a state licensing agency.

2) Defines "publish" as placement on applications of enrollment or other program information distributed to prospective students, of an Internet address labeled as an access point for data on recent program graduates' license examination passage rates. (EC §69432.7(2))

Comment:

1) Purpose of this Bill. According to the author's office this bill will “make the effectiveness of postsecondary professional preparation programs more transparent to students, parents, policy makers and employers so that all the customers will know how well the schools are preparing graduates for success on professional licensure examinations and in the workplace.”

2) Suggested Amendments. In order to add clarity, the author may want to specify exactly which professional licensure examinations rates are subject to this bill. Additionally, the bill does not provide for sharing of information between entities administering exams or licensing entities and the higher education institutions. This bill mandates that institutions post the specified information, but does not either mandate that information is provided by licensing entities or allow schools to only post information as made available. Without first, specifying who is responsible for providing the examination passage rate information, and second, requiring that entity to provide that information it is unclear if the actual implementation of this bill would be successful. Staff suggests that a state licensing agency

April 19, 2010
be mandated to make such information available to each school. Alternatively, a link to this information, provided by the Board, may be listed on an institution's website.

Several other technical issues pose problems for this bill and may impede its implementation. Staff suggests clarifying all requirements of the bill.

3) **Board Disclosed Information Regarding Passage Rates.** Currently the Board posts licensure examination passage rates, by institution and exam form, on its website. This legislation, as currently written, would not require any increased workload for Board staff.

4) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee did not recommend a position to the Board on this bill, but instead requested that the Board further discuss the policy implications of this legislation. This bill has been amended since committee discussion to address staff consensus related to language clarity and barriers to implementation.

5) **Support and Opposition (As of April 16, 2010).**  
   Support: Ed Voice (Sponsor)  
   Opposition: None on file

6) **History**  
   2010
   Apr. 8    Re-referred to Com. on HIGHER ED.
   Apr. 7    From committee chair, with author's amendments: Amend, and re-refer to Com. on HIGHER ED. Read second time and amended.
   Apr. 6    In committee: Set, first hearing. Hearing canceled at the request of author.
   Mar. 4    Referred to Com. on HIGHER ED.
   Feb. 19   From printer. May be heard in committee March 21.
   Feb. 18   Read first time. To print.
Introduced by Assembly Member Coto

February 18, 2010

An act to amend Section 67003 of the Education Code, relating to public postsecondary education. An act to amend Section 69432.7 of the Education Code, relating to postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST


Existing law, the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program, establishes the Cal Grant A and B entitlement awards, the California Community College Transfer Cal Grant Entitlement awards, the Competitive Cal Grant A and B awards, the Cal Grant C awards, and the Cal Grant T awards under the administration of the Student Aid Commission, and establishes eligibility requirements for awards under these programs for participating students attending qualifying institutions.

For purposes of the Cal Grant Program, existing law defines “qualifying institution” as a California private or independent postsecondary educational institution that participates in specified federal student aid programs, a nonprofit institution that is headquartered and operating in California that meets specified criteria, or a California public postsecondary educational institution.

This bill would redefine “qualifying institution” for purposes of the Cal Grant Program to mean an institution that is within any of those
3 categories and that complies with a requirement to annually publish license examination passage rates for graduates of specified programs.

Existing law, known as the Donahoe Higher Education Act, establishes the segments of the public postsecondary education system in the state; including the University of California administered by the Regents of the University of California, the California State University administered by the Trustees of the California State University, and the California Community Colleges administered by the Board of Governors of the California Community Colleges. Existing law also establishes the California Maritime Academy, under the administration of the trustees and a specified governing board, as a specialized institution within the California State University. The provisions of the act apply to the University of California only to the extent that the Regents of the University of California, by appropriate resolution, make them applicable.

A provision of the act vests the regents, the trustees, and the boards of governors of the California Community Colleges and the California Maritime Academy, on behalf of each of their respective segments, with the authority to perform all acts necessary to receive the benefits and expend funds provided by specified federal laws. The act designates the California Postsecondary Education Commission as the state agency to carry out the purposes of those federal laws. The act designates the Treasurer as the custodian of all funds received by the state from the federal government under specified federal law and requires the Treasurer to pay out those funds to carry out the purposes of that federal law.

This bill would require the governing boards of each of the public postsecondary educational institutions to certify annually to the Legislature and the Governor that an Internet address for professional licensure examination passage rates has been published on all applications for enrollment, and would condition the authority of those governing boards to receive and expend specified federal funds upon making that annual certification.


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

1 SECTION 1. Section 69432.7 of the Education Code is amended to read:
69432.7. As used in this chapter, the following terms have the following meanings:

(a) An “academic year” is July 1 to June 30, inclusive. The starting date of a session shall determine the academic year in which it is included.

(b) “Access costs” means living expenses and expenses for transportation, supplies, and books.

(c) “Award year” means one academic year, or the equivalent, of attendance at a qualifying institution.

(d) “College grade point average” and “community college grade point average” mean a grade point average calculated on the basis of all college work completed, except for nontransferable units and courses not counted in the computation for admission to a California public institution of higher education that grants a baccalaureate degree.

(e) “Commission” means the Student Aid Commission.

(f) “Enrollment status” means part-time status or full-time status.

(1) “Part time,” for purposes of Cal Grant eligibility, is defined as means 6 to 11 semester units, inclusive, or the equivalent.

(2) “Full time,” for purposes of Cal Grant eligibility, is defined as means 12 or more semester units or the equivalent.

(g) “Expected family contribution,” with respect to an applicant, shall be determined using the federal methodology pursuant to subdivision (a) of Section 69506 (as established by Title IV of the federal Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.)) and applicable rules and regulations adopted by the commission.

(h) “High school grade point average” means a grade point average calculated on a 4.0 scale, using all academic coursework, for the sophomore year, the summer following the sophomore year, the junior year, and the summer following the junior year, excluding physical education, reserve officer training corps (ROTC), and remedial courses, and computed pursuant to regulations of the commission. However, for high school graduates who apply after their senior year, “high school grade point average” includes senior year coursework.

(i) “Instructional program of not less than one academic year” means a program of study that results in the award of an associate or baccalaureate degree or certificate requiring at least 24 semester
units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(j) “Instructional program of not less than two academic years” means a program of study that results in the award of an associate or baccalaureate degree requiring at least 48 semester units or the equivalent, or that results in eligibility for transfer from a community college to a baccalaureate degree program.

(k) “Maximum household income and asset levels” means the applicable household income and household asset levels for participants in the Cal Grant Program, as defined and adopted in regulations by the commission for the 2001–02 academic year, which shall be set pursuant to the following income and asset ceiling amounts:

CAL GRANT PROGRAM INCOME CEILINGS

<table>
<thead>
<tr>
<th>Family Size</th>
<th>Cal Grant A, C, and T</th>
<th>Cal Grant B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dependent and Independent students with dependents*</td>
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<tr>
<td>Six or more</td>
<td>$74,100</td>
<td>$40,700</td>
</tr>
<tr>
<td>Five</td>
<td>$68,700</td>
<td>$37,700</td>
</tr>
<tr>
<td>Four</td>
<td>$64,100</td>
<td>$33,700</td>
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<tr>
<td>Three</td>
<td>$59,000</td>
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</tr>
<tr>
<td>Two</td>
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<td>$26,900</td>
</tr>
<tr>
<td>Independent</td>
<td></td>
<td></td>
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<tr>
<td>Single, no dependents</td>
<td>$23,500</td>
<td>$23,500</td>
</tr>
<tr>
<td>Married</td>
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CAL GRANT PROGRAM ASSET CEILINGS

<table>
<thead>
<tr>
<th>Dependent**</th>
<th>Cal Grant A, C, and T</th>
<th>Cal Grant B</th>
</tr>
</thead>
<tbody>
<tr>
<td>$49,600</td>
<td>$49,600</td>
<td></td>
</tr>
</tbody>
</table>

Independent           |

$23,600               | $23,600               |
**Applies to independent students with dependents other than a spouse.**

The commission shall annually adjust the maximum household income and asset levels based on the percentage change in the cost of living within the meaning of paragraph (1) of subdivision (e) of Section 8 of Article XIII B of the California Constitution. Any applicant who qualifies to be considered under the simplified needs test established by federal law for student assistance shall be presumed to meet the asset level test under this section. Prior to disbursing any Cal Grant funds, a qualifying institution shall be obligated, under the terms of its institutional participation agreement with the commission, to resolve any conflicts that may exist in the data the institution possesses relating to that individual.

(l) (1) “Qualifying institution” means an institution that complies with paragraph (2) and is any of the following:

(1) Any A California private or independent postsecondary educational institution that participates in the Pell Grant program and in at least two of the following federal campus-based student aid programs:

(A) Federal Work-Study.

(B) Perkins Loan Program.

(C) Supplemental Educational Opportunity Grant Program.

(2) Any A nonprofit institution headquartered and operating in California that certifies to the commission that 10 percent of the institution’s operating budget, as demonstrated in an audited financial statement, is expended for the purposes of institutionally funded student financial aid in the form of grants, that demonstrates to the commission that it has the administrative capacity to administer the funds, that is accredited by the Western Association of Schools and Colleges, and that meets any other state-required criteria adopted by regulation by the commission in consultation with the Department of Finance. A regionally accredited institution that was deemed qualified by the commission to participate in the Cal Grant Program for the 2000–01 academic year shall retain its eligibility as long as it maintains its existing accreditation status.
(C) A California public postsecondary educational institution.

(2) The institution shall annually publish license examination passage rates for the most recent available year from graduates of programs leading to employment for which passage of a state licensing examination is required, if that data is available from a state licensing agency. For purposes of this paragraph, “publish” may exclusively include placement, on applications for enrollment or other program information distributed to prospective students, of an Internet address labeled as an access point for data on recent program graduates’ license examination passage rates.

(m) “Satisfactory academic progress” means those criteria required by applicable federal standards published in Title 34 of the Code of Federal Regulations. The commission may adopt regulations defining “satisfactory academic progress” in a manner that is consistent with those federal standards.

SECTION 1. Section 67003 of the Education Code is amended to read:

67003. (a) Subject to making the certification of transparency pursuant to subdivision (b), the Trustees of the California State University on behalf of the California State University, the Regents of the University of California on behalf of the university, the Board of Governors of the California Community Colleges on behalf of the community colleges, and the Board of Governors of the California Maritime Academy on behalf of the California Maritime Academy, are vested with all power and authority to perform all acts necessary to receive the benefits and to expend the funds provided by the act of Congress described in Section 67000 and with all necessary power and authority to cooperate with the government of the United States, or any agency or agencies thereof, and with the California Postsecondary Education Commission for the purpose of receiving the benefits and expending the funds provided by the act of Congress, in accordance with the act, or any rules or regulations adopted thereunder, or any state plan or rules or regulations of the California Postsecondary Education Commission adopted in accordance with the act of Congress. Whenever necessary to secure the full benefits of the act of Congress for loans or grants for academic facilities, the trustees, regents, or boards of governors may give any required security and may comply with any conditions imposed by the federal government.
(b) Each institution of higher education shall certify annually to the Legislature and the Governor that an Internet address has been conspicuously published on all hard copy and online applications for enrollment where prospective students will find rates of passage on specified professional licensure examinations by students of the institution or program.
Existing Law:

1) Requires applicants for licensure as a clinical social worker (LCSW) to meet specified qualifications in order to be eligible to sit for licensure examination. (Business and Professions Code section 4992.1(a))

2) Requires every applicant issued a clinical social worker license to be examined by the Board. (BPC §4992.1(b))

3) Provides that the written examinations required for licensure as clinical social worker are a standard written examination and a written clinical vignette (CV) examination. (Section 1877 of Title 16, California Code of regulations).

4) Prohibits the Board from denying any applicant for licensure as a clinical social worker admission to the standard written examination or postpone the standard written examination or delay informing the candidate of results of the standard written examination solely upon the receipt by the Board of a complaint alleging acts or conduct that would constitute grounds to deny licensure. (BPC §4992.1(d))

5) States that no applicant shall be eligible to participate in the CV exam if his or her passing score on the standard written examination occurred more than seven years ago. (BPC §4992.1(g))

6) Allows the Board to issue a clinical social worker license to an applicant that holds a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the applicant passes the Board administered standard written and CV examinations. (BPC §4996.17(b))

7) Allows a applicant who fails the standard written or CV examination to retake that exam within one year from the notification date of failure without further application. (BPC §4996.4)

8) Requires an LCSW applicant to pay a fee of one hundred fifty dollars ($150) for the standard written examination. (BPC §4996.3(a)(4))

9) Requires an LCSW applicant to pay a fee of one hundred dollars ($100) for CV examination. (BPC §4996.3(a)(4))
This Bill:

1) Removes the requirement for LCSW licensure that an applicant take a standard written examination and CV examination and instead, requires those applicants to pass both of the following: (BPC §4996.1(a))


   b) A California jurisprudence and ethics examination incorporated or developed and administered by the Board.

2) Makes the provisions of this bill effective January 1, 2014 only if the board determines by December 1, 2013, by regulation, that the ASWB examination meets the prevailing standards for validation and use of the licensing and certification tests in California. The board shall immediately post this determination on the main page of its Internet web site.

Comments:

1) Author’s Intent. California is the only state that develops and administers its own standard written exam. All other states use a version of an exam administered by ASWB. According to the sponsors of this bill, NASW – California Chapter, this bill is needed to address the following issues:

   a) The US Health Resources and Services Administration (HRSA) does not consider current LCSWs to have license portability since California uses its own exam.

   b) Lack of access to Federal Loan Repayment Programs. Currently LCSWs are ineligible for the federal HRSA National Health Services Corps loan repayment program because California uses its own licensing exam.

   c) Reduce state expenditures by having social workers take an exam administered by ASWB instead of an examination developed and administered by the State.

2) Past Use of the ASWB by California. The Board was a member of ASWB from October 1991 through March 1999, and required the ASWB Clinical level examination, along with a state-constructed oral examination for licensure of clinical social workers. However, around 1998, the Board and the Department of Consumer Affairs, Office of Examination Resources (OER) began having concerns regarding the ASWB examination. These concerns included:

   a) The practice analysis conducted by ASWB did not include a representative number of licensees in California, just 16 participants.

   b) The sampling of participants in the practice analysis did not include demographics representative of California’s population.

   c) The pass rate for California’s first-time examination participants was very high at 89%.

Based on these concerns, and the results of a new California occupational analysis, the Board determined that there was a need for a state-constructed written examination. The new California written examination was administered beginning in late Spring 1999.

3) Background. In February 2006, the Board received a letter from Roger A. Kryzanek, MSW, LCSW and President of the ASWB. The purpose of Mr. Kryzanek’s letter was to ask the Board to consider rejoining the ASWB and to require candidates for clinical social work licensure to take ASWB’s national examination.
If February of 2007, Mr. Kryzanek made a presentation to the Board and the Board decided to audit the ASWB exam. Subsequently, the board engaged Applied Measurement Services, LLC to perform a psychometric audit of the ASWB exam for licensure as a clinical social worker and produce a report to the board to assess whether the examination meets California legal requirements for licensure examinations. Board members Renee Lonner and Joan Walmsley were assigned to assist in the audit process. Weather prevented the Board’s team from completing its site visit with ASWB’s exam vendor in Iowa.

4) Examination Program Review Committee. In February of 2008, the Board formed the Examination Program Review Committee (EPRC) to engage in a review of the Board’s examination programs for all licensing types. EPRC held its first meeting December 8, 2008. There were five subsequent meetings held in the next year throughout the state. These public meetings included training on examination validation and discussions with stakeholders relating to concerns with current and future examination processes.

In May 2008, Tracy Montez, PhD, of Applied Measurement Services, LLC, presented her findings based on the audit of the ASWB LCSW exam plan. Dr. Montez outlined strengths and weakness, or issues with the ASWB program in the overall conclusions presented to the Board.

5) Audit of the ASWB. The issues identified by Dr. Montez relating to the ASWB examination program were: 1) discrepant information, 2) role of Examination Committee members and Board of Directors, 3) multiple use of test centers, 4) availability and confidentiality of clinical exam data, and 5) differences between the LCSW exam plan and clinical exam content outline. Dr. Montez stated that it would be inappropriate at this time for the Board to use the ASWB exam in California. Based on these findings the Board made the following recommendations:

a) First, staff should work with ASWB to ensure that a significant sample of California LCSWs participate in the ASWB occupational analysis process.

b) Second, EPRC should consider the ASWB examination in its work as it relates to licensure for clinical social work.

c) Third, staff should engage ASWB in discussions regarding the following items identified in the audit report:

i) Update ASWB materials -- The ASWB should take steps to update association- and examination-related materials to better reflect current policies and practices. These steps should be reasonable given practical and fiscal constraints.

ii) Use more and diverse subject matter experts -- The ASWB should make every effort to use a variety of subject matter experts as participants in the practice analysis, as item writers, as passing score study participants, members of the examination committee and board of directors. The ASWB should discourage individuals from being too closely tied to all phases of the ASWB examination program (i.e., other than ASWB administrative staff).

iii) Explore, and implement as needed, additional security strategies at computer-based testing centers -- The ASWB should explore additional security strategies to protect the integrity of the examination process. Strategies determined to be practical and
fiscally responsible should be implemented to prevent (or, at the minimum, discourage) both minor and major security breaches.

iv) Development and use of task and knowledge statements -- The ASWB should consider writing task and knowledge statements in greater detail to provide depth and specificity. Further, ASWB should release the knowledge statements as part of the Clinical exam content outline, and the linkage to the task statements. One of the purposes of an examination plan or content outline is to provide information about a profession. Specifically, the purposes of the LCSW examination plan include revising or establishing regulatory policies, assisting with curriculum development, preparing candidates for the examination, and developing the licensure examination. The Board would expect to use the ASWB clinical exam content outline to meet similar purposes.

v) Availability of examination data -- The ASWB should release confidential examination data to the Board upon request, given parameters are established to maintain the confidentiality and security of the data. Examples of requested data would be monthly cumulative examination statistics for California candidates and annual technical reports reviewed by a qualified psychometrician representing the Board.

As directed by the Board, staff has made efforts to work with ASWB. In January 2009, staff provided ASWB with addresses for active clinical social workers licensed with the Board. The Board’s understanding is that the list of licensees provided to ASWB would be used to increase the number of California licensees used in the ASWB practice analysis sampling plan.

6) Board Administered Examination Restructuring. At its January 23, 2010 meeting the Board adopted the recommendation of the EPRC to move forward with beginning the work of restructuring the Board’s exam programs. Staff has begun to work with stakeholders, Ms. Montez and Board examination evaluators to draft an exam restructuring proposal. The first conceptual restructuring framework was presented and discussed at the January 23, 2010 Board meeting. Feedback provided at that meeting is being utilized to retool the current proposal. An amended proposal is scheduled for discussion at the next EPRC meeting to be held on April 12, 2010. The amended framework proposal would require registrants to pass a law and ethics examination and, as a condition of licensure, to also pass a board administered standard written examination. Currently a standard written examination and a clinical vignette examination both have questions relating to law and ethics. By separating out questions related to California jurisprudence and ethics into a standalone examination, the Board creates a base examination structure that will allow the interchange of the board administered standard examination with a national examination, as the second written test does not need to be specific to California practice.

7) Board Review of Recent Changes Made by ASWB. On March 16, 2010, the ASWB responded to the Board’s concerns based on the audit of the ASWB LCSW exam plan, noting that it had taken steps to address each of the Board’s concerns. These steps included a significant sample of California social workers being included in the latest ASWB practice analysis, a review of the exam program to ensure consistency, additions to the pool of subject matter experts, and implementation of additional exam security strategies. Dr. Montez has advised the Board to begin evaluating these changes as well as the updated exam plan.
8) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee voted to recommend to the Board an oppose position on this bill.

9) **Support and Opposition (As of April 13, 2010)**

**Support**
- National Association of Social Workers - California Chapter (sponsor)
- Aging Services of California
- American Federation of State, County and Municipal Employees, AFL-CIO, Local 2712
- American Federation of State, County and Municipal Employees, AFL-CIO, Local 3511

**Opposition:** None on file.

10) **History**

- **2010**
  - Apr. 15  Re-referred to Com. on APPR.
  - Apr. 14  Read second time and amended.
  - Apr. 13  From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 11. Noes 0.) (April 13).
  - Mar. 4   Referred to Com. on B. & P.
  - Feb. 19  From printer. May be heard in committee March 21.
  - Feb. 18  Read first time. To print.

**Attachments**
- A. Letter to Assembly member Nava from Tracy Rhine, Assistant Executive Officer, regarding ASWB examination
- B. Response letter from ASWB to Assembly Member Nava
- C. Response letter from ASWB to Kim Madsen, Executive Officer
- D. Response letter from Dr. Tracy Montez, AMS.
March 5, 2010

Assemblymember Pedro Nava
California State Capitol, Room 2148
Sacramento, CA  95814

Dear Assemblymember Nava:

This letter is in response to your request for information relating to Licensed Clinical Social Worker (LCSW) licensure examination administered by Board of Behavioral Sciences (Board). Specifically, you have requested that the Board provide your office background on the Board’s review of the Association of Social Work Boards (ASWB) examination.

In February 2006, in response to a letter received from Roger A. Kryzanek, MSW, LCSW and President of the ASWB, the Board began a discussion about rejoining the ASWB and to require candidates for clinical social work licensure to take ASWB’s national examination.

In February of 2007, Mr. Kryzanek made a presentation to the Board and the Board decided to audit the ASWB exam. Subsequently, the board engaged Applied Measurement Services, LLC to perform a psychometric audit of the ASWB exam for licensure as a clinical social worker and produce a report to the board to assess whether the examination meets California legal requirements for licensure examinations.

In February of 2008, the Board formed the Examination Program Review Committee (EPRC) to engage in a review of the board’s examination programs for all licensing types. EPRC held its first meeting December 8, 2008. There were five subsequent meetings held in the next year throughout the state. These public meetings included training on examination validation and discussions with stakeholders relating to concerns with current and future examination processes.

In May 2008, Tracy Montez, PhD, of Applied Measurement Services, LLC, presented her findings based on the audit of the ASWB LCSW exam plan. Dr. Montez outlined strengths and weakness, or issues with the ASWB program in the overall conclusions presented to the Board. The issues identified by Dr. Montez were: 1) discrepant information, 2) role of Examination Committee members and Board of Directors, 3) multiple use of test centers, 4) availability and confidentiality of clinical exam data, and 5) differences between the LCSW exam plan and clinical exam content outline. Dr. Montez stated that it would be inappropriate at this time for the Board to use the ASWB exam in California. Based on these findings the Board made the following recommendations:
First, staff should work with ASWB to ensure that a significant sample of California LCSWs participate in the ASWB occupational analysis process.

Second, EPRC should consider the ASWB examination in its work as it relates to licensure for clinical social work.

Third, staff should engage ASWB in discussions regarding the following items identified in the audit report:

1. Update ASWB materials -- The ASWB should take steps to update association- and examination-related materials to better reflect current policies and practices. These steps should be reasonable given practical and fiscal constraints.

2. Use more and diverse subject matter experts -- The ASWB should make every effort to use a variety of subject matter experts as participants in the practice analysis, as item writers, as passing score study participants, members of the examination committee and board of directors. The ASWB should discourage individuals from being too closely tied to all phases of the ASWB examination program (i.e., other than ASWB administrative staff).

3. Explore, and implement as needed, additional security strategies at computer-based testing centers -- The ASWB should explore additional security strategies to protect the integrity of the examination process. Strategies determined to be practical and fiscally responsible should be implemented to prevent (or, at the minimum, discourage) both minor and major security breaches.

4. Development and use of task and knowledge statements -- The ASWB should consider writing task and knowledge statements in greater detail to provide depth and specificity. Further, ASWB should release the knowledge statements as part of the Clinical exam content outline, and the linkage to the task statements. One of the purposes of an examination plan or content outline is to provide information about a profession. Specifically, the purposes of the LCSW examination plan include revising or establishing regulatory policies, assisting with curriculum development, preparing candidates for the examination, and developing the licensure examination. The Board would expect to use the ASWB clinical exam content outline to meet similar purposes.

5. Availability of examination data -- The ASWB should release confidential examination data to the Board upon request, given parameters are established to maintain the confidentiality and security of the data. Examples of requested data would be monthly cumulative examination statistics for California candidates and annual technical reports reviewed by a qualified psychometrician representing the Board.

As directed by the Board, staff has made efforts to work with ASWB. In January 2009, Staff provided ASWB with addresses for active clinical social workers licensed with the Board. The Board’s understanding is that the list of licensees provided to ASWB would be used to increase the number of California licensees used in the ASWB practice analysis sampling plan. The Board contacted Donna DeAngelis, ASWB Executive Director on February 2010 regarding the availability of the practice analysis and to inquire if ASWB had used the licensee information that was provided to them by Board staff. Ms. DeAngelis stated that ASWB has sampled California licensees based on the list provided by the Board in January 2009 and that a preliminary report had been completed, but was not for public viewing.
At its January 23, 2010 meeting the Board adopted the recommendations of the EPRC to move forward with beginning the work of restructuring the Board’s exam programs. Staff has begun to work with stakeholders, Ms. Montez and Board examination evaluators to draft an exam restructuring proposal. The first conceptual restructuring framework was presented and discussed at the January 23, 2010 Board meeting. Feedback provided at that meeting is being utilized to retool the current proposal. An amended proposal is scheduled for discussion at the next EPRC meeting to be held on April 12, 2010.

The Board understands the issues surrounding the administration of a state specific licensing examination. Until March of 1999 the Board required the ASWB clinical level examination, along with a state-constructed oral examination for the licensure of clinical social workers. However, concerns regarding the ASWB examination were brought forth by the Office of Examination Resources which lead to the Board creating and administering a California written examination. In order to address issues surrounding portability and eligibility for federal loan repayment, as well as cost to the state, the Board has historically stated that it would be open to rejoining ASWB, if the examination met the standards set by the Board. And, although the concerns of the licensees are valid, the highest priority of the Board by legislative mandate is consumer protection. And, therefore, the Board must ensure that the individual passing the licensing examination has the requisite skills to competently and safely practice in California. Currently, as a result of the findings presented by Dr. Montez, the Board does not feel that the ASWB meets those standards.

The Board and staff are continuing to work on restructuring the exam process of all licensees in anticipation that when a national examination meets the standards outlined previously, the Board can easily make the transition from a state administered examination to a national examination. To that end, the current draft proposal to be introduced into legislation would require registrants to pass a law and ethics examination and, as a condition of licensure, also pass a board administered standard written examination. Currently a standard written examination and a clinical vignette examination both have questions relating to law and ethics. By separating out questions related to California jurisprudence and ethics into a standalone examination, the Board creates a base examination structure that will allow the interchange of the board administered standard examination with a national examination, as the second written test does not need to be specific to California practice.

The Board is committed to protecting the public by ensuring that licensure examinations are valid, defensible, and do not create undue barriers to competent practitioners. The Board is willing to work with ASWB to help address the deficiencies found during the audit of the national exam. Additionally, we are continuing to work with stakeholders to restructure the current examination program structure. However, at this time the Board does not find it appropriate to offer the national examination for licensure of clinical social workers in California.

Please feel free to contact me if you have further questions. I look forward to continuing to work together this legislative session on the issues affecting Board licenses. I understand your office is committed to ensuring that LCSWs become eligible to take a national examination.
Sincerely,

Tracy Rhine
Assistant Executive Officer

Attachment: *A Comprehensive Assessment of the Association of Social Work Boards Clinical Exam*

cc: Luis Portillo, Deputy Director
    Division of Legislative and Policy Review
    California Department of Consumer Affairs
March 16, 2010

Mr. Pedro Nava
Assemblymember, 35th District
California Legislature
P.O. Box 94249
Sacramento, California 94249-0035

VIA Facsimile and U.S. Mail

Dear Assemblymember Nava:

Thank you for your interest in and support for providing citizens of California with access to professionally trained social workers who meet standards for licensing in the state. It was a pleasure to talk with your staff member, Ms. Jillena Eifer, and representatives from the National Association of Social Workers, California Chapter yesterday about the Association of Social Work Boards (ASWB) Clinical licensing examination and its potential use in California. We have reviewed and discussed the concerns about the ASWB Clinical licensing examination that were outlined in a letter to you from the Board of Behavioral Sciences (BBS), which you forwarded to us with your letter of March 11, 2010.

ASWB is a nonprofit organization made up of social work regulatory boards in 49 states, the District of Columbia, the Virgin Islands, and ten Canadian provinces. Its mission is to support social work licensing boards and promote regulation of social workers according to uniform standards in order to protect the public. ASWB develops and administers four categories of social work licensing examinations used by the jurisdictions to determine whether a social work applicant for licensure has the minimum competence necessary to practice.

In 2008 ASWB cooperated with the BBS to provide extensive information on our Clinical licensing examination to Dr. Tracey Montez, a psychometrician who completed an evaluation for the board. Because ASWB is committed to continually reviewing and monitoring its examination program, in the same year ASWB had an independent evaluation conducted on its entire examination program by Dr. Gregory Cizek, professor and psychometrician at the University of North Carolina, Chapel Hill. Both evaluations found the ASWB licensing examination to be valid and reliable measures of social work knowledge. Many of the findings reported by Dr. Montez and the recommendations made by Dr. Cizek were very similar and ASWB has implemented several changes in its examination program since 2008. The applicable recommended changes were also incorporated in the composition and work of the 2008-2009 Practice Analysis.
Task Force, which developed new content outlines and Knowledge, Skill, and Abilities (KSA) statements that will go into effect in 2011.

As discussed during yesterday’s telephone conference, a letter was sent to the BBS addressing the concerns outlined in its letter of March 5th that you forwarded to ASWB, and a copy of the ASWB response letter is enclosed with this correspondence.

We are looking forward to BBS again becoming an ASWB member and we are available to work closely with the board and its staff to make available the ASWB Clinical licensing examination to candidates for Clinical licensure in California.

Please let us know if you have any additional questions, or if we can be of assistance in any other way.

Sincerely,

Donna DeAngelis, LICSW, ACSW
Executive Director

Enclosure

cc: California Board of Behavioral Sciences
March 16, 2010

Ms. Kim Madsen  
Executive Officer  
Board of Behavioral Sciences  
1625 N Market Blvd., Suite S-200  
Sacramento, CA 95834

VIA Facsimile and Federal Express

Dear Ms. Madsen:

With your permission, the office of Assemblymember Pedro Nava forwarded to me his March 5 letter from Tracy Rhine of the California Board of Behavioral Sciences (BBS). In her letter, Ms. Rhine outlined a number of recommendations from the BBS related to its 2007-08 review of the Clinical licensure examination for social workers that is developed and administered by the Association of Social Work Boards (ASWB).

Since the review of the exam by the BBS, there have been a number of new developments related to the ASWB exam program.

In June of 2008, Dr. Gregory Cizek, a psychometrician at the University of North Carolina, completed a detailed independent technical review of all areas of the ASWB Examination Program and concluded that the exams “meet or exceed applicable standards of psychometric quality.” The ASWB would be pleased to make the report available to your psychometrician for review within parameters that would protect the report’s confidentiality.

As a result of the review of the exam program by Dr. Cizek and ongoing discussions of the ASWB Board of Directors regarding potential enhancements that would serve our member jurisdictions, there have been developments regarding each point listed in Ms. Rhine’s March 5th letter.

First, with the cooperation of BBS staff, ASWB included a significant sample of California social workers in the 2008-09 practice analysis survey, which will be the foundation for the new exam blueprints that will be implemented in January 2011. Details regarding California’s participation in the practice analysis process were provided by ASWB to Dr. Tracy Montez of Applied Measurement Services on September 28, 2009. The report on the 2008-09 practice analysis will be complete within the next few weeks, and we would be pleased to send you a copy of the report at that time.
Second, developments in the examination program since 2008 have also addressed the five specific items mentioned by Ms. Rhine in her letter summarizing conclusions from the BBS review of the ASWB exam:

1) ASWB reviewed materials related to the exam program to ensure consistency in the presentation of current policies and practices, including Study Guides, Candidate Handbook, and online FAQs.

2) ASWB made significant additions to its broad and diverse pool of subject matter experts who participate in examination development activities, including the recruitment of new item writers, Practice Analysis Task Force members, and Passing Score Panel participants who were not previously involved in exam development activities.

3) ASWB required the implementation of an array of additional exam security strategies by its exam contractor for the upcoming contract period beginning in January 2011, including expanded data forensics procedures and the systematic monitoring of the Internet for the unauthorized exposure of exam content.

4) At meetings in September and December of 2009, the ASWB Practice Analysis Task Force and Examination Committee completed a systematic review and revision of the Content Outline and Knowledge, Skills, and Abilities statements (KSAs) for the Clinical Examination that was based on the results of the recent practice analysis survey. Moreover, at its meeting in January of 2010, the ASWB Board of Directors voted to release to the public the new KSAs for all exams. The new Content Outlines and KSAs will be included in the Practice Analysis Report that you will soon receive.

5) The ASWB works with all of its member jurisdictions to provide confidential examination data on request within parameters that protect the confidentiality of the data. In the event that BBS should choose to become an ASWB jurisdiction, we would be pleased to work with your Board to set up such a process.

ASWB is committed to continuing to work with the BBS to provide it with additional information regarding the ASWB Examination Program. As you know, I traveled to California during the BBS review of the exam to meet with Tracy Montez and to give her access to confidential materials.
Ms. Kim Madsen  
March 16, 2010  
Page Three

Please do not hesitate to let me know if there is anything else that we could do to be helpful to you and your Board in its ongoing work and discussions.

Sincerely,

Donna DeAngelis, LICSW, ACSW  
Executive Director

cc: Pedro Nava, Assemblymember, 35th District
April 8, 2010

California Department of Consumer Affairs  
Board of Behavioral Sciences  
Attn: Kim Madsen, Executive Officer  
1625 N. Market Blvd., Ste. S-200  
Sacramento, CA 95834

Dear Ms. Madsen:

This letter is in response to Ms. DeAngelis' letter dated March 16, 2010 and your request for an explanation of next steps. Several developments related to the Association of Social Work (ASWB) examination program were noted in her letter and require follow up by the Board of Behavioral Sciences (BBS).

At this time, it is recommended that the BBS, in conjunction with a testing expert, complete the following tasks:

- evaluate the newly released ASWB 2008-09 practice analysis, specifically participation of California licensees and resulting examination blueprint;
- review the additions made to the ASWB pool of subject matter experts who participate in examination development activities;
- discuss the implementation of additional examination security strategies required of ASWB's exam contractor, scheduled to begin in 2011; and,
- explore the types of confidential data the ASWB would be willing to share with the BBS in the event that the BBS chooses to become an ASWB jurisdiction.

Completion of these tasks is expected to take several months, but would be accomplished to meet the end of legislative session requirements. Participation of California Licensed Clinical Social Workers, acting as subject matter experts (SMEs), would also be expected. The SMEs would assist in evaluating both the updated exam plan to determine extent of clinical content and a sample of exam questions to assess depth of measurement of critical clinical competencies. These tasks are consistent with mandates set forth in Business and Professions Code section 139.

If you have comments or questions about the information contained in this letter, you may contact me either at 530.788.5346 or at Tracymontez@sbcglobal.net.

Sincerely,

[Signature]
Tracy A. Montez, Ph.D.
President
Introduced by Assembly Member Nava

February 18, 2010

An act to amend, repeal, and add Sections 4992.1, 4996.1, 4996.3, 4996.4, and 4996.17 of the Business and Professions Code, relating to clinical social workers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2167, as amended, Nava. Clinical social workers: examination requirements.

Existing law, the Clinical Social Worker Practice Act, provides for the licensure and regulation of social workers by the Board of Behavioral Sciences. Existing law requires the board to issue a license to each applicant meeting specified requirements who successfully passes a board administered standard written or oral examination or both examinations and existing law also provides for a clinical vignette written examination for these applicants. Under existing law, the fee for the standard written examination is $150 and the fee for the clinical vignette written examination is $100.

This bill would, on and after January 1, 2014, if the board makes a specified determination, instead require the board to issue a license to each applicant meeting specified requirements who successfully passes the Association of Social Work Boards Clinical Level Exam administered by the Association of Social Work Boards and a separate California jurisprudence and ethics examination incorporated or developed and administered by the board. The bill would provide--
The people of the State of California do enact as follows:

SECTION 1. Section 4992.1 of the Business and Professions Code is amended to read:

4992.1. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination.

(b) Every applicant who is issued a clinical social worker license shall be examined by the board.

(c) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(d) The board shall not deny any applicant, whose application for licensure is complete, admission to the standard written examination, nor shall the board postpone or delay any applicant’s standard written examination or delay informing the candidate of the results of the standard written examination, solely upon the receipt by the board of a complaint alleging acts or conduct that would constitute grounds to deny licensure.

(e) If an applicant for examination who has passed the standard written examination is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the clinical vignette written examination for licensure, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

(f) Notwithstanding Section 135, the board may deny any applicant who has previously failed either the standard written or clinical vignette written examination permission to retake either examination pending completion of the investigation of any complaint against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has
been filed against the applicant pursuant to Section 11503 or 11504 of the Government Code, or the applicant has been denied in accordance with subdivision (b) of Section 485.

(g) On or after January 1, 2002, no applicant shall be eligible to participate in a clinical vignette written examination if his or her passing score on the standard written examination occurred more than seven years before.

(h) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2014, deletes or extends that date.

(i) This section shall become inoperative on the date that Section 4996.1, as added by Section 4 of the act adding this subdivision, becomes operative.

SEC. 2. Section 4992.1 is added to the Business and Professions Code, to read:

4992.1. (a) Only individuals who have the qualifications prescribed by the board under this chapter are eligible to take the examination.

(b) Notwithstanding any other provision of law, the board may destroy all examination materials two years following the date of an examination.

(c) If an applicant who has passed the examination described in paragraph (1) of subdivision (a) of Section 4996.1 is the subject of a complaint or is under board investigation for acts or conduct that, if proven to be true, would constitute grounds for the board to deny licensure, the board shall permit the applicant to take the California jurisprudence and ethics examination, but may withhold the results of the examination or notify the applicant that licensure will not be granted pending completion of the investigation.

(d) Notwithstanding Section 135, the board may deny any applicant who has previously failed the examination permission to retake the examination pending completion of the investigation of any complaint against the applicant. Nothing in this section shall prohibit the board from denying an applicant admission to any examination, withholding the results, or refusing to issue a license to any applicant when an accusation or statement of issues has been filed against the applicant pursuant to Section 11503 or
11504 of the Government Code, or the applicant has been denied
in accordance with subdivision (b) of Section 485.

(e) This section shall become operative on January 1, 2014.

(e) This section shall become operative on the date that Section
4996.1, as added by Section 4 of the act adding this subdivision,
becomes operative.

SEC. 3. Section 4996.1 of the Business and Professions Code
is amended to read:

4996.1. (a) The board shall issue a clinical social worker
license to each applicant who qualifies pursuant to this article and
successfully passes a board administered written or oral
examination or both examinations. An applicant who has
successfully passed a previously administered written examination
may be subsequently required to take and pass another written
examination.

(b) This section shall remain in effect only until January 1, 2014,
and as of that date is repealed, unless a later enacted statute, that
is enacted before January 1, 2014, deletes or extends that date.

(b) This section shall become inoperative on the date that
Section 4996.1, as added by Section 4 of the act adding this
subdivision, becomes operative.

(c) This section is repealed as of the January 1 following the
date that it becomes inoperative.

SEC. 4. Section 4996.1 is added to the Business and Professions
Code, to read:

4996.1. (a) The board shall issue a clinical social worker
license to each applicant who qualifies pursuant to this article and
successfully passes both of the following:

1. The Association of Social Work Boards Clinical Level Exam
administered by the Association of Social Work Boards.

2. A California jurisprudence and ethics examination
incorporated or developed and administered by the board.

(b) For the purposes of this chapter, the term “examination” or
“examinations” shall include both examinations described in
subdivision (a).

(c) This section shall become operative on January 1, 2014.

(c) This section shall become operative on January 1, 2014,
only if the board determines by December 1, 2013, by regulation,
that the examination described in paragraph (1) of subdivision (a)
meets the prevailing standards for validation and use of the
licensing and certification tests in California. The board shall immediately post this determination on the main page of its Internet Web site.

SEC. 5. Section 4996.3 of the Business and Professions Code is amended to read:

4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).

(3) The fee for application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be a maximum of one hundred fifty dollars ($150). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(8) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).

(9) The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).
(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

c) This section shall become inoperative on the date that Section 4996.1, as added by Section 4 of the act adding this subdivision, becomes operative.

d) This section is repealed as of the January 1 following the date that it becomes inoperative.

SEC. 6. Section 4996.3 is added to the Business and Professions Code, to read:

4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).

(3) The fee for application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the California jurisprudence and ethics examination shall be a maximum of $100.

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the California jurisprudence and ethics examination fees shall be based on the actual cost to the board of developing, purchasing, and grading that examination and the actual cost to the board of administering each California jurisprudence and ethics examination. The California jurisprudence and ethics examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(6) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).
The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(9) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(10) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

(c) This section shall become operative on January 1, 2014.

SEC. 7. Section 4996.4 of the Business and Professions Code is amended to read:

4996.4. (a) An applicant who fails a standard or clinical vignette written examination may within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all required fees.

(b) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

(c) This section is repealed as of the January 1 following the date that it becomes inoperative.

SEC. 8. Section 4996.4 is added to the Business and Professions Code, to read:

4996.4. (a) An applicant who fails the examination may within one year from the notification date of failure, retake that examination as regularly scheduled, without further application, upon payment of the required examination fees. Thereafter, the applicant shall not be eligible for further examination until he or
she files a new application, meets all current requirements, and
pays all required fees.

(b) This section shall become operative on January 1, 2014.

This section shall become operative on the date that Section
4996.1, as added by Section 4 of the act adding this subdivision,
becomes operative.

SEC. 9. Section 4996.17 of the Business and Professions Code
is amended to read:

4996.17. (a) Experience gained outside of California shall be
accepted toward the licensure requirements if it is substantially
the equivalent of the requirements of this chapter.

(b) The board may issue a license to any person who, at the time
of application, holds a valid active clinical social work license
issued by a board of clinical social work examiners or
corresponding authority of any state, if the person passes the board
administered licensing examinations as specified in Section 4996.1
and pays the required fees. Issuance of the license is conditioned
upon all of the following:

(1) The applicant has supervised experience that is substantially
the equivalent of that required by this chapter. If the applicant has
less than 3,200 hours of qualifying supervised experience, time
actively licensed as a clinical social worker shall be accepted at a
rate of 100 hours per month up to a maximum of 1,200 hours.

(2) Completion of the following coursework or training in or
out of this state:

(A) A minimum of seven contact hours of training or coursework
in child abuse assessment and reporting as specified in Section 28,
and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework
in human sexuality as specified in Section 25, and any regulations
promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework
in alcoholism and other chemical substance dependency, as
specified by regulation.

(D) A minimum of 15 contact hours of coursework or training
in spousal or partner abuse assessment, detection, and intervention
strategies.

(3) The applicant’s license is not suspended, revoked, restricted,
sanctioned, or voluntarily surrendered in any state.
(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant’s professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant shall provide a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(c) The board may issue a license to any person who, at the time of application, has held a valid, active clinical social work license for a minimum of four years, issued by a board of clinical social work examiners or a corresponding authority of any state, if the person passes the board administered licensing examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) Completion of the following coursework or training in or out of state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(2) The applicant has been licensed as a clinical social worker continuously for a minimum of four years prior to the date of application.
(3) The applicant’s license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant’s professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(d) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

(d) This section shall become inoperative on the date that Section 4996.1, as added by section 4 of the act adding this subdivision, becomes operative.

(e) This section is repealed as of the January 1 following the date that it becomes inoperative.

SEC. 10. Section 4996.17 is added to the Business and Professions Code, to read:

4996.17. (a) Experience gained outside of California shall be accepted toward the licensure requirements if it is substantially the equivalent of the requirements of this chapter.

(b) The board may issue a license to any person who, at the time of application, holds a valid active clinical social work license issued by a board of clinical social work examiners or corresponding authority of any state, if the person passes or has passed the examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:

(1) The applicant has supervised experience that is substantially the equivalent of that required by this chapter. If the applicant has less than 3,200 hours of qualifying supervised experience, time
actively licensed as a clinical social worker shall be accepted at a rate of 100 hours per month up to a maximum of 1,200 hours.

(2) Completion of the following coursework or training in or out of this state:

(A) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.

(B) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(C) A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.

(D) A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

(3) The applicant’s license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

(4) The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant’s professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

(5) The applicant shall provide a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

(6) The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(c) The board may issue a license to any person who, at the time of application, has held a valid, active clinical social work license for a minimum of four years, issued by a board of clinical social work examiners or a corresponding authority of any state, if the person passes or has passed the examinations as specified in Section 4996.1 and pays the required fees. Issuance of the license is conditioned upon all of the following:
1. Completion of the following coursework or training in or out of state:
   A. A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28, and any regulations promulgated thereunder.
   B. A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.
   C. A minimum of 15 contact hours of training or coursework in alcoholism and other chemical substance dependency, as specified by regulation.
   D. A minimum of 15 contact hours of coursework or training in spousal or partner abuse assessment, detection, and intervention strategies.

2. The applicant has been licensed as a clinical social worker continuously for a minimum of four years prior to the date of application.

3. The applicant’s license is not suspended, revoked, restricted, sanctioned, or voluntarily surrendered in any state.

4. The applicant is not currently under investigation in any other state, and has not been charged with an offense for any act substantially related to the practice of social work by any public agency, entered into any consent agreement or been subject to an administrative decision that contains conditions placed by an agency upon an applicant’s professional conduct or practice, including any voluntary surrender of license, or been the subject of an adverse judgment resulting from the practice of social work that the board determines constitutes evidence of a pattern of incompetence or negligence.

5. The applicant provides a certification from each state where he or she holds a license pertaining to licensure, disciplinary action, and complaints pending.

6. The applicant is not subject to denial of licensure under Section 480, 4992.3, 4992.35, or 4992.36.

(d) This section shall become operative on January 1, 2014.

(d) This section shall become operative on the date that Section 4996.1, as added by Section 4 of the act adding this subdivision, becomes operative.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2229  INTRODUCED APRIL 15, 2010

AUTHOR: BROWNLEY  SPONSOR: LOS ANGELES COUNTY DISTRICT ATTORNEY’S OFFICE

RECOMMENDED POSITION: SUPPORT

SUBJECT: MANDATED CHILD ABUSE REPORTING

Existing Law:

1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and as such, he or she must submit a report to law enforcement whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code § 11165.7(a)(21) and 11166(a))

2) Defines a “multidisciplinary personnel team” as any team of three or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse, and may include Board licensees. (Welfare and Institutions Code §18951(d)(1))

3) Allows members of a multidisciplinary team, in the prevention, identification, and treatment of child abuse, to disclose and exchange information in writing to and with one another relating to any incidents of child abuse that may be confidential under state law, if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification or treatment of child abuse. (WIC §830(a))

This Bill:

1) Allows the disclosure and exchange of information relating to any incidents of child abuse by members of a multidisciplinary team in the prevention, identification and treatment of child abuse, to exchange that information by telephone or electronically if there is adequate verification of the identity of the multidisciplinary personnel who are involved in that disclosure or exchange of information. (WIC §830(b))

2) Defines a “multidisciplinary personnel team” as any team of two or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse, and may include Board licensees. (WIC §18951(d)(1))

3) Provides that any county may establish a computerized data base system within that county to allow provider agencies, as defined, to share specified identifying information regarding families at risk for child abuse and neglect, for the purposes of forming multidisciplinary personnel teams. (WIC §18961.5.)

April 22, 2010
Comment:

1) **Author’s Intent.** According to the author’s office, "Due to budget cuts, and the lack of staff children who are victims of abuse and taken into protective custody cannot receive timely treatment for medical problems unless information is shared among verified members of the team investigating the abuse.

"Existing law requires at least three team members convene before confidential information may be shared. Nurses, social workers and law officers complain that valuable time is lost while responding to an emergency child abuse problem while trying to locate a third team member. AB 2229 would help by allowing multidisciplinary investigative teams to be two or more people be allowed to be considered a multidisciplinary team, which is currently practiced when investigating elder abuse; which was originally a three person team as well.

2) **Background.** According to background information provided by the author, "Existing law provides for the formation of a child abuse Multidisciplinary Team (MDT) comprised of three individuals who are trained in the prevention, treatment and identification of child abuse. The benefit and purpose of forming a child abuse MDT is that information that would otherwise be confidential may be shared within the confines of the team. Unfortunately, nurses, social workers, and law enforcement personnel complain that valuable time is lost in responding to an emergency child abuse program while a third party is sought to complete the team and allow for the information to be shared. Additionally, the existing statute is silent as to the telephonic and electronic communication as an acceptable mode for the sharing of information upon the proper verification of the recipient's status as a team member.

"In 1987, the Legislature enacted AB 1049 (Bader), which first authorized the use of MTDs in both child abuse and elder abuse cases to exchange confidential information. At that time, MDTs were a relatively new concept, which primarily existed as pilot projects in certain counties. In 1994, however, there was a comprehensive overhaul of the elder abuses statutes proposed by SB 1681 (Mello). SB 1681 reduced from three to two the number of members necessary to form an elder abuse MDT. By 1994, the change from three to two members was no longer considered controversial because there was no discussion of this change in the legislative history of SB 1681. However, since that time, the law regarding MDTs in elder abuse and child abuse cases has no longer been consistent.

"According to the Elder Abuse Unit in Los Angeles County, elder abuse MDTs currently exchange information telephonically, and there have been no problem with either the formation of elder abuse MDTs with two members or the manner of communication among them.

"The work of child abuse MDTs is very time sensitive because county Children's Protective Service agencies only have 48 hours from the time an incident of potential child abuse is reported to make a determination on whether or not to file a petition under California Welfare and Institutions Code Section 300. Because of this short time line, it is critical that information needed by a Children's Protective Service agent that may be in the possession of an agency represented on the child abuse MDT be shared.

"By bringing the law regarding child abuse MDTs into line with existing law regarding elder abuse MDTs, which only require two members, AB 2229 will enhance the treatment and prevention of child abuse by streamlining the ability of qualified personnel to aid victims by promptly sharing relevant information, and save time and resources by eliminating the need for a redundant third person consulted merely to satisfy the statute."
3) **Disclosure Already Permitted.** The disclosure and exchange of information by multidisciplinary personnel team members is already permitted by law, this bill simply expands the method by which that disclosure or exchange can be made. The language, as currently written, requires adequate verification of the identity of the multidisciplinary personnel member involved in the disclosure or exchange of information when that exchange or disclosure happens telephonically or electronically. It is unclear to staff if this is adequate language to ensure information shared through electronic means remains confidential.

4) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee did not make a position recommendation to the Board. The bill had been amended on April 7th, after staff drafted the bill analysis included for Committee discussion. Staff requested time to analyze the new amendments. This bill has subsequently been amended since that Committee meeting (April 15th).

5) **Support and Opposition.**

**Support**
Los Angeles County District Attorney's Office (Sponsor)

**Opposition**
American Civil Liberties Union

6) **History**

<table>
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<tr>
<th>Date</th>
<th>Action</th>
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<tr>
<td>2010</td>
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<tr>
<td>Apr. 19</td>
<td>Re-referred to Com. on HUM. S.</td>
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<tr>
<td>Apr. 15</td>
<td>From committee chair, with author's amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended.</td>
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<tr>
<td>Apr. 14</td>
<td>From committee: Do pass, and re-refer to Com. on HUM. S. Re-referred. (Ayes 7, Noes 0.) (April 13).</td>
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<tr>
<td>Apr. 8</td>
<td>Re-referred to Com. on PUB. S.</td>
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<tr>
<td>Apr. 7</td>
<td>From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.</td>
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<tr>
<td>Apr. 6</td>
<td>In committee: Set, first hearing. Hearing canceled at the request of author.</td>
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<tr>
<td>Mar. 11</td>
<td>Referred to Com. on PUB. S.</td>
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<tr>
<td>Feb. 19</td>
<td>From printer. May be heard in committee March 21.</td>
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<tr>
<td>Feb. 18</td>
<td>Read first time. To print.</td>
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An act to amend Sections 830 and 18961.5 of the Welfare and Institutions Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL’S DIGEST

AB 2229, as amended, Brownley. Mandated child abuse reporting.

Existing law authorizes members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse to disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be a part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse. A multidisciplinary personnel team is defined for purposes of this provision to mean any team of 3 or more persons who are trained in the prevention, identification, and treatment of child abuse, as specified.

This bill would additionally authorize the disclosure and exchange of information to occur telephonically and electronically if there is adequate verification of the identity of the multidisciplinary personnel who are involved in that disclosure or exchange of information. The bill would revise the definition of a multidisciplinary personnel team for purposes of this provision to mean any team of 2 or more persons.
created to investigate a report of suspected child abuse, as specified, who are trained in the prevention, identification, and treatment of child abuse, as specified.

Existing law provides that a county may establish a computerized data base system within that county to allow provider agencies to share identifying information regarding families at risk for child abuse or neglect, for the purpose of forming multidisciplinary personnel teams for the prevention, identification, management, or treatment of child abuse. A multidisciplinary personnel team is defined for purposes of this provision to mean any team of 3 or more persons who are trained in the prevention, identification, and treatment of child abuse, as specified.

This bill would revise the definition of multidisciplinary personnel teams for purposes of this provision to additionally include any team of 2 or more persons who are trained in the prevention, identification, management, or treatment of child abuse, as specified.


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

SECTION 1. Section 830 of the Welfare and Institutions Code is amended to read:

830. (a) Notwithstanding any other provision of law, members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse may disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be a part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse. All discussions relative to the disclosure or exchange of any such information or writings during team meetings are confidential and, notwithstanding any other provision of law, testimony concerning any such discussion is not admissible in any criminal, civil, or juvenile court proceeding.

(b) Disclosure and exchange of information pursuant to this section may occur telephonically and electronically if there is adequate verification of the identity of the multidisciplinary
personnel who are involved in that disclosure or exchange of
information.
(c) As used in this section, the following definitions shall apply:
(1) “Childabuse” has the same meaning as defined in Section
18951.
(2) “Multidisciplinary personnel team” means any team of two
or more persons created to investigate a report of suspected child
abuse made pursuant to Section 11166 or 11166.05 of the Penal
Code, the members of which are trained in the prevention,
identification, and treatment of child abuse and are qualified to
provide a broad range of services related to child abuse. The team
may include, but shall not be limited to, all of the following:
(A) Psychiatrists, psychologists, marriage and family therapists,
or other trained counseling personnel.
(B) Police officers or other law enforcement agents.
(C) Medical personnel with sufficient training to provide health
services.
(D) Social service workers with experience or training in child
abuse prevention.
(E) Any public or private school teacher, administrative officer,
supervisor of child welfare attendance, or certified pupil personnel
employee.
SEC. 2. Section 18961.5 of the Welfare and Institutions Code
is amended to read:
18961.5. (a) Notwithstanding any other provision of law, any
county may establish a computerized data base system within that
county to allow provider agencies, as defined in subdivision (h),
to share identifying information, as specified in subdivision (c),
regarding families at risk for child abuse or neglect, for the purpose
of forming multidisciplinary personnel teams, as defined in either
paragraph (2) of subdivision (c) of Section 830 or subdivision (d)
of Section 18951, for the prevention, identification, management,
or treatment of child abuse.
(b) Each county shall develop its own standards for defining
“at risk” before joining this system. Only information about
children or the families of children at risk for child abuse or neglect
may be entered into a computerized data base system established
pursuant to this section.
(c) With regard to a case in which a child or family has been
identified as at risk for child abuse or neglect under this section,
only the following information shall be entered into the system:
(1) The name, address, telephone number, and date and place
of birth of family members.
(2) The number assigned to the case by each provider agency.
(3) The name and telephone number of each employee assigned
to the case from each provider agency.
(4) The date or dates of contact between each provider agency
and a family member or family members.
(d) The information may only be entered into the system by, or
disclosed to, provider agency employees designated by the director
of each participating provider agency. Members of the
multidisciplinary personnel teams shall be drawn from these
designated employees, or other persons, as specified in Section
18961. The heads of provider agencies shall establish a system by
which unauthorized personnel cannot access the data contained in
the system.
(e) The information obtained pursuant to this section shall be
kept confidential and shall be used solely for the prevention,
identification, management, or treatment of child abuse, child
neglect, or both.
(f) This section shall not supplant any duties required by the
Child Abuse and Neglect Reporting Act (Article 2.5 (commencing
with Section 11164) of Chapter 2 of Title 1 of Part 3 of the Penal
Code).
(g) No employee of a provider agency which serves children
and their families shall be civilly or criminally liable for furnishing
or sharing information as authorized by this section.
(h) For the purposes of this section, “provider agency” means
any governmental or other agency which has as one of its purposes
the prevention, identification, management, or treatment of child
abuse or neglect. The provider agencies serving children and their
families which may share information under this section shall
include, but not be limited to, the following entities or service
agencies:
(1) Social services.
(2) Children’s services.
(3) Health services.
(4) Mental health services.
1  (5) Probation.
2  (6) Law enforcement.
3  (7) Schools.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES
BILL ANALYSIS

BILL NUMBER: AB 2339
VERSION: INTRODUCED FEBRUARY 19, 2010
AUTHOR: SMYTH
SPONSOR: CALIFORNIA ASSOCIATION OF MARRIAGE AND FAMILY THERAPISTS

RECOMMENDED POSITION: SUPPORT

SUBJECT: CHILD ABUSE REPORTING

Existing Law:

1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and as such, he or she must submit a report to law enforcement whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code §§11165.7(a)(21) – (25) and 11166(a))

2) Allows any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage, evidenced by states of being or behavior, including, but not limited to, severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, to make a report to an any police department or sheriff's department, not including a school district police or security department, county probation department, if designated by the county to receive mandated reports, or the county welfare department.(PC §11166.05)

3) Provides that information relevant to an incident or child abuse or neglect may be given to an investigator from an agency that is investigation the known suspected case of child abuse or neglect. (PC §11167(b))

4) Allows information relevant to an incident of child abuse or neglect, including the investigation report and other pertinent materials to be given to the State Department of Social Services or specified county agencies. (PC §11167(c))

This Bill:

1) Provides that information relevant to an incident or child abuse or neglect and information relevant to a report made relating to a child suffering serious emotional damage, may be given to an investigator from an agency that is investigation the known suspected case of child abuse or neglect. (PC §11167(b))

2) Allows information relevant to an incident of child abuse or neglect, and information relevant to a report made relating to a child suffering serious emotional damage, including the investigation report and other pertinent materials to be given to the State Department of Social Services or specified county agencies. (PC §11167(c))

April 20, 2010
Comment:

1) **Author’s Intent.** According to the author’s office, this bill will protect reporters of emotional abuse from threats of liability or discipline by allowing mandated reporters to discuss cases with investigators without fear of violating the law.

The California Association of Marriage and Family Therapist (CAMFT), sponsor of this bill, explains that several years ago emotional abuse of a child was removed from the Child Abuse and Neglect Reporting Act (Act). Subsequently, Penal Code 11166.05 was added to the Act to again allow “Any mandated reporter who has knowledge of or who reasonably suspects that a child is suffering serious emotional damage or is at a substantial risk of suffering serious emotional damage…may make a report to an agency…” as specified. This language makes a report of this nature permissible, but not mandatory. Additionally, because this type of report is not considered a child abuse report, CAMFT argues that a practitioner making this type of report would not be immune to liability when cooperating with an investigator and sharing information regarding the report of emotional abuse.

2) **Suggested Amendments.** A conforming and technical amendment may add clarity to the immunity from liability when cooperating with an agency related to reports of emotional abuse of a child. Staff suggests adding a reference to Penal Code Section 11166.05, consistent with language currently in the bill, to Penal Code Section 11172(b).

   (b) Any person, who, pursuant to a request from a government agency investigating a report of suspected child abuse or neglect, or a report made pursuant to 11166.05, provides the requesting agency with access to the victim of a known or suspected instance of child abuse or neglect shall not incur civil or criminal liability as a result of providing that access.

3) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee voted to recommend to the Board a support position on this bill.

4) **Support and Opposition.**

   None on file

5) **History**

   **2010**
   Apr. 15  Read second time. To Consent Calendar.
   Apr. 14  From committee: Do pass. To Consent Calendar. (April 13).
   Mar. 11  Referred to Com. on PUB. S.
   Feb. 22  Read first time.
   Feb. 21  From printer. May be heard in committee March 23.
   Feb. 19  Introduced. To print.
An act to amend Section 11167 of the Penal Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL’S DIGEST

AB 2339, as introduced, Smyth. Child abuse reporting.
Existing law requires reports made by mandated reporters of suspected child abuse or neglect to include specified information. Existing law also provides that information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect and to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.
This bill would provide, in addition, that information relevant to a report made relating to a child suffering, or in substantial risk of suffering, serious emotional damage may be given to that investigator and licensing agency.


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

SECTION 1. Section 11167 of the Penal Code is amended to read:
11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 or Section 11166.05 shall include the name,
business address, and telephone number of the mandated reporter;
the capacity that makes the person a mandated reporter; and the
information that gave rise to the reasonable suspicion of child
abuse or neglect and the source or sources of that information. If
a report is made, the following information, if known, shall also
be included in the report: the child’s name, the child’s address,
present location, and, if applicable, school, grade, and class; the
names, addresses, and telephone numbers of the child’s parents or
guardians; and the name, address, telephone number, and other
relevant personal information about the person or persons who
might have abused or neglected the child. The mandated reporter
shall make a report even if some of this information is not known
or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect
and information relevant to a report made pursuant to Section
11166.05 may be given to an investigator from an agency that is
investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect,
including the investigation report and other pertinent materials,
and information relevant to a report made pursuant to Section
11166.05 may be given to the licensing agency when it is
investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article
shall be confidential and disclosed only among agencies receiving
or investigating mandated reports, to the prosecutor in a criminal
prosecution or in an action initiated under Section 602 of the
Welfare and Institutions Code arising from alleged child abuse,
or to counsel appointed pursuant to subdivision (c) of Section 317
of the Welfare and Institutions Code, or to the county counsel or
prosecutor in a proceeding under Part 4 (commencing with Section
7800) of Division 12 of the Family Code or Section 300 of the
Welfare and Institutions Code, or to a licensing agency when abuse
or neglect in out-of-home care is reasonably suspected, or when
those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose
the identity of any person who reports under this article to that
person’s employer, except with the employee’s consent or by court
order.

(e) Notwithstanding the confidentiality requirements of this
section, a representative of a child protective services agency
performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166 or Section 11166.05, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in a manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (g) of Section 11166 are not required to include their names.
Existing Law:

1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and as such, he or she must submit a report to law enforcement whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code §§11165.7(a)(21) – (25) and 11166(a))

2) Defines “reasonable suspicion” as it relates to child abuse reporting to mean that it is objectively reasonable for a person to entertain a suspicion, based on facts that could cause a reasonable person in a like position, drawing, when appropriate, on his or her training and experience, to suspect child abuse or neglect. (PC §11166(a)(1))

3) Makes the failure to report an incident of known or reasonably suspected child abuse or neglect by a mandated reporter a misdemeanor punishable by up to six months confinement in a county jail or by fine of one thousand dollars or by both that imprisonment and fine. (PC §111666(c))

This Bill:

1) Clarifies the meaning of reasonable suspicion as it relates to the reporting of child abuse by adding the following language to statute: (PC §111666(a)(1))

   a) Reasonable suspicion does not require certainty that a child abuse or neglect has occurred;

   b) Reasonable suspicion does not require a specific medical indication of child abuse or neglect; any reasonable suspicion is sufficient; and

   c) Reasonable suspicion may be based on any information considered credible by the reporter, including statements from other individuals.

Comment:

1) Author’s Intent. According to the author’s office “The current statute surrounding ‘reasonable suspicion’ for a mandated reporter is vague and open to interpretation, leading
many mandated reporters to fail to report when they should have.”

2) **Related Legislation.**
AB 2339 (Smyth) will protect mandated reports from liability when cooperating with investigators regarding a report of suspected emotion suffering by a child.

AB 2229 (Brownley) allows the disclosure and exchange of information by a multidisciplinary personnel team related to the prevention, identification and treatment of child abuse by telephone or electronic means.

3) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee voted to recommend to the Board a support position on this bill.

4) **Support and Opposition (As of April 13, 2010).**

Support – Los Angeles City Attorney
Opposition – None on File

5) **History**

2010

- **Apr. 15** Read second time. To Consent Calendar.
- **Apr. 14** From committee: Do pass. To Consent Calendar. (April 13).
- **Mar. 25** Re-referred to Com. on PUB. S.
- **Mar. 24** From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
- **Mar. 11** Referred to Com. on PUB. S.
- **Feb. 22** Read first time.
- **Feb. 21** From printer. May be heard in committee March 23.
- **Feb. 19** Introduced. To print.
An act to amend Sections 11166, 11167.5, and 11170 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL’S DIGEST


Existing law identifies specified persons as mandated reporters who must submit a report to law enforcement whenever in their professional capacity or within the scope of their employment, they have knowledge of or observe a child who is known or reasonably suspected to have been the victim of child abuse or neglect. Existing law defines the term “reasonable suspicion” for purposes of these child abuse reporting provisions.

This bill would provide that “reasonable suspicion” does not require certain knowledge certainty that child abuse or neglect has occurred nor does it require a specific medical indication of child abuse or neglect. The bill would also provide that “reasonable suspicion” may be based on any information considered credible by the reporter, including hearsay statements from other individuals.

Existing law requires the Department of Justice to maintain an index of all reports of child abuse and severe neglect submitted by agencies mandated to make those reports.
This bill would require the department to make available to certain health care practitioners who have delivered or treated a newborn infant information regarding any known or suspected child abuser maintained on the index concerning any parent or primary care provider of the newborn infant. The bill would provide that the health care practitioner is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions on the evidence for purposes of evaluating the necessity for a child welfare risk assessment. The bill would require the health care practitioner to notify the local child protective services agency if it is determined that a child welfare risk assessment is appropriate.

Existing law requires a person convicted of any specified sex offenses to register as a sex offender and provide specified information to law enforcement agencies. That information is kept at the location where the offender registered and transmitted to the Department of Justice where it is electronically stored in the Violent Crime Information Network (VCIN), as specified.

This bill would require the Department of Justice to study the feasibility and value of requiring every person who must register as a sex offender to include in the information provided by the person all e-mail addresses and instant message addresses, all screen names and online pseudonyms, and all Internet protocol addresses he or she uses, or intends to use, to communicate over the Internet. The bill would require the department's study to include a determination of the value and feasibility of incorporating this information in the VCIN, and would require the department to complete and publish its report by December 31, 2011.

This bill would make technical and conforming changes.


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

SECTION 1. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivision (d), and in Section 11166.05, a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom
the mandated reporter knows or reasonably suspects has been the
victim of child abuse or neglect. The mandated reporter shall make
an initial report to the agency immediately or as soon as is
practically possible by telephone and the mandated reporter shall
prepare and send, fax, or electronically transmit a written followup
report thereof within 36 hours of receiving the information
concerning the incident. The mandated reporter may include with
the report any nonprivileged documentary evidence the mandated
reporter possesses relating to the incident.

(1) For purposes of this article, “reasonable suspicion” means
that it is objectively reasonable for a person to entertain a suspicion,
based upon facts that could cause a reasonable person in a like
position, drawing, when appropriate, on his or her training and
experience, to suspect child abuse or neglect. “Reasonable
suspicion” does not require certain knowledge certainty that child
abuse or neglect has occurred nor does it require a specific medical
indication of child abuse or neglect; any “reasonable suspicion”
is sufficient. “Reasonable suspicion” may be based on any
information considered credible by the reporter, including hearsay
statements from other individuals. For the purpose of this article,
the pregnancy of a minor does not, in and of itself, constitute a
basis for a reasonable suspicion of sexual abuse.

(2) The agency shall be notified and a report shall be prepared
and sent, faxed, or electronically transmitted even if the child has
expired, regardless of whether or not the possible abuse was a
factor contributing to the death, and even if suspected child abuse
was discovered during an autopsy.

(3) Any report made by a mandated reporter pursuant to this
section shall be known as a mandated report.

(b) If after reasonable efforts a mandated reporter is unable to
submit an initial report by telephone, he or she shall immediately
or as soon as is practically possible, by fax or electronic
transmission, make a one-time automated written report on the
form prescribed by the Department of Justice, and shall also be
available to respond to a telephone followup call by the agency
with which he or she filed the report. A mandated reporter who
files a one-time automated written report because he or she was
unable to submit an initial report by telephone is not required to
submit a written followup report.
(1) The one-time automated written report form prescribed by the Department of Justice shall be clearly identifiable so that it is not mistaken for a standard written followup report. In addition, the automated one-time report shall contain a section that allows the mandated reporter to state the reason the initial telephone call was not able to be completed. The reason for the submission of the one-time automated written report in lieu of the procedure prescribed in subdivision (a) shall be captured in the Child Welfare Services/Case Management System (CWS/CMS). The department shall work with stakeholders to modify reporting forms and the CWS/CMS as is necessary to accommodate the changes enacted by these provisions.

(2) This subdivision shall not become operative until the CWS/CMS is updated to capture the information prescribed in this subdivision.

(3) This subdivision shall become inoperative three years after this subdivision becomes operative or on January 1, 2009, whichever occurs first.

(4) On the inoperative date of these provisions, a report shall be submitted to the counties and the Legislature by the Department of Social Services that reflects the data collected from automated one-time reports indicating the reasons stated as to why the automated one-time report was filed in lieu of the initial telephone report.

(5) Nothing in this section shall supersede the requirement that a mandated reporter first attempt to make a report via telephone, or that agencies specified in Section 11165.9 accept reports from mandated reporters and other persons as required.

(c) Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that imprisonment and fine. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until an agency specified in Section 11165.9 discovers the offense.

(d) (1) A clergy member who acquires knowledge or a reasonable suspicion of child abuse or neglect during a penitential
communication is not subject to subdivision (a). For the purposes of this subdivision, “penitential communication” means a communication, intended to be in confidence, including, but not limited to, a sacramental confession, made to a clergy member who, in the course of the discipline or practice of his or her church, denomination, or organization, is authorized or accustomed to hear those communications, and under the discipline, tenets, customs, or practices of his or her church, denomination, or organization, has a duty to keep those communications secret.

(2) Nothing in this subdivision shall be construed to modify or limit a clergy member’s duty to report known or suspected child abuse or neglect when the clergy member is acting in some other capacity that would otherwise make the clergy member a mandated reporter.

(3) (A) On or before January 1, 2004, a clergy member or any custodian of records for the clergy member may report to an agency specified in Section 11165.9 that the clergy member or any custodian of records for the clergy member, prior to January 1, 1997, in his or her professional capacity or within the scope of his or her employment, other than during a penitential communication, acquired knowledge or had a reasonable suspicion that a child had been the victim of sexual abuse that the clergy member or any custodian of records for the clergy member did not previously report the abuse to an agency specified in Section 11165.9. The provisions of Section 11172 shall apply to all reports made pursuant to this paragraph.

(B) This paragraph shall apply even if the victim of the known or suspected abuse has reached the age of majority by the time the required report is made.

(C) The local law enforcement agency shall have jurisdiction to investigate any report of child abuse made pursuant to this paragraph even if the report is made after the victim has reached the age of majority.

(e) Any commercial film and photographic print processor who has knowledge of or observes, within the scope of his or her professional capacity or employment, any film, photograph, videotape, negative, or slide depicting a child under the age of 16 years engaged in an act of sexual conduct, shall report the instance of suspected child abuse to the law enforcement agency having jurisdiction over the case immediately, or as soon as practicably
possible, by telephone and shall prepare and send, fax, or
electronically transmit a written report of it with a copy of the film,
photograph, videotape, negative, or slide attached within 36 hours
of receiving the information concerning the incident. As used in
this subdivision, “sexual conduct” means any of the following:
(1) Sexual intercourse, including genital-genital, oral-genital,
anal-genital, or oral-anal, whether between persons of the same or
opposite sex or between humans and animals.
(2) Penetration of the vagina or rectum by any object.
(3) Masturbation for the purpose of sexual stimulation of the
viewer.
(4) Sadomasochistic abuse for the purpose of sexual stimulation
of the viewer.
(5) Exhibition of the genitals, pubic, or rectal areas of any person
for the purpose of sexual stimulation of the viewer.
(f) Any mandated reporter who knows or reasonably suspects
that the home or institution in which a child resides is unsuitable
for the child because of abuse or neglect of the child shall bring
the condition to the attention of the agency to which, and at the
same time as, he or she makes a report of the abuse or neglect
pursuant to subdivision (a).
(g) Any other person who has knowledge of or observes a child
whom he or she knows or reasonably suspects has been a victim
of child abuse or neglect may report the known or suspected
instance of child abuse or neglect to an agency specified in Section
11165.9. For purposes of this section, “any other person” includes
a mandated reporter who acts in his or her private capacity and
not in his or her professional capacity or within the scope of his
or her employment.
(h) When two or more persons, who are required to report,
jointly have knowledge of a known or suspected instance of child
abuse or neglect, and when there is agreement among them, the
telephone report may be made by a member of the team selected
by mutual agreement and a single report may be made and signed
by the selected member of the reporting team. Any member who
has knowledge that the member designated to report has failed to
do so shall thereafter make the report.
(i) (1) The reporting duties under this section are individual,
and no supervisor or administrator may impede or inhibit the
reporting duties, and no person making a report shall be subject
to any sanction for making the report. However, internal procedures
to facilitate reporting and apprise supervisors and administrators
of reports may be established provided that they are not inconsistent
with this article.

(2) The internal procedures shall not require any employee
required to make reports pursuant to this article to disclose his or
her identity to the employer.

(3) Reporting the information regarding a case of possible child
abuse or neglect to an employer, supervisor, school principal,
school counselor, coworker, or other person shall not be a substitute
for making a mandated report to an agency specified in Section
11165.9.

(j) A county probation or welfare department shall immediately,
or as soon as practicably possible, report by telephone, fax, or
electronic transmission to the law enforcement agency having
jurisdiction over the case, to the agency given the responsibility
for investigation of cases under Section 300 of the Welfare and
Institutions Code, and to the district attorney’s office every known
or suspected instance of child abuse or neglect, as defined in
Section 11165.6, except acts or omissions coming within
subdivision (b) of Section 11165.2, or reports made pursuant to
Section 11165.13 based on risk to a child which relates solely to
the inability of the parent to provide the child with regular care
due to the parent’s substance abuse, which shall be reported only
to the county welfare or probation department. A county probation
or welfare department also shall send, fax, or electronically transmit
a written report thereof within 36 hours of receiving the information
concerning the incident to any agency to which it makes a
telephone report under this subdivision.

(k) A law enforcement agency shall immediately, or as soon as
practicably possible, report by telephone, fax, or electronic
transmission to the agency given responsibility for investigation
of cases under Section 300 of the Welfare and Institutions Code
and to the district attorney’s office every known or suspected
instance of child abuse or neglect reported to it, except acts or
omissions coming within subdivision (b) of Section 11165.2, which
shall be reported only to the county welfare or probation
department. A law enforcement agency shall report to the county
welfare or probation department every known or suspected instance
of child abuse or neglect reported to it which is alleged to have
occurred as a result of the action of a person responsible for the
child’s welfare, or as the result of the failure of a person responsible
for the child’s welfare to adequately protect the minor from abuse
when the person responsible for the child’s welfare knew or
reasonably should have known that the minor was in danger of
abuse. A law enforcement agency also shall send, fax, or
electronically transmit a written report thereof within 36 hours of
receiving the information concerning the incident to any agency
to which it makes a telephone report under this subdivision.

SEC. 2. Section 11167.5 of the Penal Code is amended to read:
11167.5. (a) The reports required by Sections 11166 and
11166.2, or authorized by Section 11166.05, and child abuse or
neglect investigative reports that result in a summary report being
filed with the Department of Justice pursuant to subdivision (a) of
Section 11169 shall be confidential and may be disclosed only as
provided in subdivision (b). Any violation of the confidentiality
provided by this article is a misdemeanor punishable by
imprisonment in a county jail not to exceed six months, by a fine
of five hundred dollars ($500), or by both that imprisonment and
fine.

(b) Reports of suspected child abuse or neglect and information
contained therein may be disclosed only to the following:
(1) Persons or agencies to whom disclosure of the identity of
the reporting party is permitted under Section 11167;
(2) Persons or agencies to whom disclosure of information is
permitted under subdivision (b) of Section 11170 or subdivision
(a) of Section 11170.5;
(3) Persons or agencies with whom investigations of child abuse
or neglect are coordinated under the regulations promulgated under
Section 11174;
(4) Multidisciplinary personnel teams as defined in subdivision
d of Section 18951 of the Welfare and Institutions Code;
(5) Persons or agencies responsible for the licensing of facilities
which care for children, as specified in Section 11165.7;
(6) The State Department of Social Services or any county
licensing agency which has contracted with the state, as specified
in paragraph (4) of subdivision (b) of Section 11170, when an
individual has applied for a community care license or child day
care license, or for employment in an out of home care facility;
or when a complaint alleges child abuse or neglect by an operator
or employee of an out-of-home care facility.

(7) Hospital scan teams. As used in this paragraph, “hospital
scan team” means a team of three or more persons established by
a hospital, or two or more hospitals in the same county, consisting
of health care professionals and representatives of law enforcement
and child protective services, the members of which are engaged
in the identification of child abuse or neglect. The disclosure
authorized by this section includes disclosure among all hospital
scan teams.

(8) Coroners and medical examiners when conducting a post
mortem examination of a child.

(9) The Board of Parole Hearings, which may subpoena an
employee of a county welfare department who can provide relevant
evidence and reports that both (A) are not unfounded, pursuant to
Section 11165.12, and (B) concern only the current incidents upon
which parole revocation proceedings are pending against a parolee
charged with child abuse or neglect. The reports and information
shall be confidential pursuant to subdivision (d) of Section 11167.

(10) Personnel from an agency responsible for making a
placement of a child pursuant to Section 361.3 of, and
Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division
2 of, the Welfare and Institutions Code.

(11) Persons who have been identified by the Department of
Justice as listed in the Child Abuse Central Index pursuant to
paragraph (7) of subdivision (b) of Section 11170 or subdivision
(c) of Section 11170, or persons who have verified with the
Department of Justice that they are listed in the Child Abuse
Central Index as provided in subdivision (g) of Section 11170.
Disclosure under this paragraph is required notwithstanding the
California Public Records Act, Chapter 3.5 (commencing with
Section 6250) of Division 7 of Title 1 of the Government Code.
Nothing in this paragraph shall preclude a submitting agency prior
to disclosure from redacting any information necessary to maintain
confidentiality as required by law.

(12) Out-of-state law enforcement agencies conducting an
investigation of child abuse or neglect only when an agency makes
the request for reports of suspected child abuse or neglect in writing
and on official letterhead, or as designated by the Department of
Justice, identifying the suspected abuser or victim by name and
The request shall be signed by the department supervisor of the requesting law enforcement agency. The written request shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports is to be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision.

(13) Out-of-state agencies responsible for approving prospective foster or adoptive parents for placement of a child only when the agency makes the request in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). The request shall also cite the safeguards in place to prevent unlawful disclosure provided by the requesting state or the applicable interstate compact provision and indicate that the requesting state shall maintain continual compliance with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoptive placement cases.

(14) Each chairperson of a county child death review team, or his or her designee, to whom disclosure of information is permitted under this article, relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victim, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(e) Authorized persons within county health departments shall be permitted to receive copies of any reports made by health practitioners, as defined in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7, and pursuant to Section 11165.13, and copies of assessments completed pursuant to Sections 123600 and 123605 of the Health and Safety Code, to the extent permitted by federal law. Any information received pursuant to this subdivision is protected by subdivision (e).
(d) Nothing in this section requires the Department of Justice to disclose information contained in records maintained under Section 11170 or under the regulations promulgated pursuant to Section 11174, except as otherwise provided in this article.

(e) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse or neglect if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of child abuse or neglect.

SEC. 3. Section 11170 of the Penal Code is amended to read:

11170. (a) (1) The Department of Justice shall maintain an index of all reports of child abuse and severe neglect submitted pursuant to Section 11169. The index shall be continually updated by the department and shall not contain any reports that are determined to be unfounded. The department may adopt rules governing recordkeeping and reporting pursuant to this article.

(2) The department shall act only as a repository of reports of suspected child abuse and severe neglect to be maintained in the Child Abuse Central Index pursuant to paragraph (1). The submitting agencies are responsible for the accuracy, completeness, and retention of the reports described in this section. The department shall be responsible for ensuring that the Child Abuse Central Index accurately reflects the report it receives from the submitting agency.

(3) Information from an inconclusive or unsubstantiated report filed pursuant to subdivision (a) of Section 11169 shall be deleted from the Child Abuse Central Index after 10 years if no subsequent report concerning the same suspected child abuser is received within that time period. If a subsequent report is received within that 10-year period, information from any prior report, as well as any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting health care practitioner who is treating a person reported
as a possible victim of known or suspected child abuse. The agency shall make that information available to the reporting child
custodian, guardian ad litem appointed under Section 326, or counsel appointed under Section 317 or 318 of the Welfare and
Institutions Code, or the appropriate licensing agency, if he or she or the licensing agency is handling or investigating a case of known
or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section
11166, or Section 11166.05, the investigating agency, upon
completion of the investigation or after there has been a final
disposition in the matter, shall inform the person required or
authorized to report of the results of the investigation and of any
action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law
enforcement agency, county welfare department, or county
probation department that is conducting a child abuse investigation
relevant information contained in the index.

(4) The department shall make available to the State Department
of Social Services; or to any county licensing agency that has
contracted with the state for the performance of licensing duties;
or to a tribal court or tribal child welfare agency of a tribe or
consortium of tribes that has entered into an agreement with the
state pursuant to Section 10553.1 of the Welfare and Institutions
Code, information regarding a known or suspected child abuser
maintained pursuant to this section and subdivision (a) of Section
11169 concerning any person who is an applicant for licensure or
any adult who resides or is employed in the home of an applicant
for licensure or who is an applicant for employment in a position
having supervisorial or disciplinary power over a child or children;
or who will provide 24-hour care for a child or children in a
residential home or facility, pursuant to Section 1522.1 or 1596.877
of the Health and Safety Code, or Section 8714, 8802, 8912, or
9000 of the Family Code.

(5) The Department of Justice shall make available to a Court
Appointed Special Advocate program that is conducting a
background investigation of an applicant seeking employment
with the program or a volunteer position as a Court Appointed
Special Advocate, as defined in Section 101 of the Welfare and
Institutions Code, information contained in the index regarding
known or suspected child abuse by the applicant.
(6) For purposes of child death review, the Department of Justice shall make available to the chairperson, or the chairperson’s designee, for each county child death review team, or the State Child Death Review Council, information maintained in the Child Abuse Central Index pursuant to subdivision (a) of Section 11170 relating to the death of one or more children and any prior child abuse or neglect investigation reports maintained involving the same victims, siblings, or suspects. Local child death review teams may share any relevant information regarding case reviews involving child death with other child death review teams.

(7) The department shall make available to investigative agencies or probation officers, or court investigators acting pursuant to Section 1513 of the Probate Code, responsible for placing children or assessing the possible placement of children pursuant to Article 6 (commencing with Section 300), Article 7 (commencing with Section 305), Article 10 (commencing with Section 360), or Article 14 (commencing with Section 601) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, Article 2 (commencing with Section 1510) or Article 3 (commencing with Section 1540) of Chapter 1 of Part 2 of Division 4 of the Probate Code, information regarding a known or suspected child abuser contained in the index concerning any adult residing in the home where the child may be placed, when this information is requested for purposes of ensuring that the placement is in the best interest of the child. Upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice pursuant to this subdivision, the agency or court investigator shall notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the name of the reporting agency and the date of the report.

(8) The Department of Justice shall make available to a government agency conducting a background investigation pursuant to Section 1031 of the Government Code of an applicant seeking employment as a peace officer, as defined in Section 830, information regarding a known or suspected child abuser maintained pursuant to this section concerning the applicant.

(9) The Department of Justice shall make available to a county child welfare agency or delegated county adoption agency, as defined in Section 8515 of the Family Code, conducting a
background investigation, or a government agency conducting a
background investigation on behalf of one of those agencies;
information regarding a known or suspected child abuser
maintained pursuant to this section and subdivision (a) of Section
11169 concerning any applicant seeking employment or volunteer
status with the agency who, in the course of his or her employment
or volunteer work, will have direct contact with children who are
alleged to have been, are at risk of, or have suffered, abuse or
neglect.

(10) (A) Persons or agencies, as specified in subdivision (b),
if investigating a case of known or suspected child abuse or neglect;
or the State Department of Social Services or any county licensing
agency pursuant to paragraph (4), or a Court Appointed Special
Advocate program conducting a background investigation for
employment or volunteer candidates pursuant to paragraph (5), or
an investigative agency, probation officer, or court investigator
responsible for placing children or assessing the possible placement
of children pursuant to paragraph (7), or a government agency
conducting a background investigation of an applicant seeking
employment as a peace officer pursuant to paragraph (8), or a
county child welfare agency or delegated county adoption agency
conducting a background investigation of an applicant seeking
employment or volunteer status who, in the course of his or her
employment or volunteer work, will have direct contact which
children who are alleged to have been, are at risk of, or have
suffered, abuse or neglect, pursuant to paragraph (9), to whom
disclosure of any information maintained pursuant to subdivision
(a) is authorized, are responsible for obtaining the original
investigative report from the reporting agency, and for drawing
independent conclusions regarding the quality of the evidence
disclosed, and its sufficiency for making decisions regarding
investigation, prosecution, licensing, placement of a child,
employment or volunteer positions with a CASA program, or
employment as a peace officer.

(B) If Child Abuse Central Index information is requested by
an agency for the temporary placement of a child in an emergency
situation pursuant to Article 7 (commencing with Section 305) of
Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
Code, the department is exempt from the requirements of Section
1798.18 of the Civil Code if compliance would cause a delay in
providing an expedited response to the agency’s inquiry and if further delay in placement may be detrimental to the child.

(11) (A) Whenever information contained in the Department of Justice files is furnished as the result of an application for employment or licensing or volunteer status pursuant to paragraph (4), (5), (8), or (9), the Department of Justice may charge the person or entity making the request a fee. The fee shall not exceed the reasonable costs to the department of providing the information. The only increase shall be at a rate not to exceed the legislatively approved cost-of-living adjustment for the department. In no case shall the fee exceed fifteen dollars ($15).

(B) All moneys received by the department pursuant to this section to process trustline applications for purposes of Chapter 3.35 (commencing with Section 1596.60) of Division 2 of the Health and Safety Code shall be deposited in a special account in the General Fund that is hereby established and named the Department of Justice Child Abuse Fund. Moneys in the fund shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred to process trustline automated child abuse or neglect system checks pursuant to this section.

(C) All moneys, other than that described in subparagraph (B), received by the department pursuant to this paragraph shall be deposited in a special account in the General Fund which is hereby created and named the Department of Justice Sexual Habitual Offender Fund. The funds shall be available, upon appropriation by the Legislature, for expenditure by the department to offset the costs incurred pursuant to Chapter 9.5 (commencing with Section 13885) and Chapter 10 (commencing with Section 13890) of Title 6 of Part 4, and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1), and for maintenance and improvements to the statewide Sexual Habitual Offender Program and the California DNA offender identification file (CAL-DNA) authorized by Chapter 9.5 (commencing with Section 13885) of Title 6 of Part 4 and the DNA and Forensic Identification Data Base and Data Bank Act of 1998 (Chapter 6 (commencing with Section 295) of Title 9 of Part 1).

(e) The Department of Justice shall make available to any agency responsible for placing children pursuant to Article 7 (commencing...
with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, upon request, relevant information concerning child abuse or neglect reports contained in the index, when making a placement with a responsible relative pursuant to Sections 281.5, 305, and 361.3 of the Welfare and Institutions Code. Upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice pursuant to this subdivision, the agency shall also notify in writing the person listed in the Child Abuse Central Index that he or she is in the index. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement.

If Child Abuse Central Index information is requested by an agency for the placement of a child with a responsible relative in an emergency situation pursuant to Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, the department is exempt from the requirements of Section 1798.18 of the Civil Code if compliance would cause a delay in providing an expedited response to the child protective agency’s inquiry and if further delay in placement may be detrimental to the child.

(d) The department shall make available any information maintained pursuant to subdivision (a) to out-of-state law enforcement agencies conducting investigations of known or suspected child abuse or neglect only when an agency makes the request for information in writing and on official letterhead, or as designated by the department, identifying the suspected abuser or victim by name and date of birth or approximate age. The request shall be signed by the department supervisor of the requesting law enforcement agency. The written requests shall cite the out-of-state statute or interstate compact provision that requires that the information contained within these reports shall be disclosed only to law enforcement, prosecutorial entities, or multidisciplinary investigative teams, and shall cite the safeguards in place to prevent unlawful disclosure of any confidential information provided by the requesting state or the applicable interstate compact provision.

(e) (1) The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive
parent in compliance with the Adam Walsh Child Protection and
Safety Act of 2006 (Public Law 109-248), information regarding
a known or suspected child abuser maintained pursuant to
subdivision (a) concerning the prospective foster or adoptive
parent, and any other adult living in the home of the prospective
foster or adoptive parent. The department shall make that
information available only when the out-of-state agency makes
the request indicating that continual compliance will be maintained
with the requirement in paragraph (20) of subdivision (a) of Section
671 of Title 42 of the United States Code that requires the state to
have in place safeguards to prevent the unauthorized disclosure of
information in any child abuse and neglect registry maintained by
the state and prevent the information from being used for a purpose
other than the conducting of background checks in foster or
adoption placement cases.
(2) With respect to any information provided by the department
in response to the out-of-state agency’s request, the out-of-state
agency is responsible for obtaining the original investigative report
from the reporting agency, and for drawing independent
conclusions regarding the quality of the evidence disclosed and
its sufficiency for making decisions regarding the approval of
prospective foster or adoptive parents.
(3) (A) Whenever information contained in the index is
furnished pursuant to this subdivision, the department shall charge
the out-of-state agency making the request a fee. The fee shall not
exceed the reasonable costs to the department of providing the
information. The only increase shall be at a rate not to exceed the
legislatively approved cost-of-living adjustment for the department.
In no case shall the fee exceed fifteen dollars ($15).
(B) All moneys received by the department pursuant to this
subdivision shall be deposited in the Department of Justice Child
Abuse Fund, established under subparagraph (B) of paragraph (11)
of subdivision (b). Moneys in the fund shall be available, upon
appropriation by the Legislature, for expenditure by the department
to offset the costs incurred to process requests for information
pursuant to this subdivision.
(f) The department shall make available to any public health
nurse, treating physician or agent thereof, or other health care
practitioner who has delivered or treated a newborn infant,
information regarding any known or suspected child abuser
maintained pursuant to subdivision (a) concerning any parent or primary care provider of the newborn infant. The public health nurse, treating physician or agent thereof, or other health care practitioner is responsible for obtaining the original investigative report from the reporting agency, and for drawing independent conclusions regarding the quality of the evidence disclosed and the sufficiency of the evidence for the purpose of making decisions when evaluating the necessity for a child welfare risk assessment.

If it is determined that a child welfare risk assessment is appropriate, the public health nurse, treating physician or agent thereof, or other health care practitioner shall notify the local child protective services agency so that a child welfare risk assessment can be conducted.

(g) (1) Any person may determine if he or she is listed in the Child Abuse Central Index by making a request in writing to the Department of Justice. The request shall be notarized and include the person's name, address, date of birth, and either a social security number or a California identification number. Upon receipt of a notarized request, the Department of Justice shall make available to the requesting person information identifying the date of the report and the submitting agency. The requesting person is responsible for obtaining the investigative report from the submitting agency pursuant to paragraph (11) of subdivision (b) of Section 11167.5.

(2) No person or agency shall require or request another person to furnish a copy of a record concerning himself or herself, or notification that a record concerning himself or herself exists or does not exist, pursuant to paragraph (1) of this subdivision.

(h) If a person is listed in the Child Abuse Central Index only as a victim of child abuse or neglect, and that person is 18 years of age or older, that person may have his or her name removed from the index by making a written request to the Department of Justice. The request shall be notarized and include the person's name, address, social security number, and date of birth.

SEC. 4. The Department of Justice shall study the feasibility and value of requiring every person who must register pursuant to the Sex Offender Registration Act (Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1 of the Penal Code) to include in the information provided by the person all e-mail addresses and instant message addresses, all screen names and online
pseudonyms, and all Internet protocol addresses he or she uses, or
intends to use, to communicate over the Internet. The Department
of Justice study shall include a determination of the value and
feasibility of incorporating this information in the Violent Crime
Information Network (VCIN). The Department of Justice shall
complete and publish its report by December 31, 2011.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2435 VERSION: AMENDED MARCH 24, 2010
AUTHOR: B. LOWENTHAL SPONSOR: CALIFORNIA COMMISSION ON AGING
RECOMMENDED POSITION: SUPPORT IF AMENDED
SUBJECT: ELDER AND DEPENDENT ADULT ABUSE

Existing Law:

1) Requires the Board of Behavioral Sciences (Board) and the Board of Psychology to establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of specified licenses. (Business and Professions Code §28)

2) Outlines the coursework and training requirements for child abuse assessment and reporting education designed to meet the mandated coursework requirement. (BPC §28(a))

3) States that it is the intent of the legislature that there is a need to ensure that professionals of the healing arts who have a demonstrated contact with child abuse victims, potential child abuse victims and child abusers and potential child abusers are provided adequate and appropriate training regarding the assessment and reporting of child abuse which will ameliorate, reduce, and eliminate the trauma of child abuse and neglect and ensure the reporting of child abuse in a timely manner to prevent additional occurrences. (BPC §28)

4) Requires applicants for licensure as marriage and family therapists (MFTs) who begin graduate study before August 1, 2012, and who complete that study before December 31, 2018, to possess a masters or doctor’s degree that includes coursework in developmental issues and life events from infancy to old age and their relationship on individuals, couples, and family relationships. (BPC §4980.37(b)(3))

5) Requires applicants for licensure as an MFT who begin graduate study before August 1, 2012, and who complete that study before December 31, 2018 to complete a minimum of 10 contact hours of coursework in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. (BPC §4980.39)

6) Requires an applicant for licensure as a clinical social worker (LCSW), who began graduate study after January 1, 2004, to complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social and psychological aspects of aging. (BPC §4996.25)

7) Requires LCSW applicants, who began graduate study prior to January 1, 2004, to complete a three hour continuing education course in aging and long-term care, which could include, but is not limited to, the biological, social and psychological aspects of aging. (BPC §4996.26)
8) Requires Licensed Professional Clinical Counselor (LPCC) applicants who begin study before August 1, 2012 and complete that study on or before December 31, 2018, to possess a master’s or doctor’s degree that includes a minimum of 10 contact hours of instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. (BPC §4999.32(e)(7))

9) Requires LPCC applicants who begin study after August 1, 2012, or who begin before that date but do not complete study before December 31, 2018, to possess a master’s or doctor’s degree that includes instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. (BPC §4999.33(d)(10))

This Bill:

1) Requires licensed Psychologists, after January 1, 2012, to receive instruction in the assessment and reporting of, as well as treatment related to, elder and dependent abuse and neglect. (BPC §§2915.5 and 2915.7)

2) Requires an applicant for licensure as an MFT who begins graduate study before August 1, 2012, and who completes that study before December 31, 2018 to possess a master’s or doctor’s degree that includes coursework in developmental issues and life events from infancy to old age and their relationship on individuals, couples, and family relationships that may include coursework in abuse and neglect of older and dependent adults and geropsychology. (BPC §4980.37(b)(3))

3) Requires an applicant for licensure as an MFT who begins graduate study before August 1, 2012, and completes that study before December 31, 2018 to complete a minimum of 10 contact hours of coursework in aging and long-term care and requires this coursework after January 1, 2012 to also include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect. (BPC §4980.39(a))

4) States that it is anticipated and encouraged that hours of experience required for MFT licensure will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights. (BPC § 4980.43(a)(12)

5) Requires LCSW applicants, who began graduate study after January 1, 2004, to complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, and requires this coursework after January 1, 2012 to include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect (BPC §4996.25(a))

6) Requires LCSW applicants, who began graduate study prior to January 1, 2004, to complete a three hour continuing education course in aging and long-term care, and requires this coursework after January 1, 2012 to include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect (BPC §4996.26(a))

7) Requires LPCC applicants who begin study before August 1, 2012 and complete that study on or before December 31, 2018, to possess a master’s or doctor’s degree that includes a minimum of 10 contact hours of instruction in aging and long-term care, and requires this coursework after January 1, 2012 to include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect (BPC
§4999.32(e)(7))

8) Requires LPCC applicants who begin study after August 1, 2012, or who begin before that date but do not complete that study before December 31, 2018, to possess a master’s or doctor’s degree that includes instruction in aging and long-term care, and requires this coursework after January 1, 2012 to include instruction on the assessment and reporting of, as well as the treatment related to, elder and dependent abuse and neglect. (BPC §4999.33(d)(10))

Comments:

1) Purpose of this Bill. Legislative intent language inserted into Business and Professions Code section 28 by this bill states, “The Board of Psychology and the Board of Behavioral Sciences are encouraged to include coursework regarding the assessment and reporting of elder abuse and dependent adult abuse in the required training on aging and long-term care issues prior to licensure or license renewal.”

Although all Board licensees, except Licensed Educational Psychologists, are required to take aging and long-term care coursework either prior to licensure, or during their first license renewal cycle, the law is silent on the inclusion of instruction relating to assessment of elder abuse or neglect. Additionally, current licensure requirements do not address dependent adults as a specific population, though Welfare and Institutions Code Section 15630(a) requires any health practitioner providing care or services to an elder or dependent adult to report an incident of abuse or neglect.

2) Changes to MFT Curriculum by SB 33. The Board, by request of, and in consultation with, the California Commission on Aging (CCoA) included elder adult centered education requirements in SB 33 (Correa), Chapter 26, Statutes of 2009. As a result of the passage of SB 33, the following are requirements for MFT licensure applicants who begin graduate study after August 1, 2012, or who begin study before August 1, 2012 but fail to complete that study before December 31, 2018:

- The qualifying degree must include coursework in theories, principles, and methods of a variety of psychotherapeutic orientations directly related to family therapy and marital family systems approaches to treatment and how these theories can be applied therapeutically with individuals, couples, families, adults, including elder adults, children, adolescents, and groups to improve, restore, or maintain healthy relationships. (BPC §4980.36(d)(1))
- The qualifying degree must include instruction in developmental issues from infancy to old age, including aging and its biological, social cognitive and psychological aspects. (BPC §480.36(d)(2)(B)(iii))
- The qualifying degree must include instruction in adult abuse assessment and reporting, long-term care, and end of life and grief (BPC §4980.36(d)(2)(C))

3) Suggested Amendments. This bill includes changes, related to elder and dependent abuse, to the current licensure requirements for LPCCs (commencing January 1, 2011) as well as corresponding requirement changes for LPCC applicants who begin graduate study after August 1, 2012 or begin before that date but fail to complete the program before December 31, 2018. Amendments to BPC Section 4999.33(d)(10) require that, beginning after January 1, 2012, aging and long-term care coursework shall also include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect. The language contained in this subdivision provides for a delayed
implementation (after January 1, 2012) of the new requirement (inclusion of instruction in assessment and reporting). However, this entire section of law has a delayed implementation; this section does not mandate the requirements contained therein unless the applicant begins study after August 1, 2012 or the applicant does not complete study until after December 31, 2018. Therefore the requirements of the section already have a limitation on the applicable population. Additionally, this law will go into effect one year prior to the first individual subject to the January 1, 2012 requirements (instruction in assessment and reporting) enters school or, for those students graduating after 2018, potentially seven years prior to the effective date of the requirements of this subdivision.

Having a provision with a delayed implementation date within a section that already has delayed implementation (and both with different dates: August 1, 2012 and January 1, 2012) would certainly cause confusion not only for students and consumer, but for those Board staff tasked with evaluating licensure applications.

To create consistency and clarity, staff suggests taking out the January 1, 2012 implementation date from this subdivision (4999.33(d)(10)), and make that specified instruction mandatory for anyone subject to this section (those applicants that begins study after August 1, 2012 or those applicants that not complete study until after December 31, 2018).

4) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee voted to recommend to the Board a position of support if the bill is amended to strike the delayed implementation provision in Section 4.999.33(d)(10).

5) **Support and Opposition (As of April 6, 2010).**
   Support:
   - California Commission on Aging (Co-Sponsor)
   - Congress of California Seniors (Co-Sponsor)
   - County Welfare Directors Association of California (Co-Sponsor)
   - Alzheimer's Association
   - City and County of San Francisco

   Opposition: None on file.

6) **History**
   2010
   - Apr. 6 From committee:  Do pass, and re-refer to Com. on APPR. 
   - Mar. 25 Re-referred to Com. on B. & P.
   - Mar. 24 From committee chair, with author's amendments:  Amend, and re-refer to Com. on B. & P. Read second time and amended.
   - Mar. 11 Referred to Com. on B. & P.
   - Feb. 22 Read first time.
   - Feb. 21 From printer.  May be heard in committee March 23.
   - Feb. 19 Introduced.  To print.
ASSEMBLY BILL No. 2435

Introduced by Assembly Member Bonnie Lowenthal

February 19, 2010

An act to amend Sections 28, 2915.5, 2915.7, 4980.37, 4980.39, and 4980.43, 4996.25, 4996.26, 4999.32, and 4999.33 of the Business and Professions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL’S DIGEST

AB 2435, as amended, Bonnie Lowenthal. Elder and dependent adult abuse.

(1) Existing law provides for the licensing and regulation of psychologists, professional clinical counselors, clinical social workers, and marriage and family therapists. Existing law requires a person applying for licensure in these professions to have completed specified coursework or training in child abuse assessment and reporting from certain types of institutions.

This bill, on and after January 1, 2012, would expand the required coursework or encourage the Board of Psychology and the Board of Behavioral Sciences to include in that training to additionally cover elder and dependent adult abuse assessment and reporting, and would make legislative findings with regard to that training.

(2) Existing law, with respect to psychologists, licensed clinical social workers, and licensed professional clinical counselors, requires a licensee to complete, as a condition of licensure and relicensure, specified coursework in aging.
This bill, on and after January 1, 2012, would expand the required coursework to additionally cover elder and dependent adult abuse assessment and reporting.

(2)

(3) Existing law, with respect to marriage and family therapists, requires an applicant for licensure or registration to possess a doctor’s or master’s degree in various disciplines, including marriage, family, and child counseling, relative to applicants who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018.

This bill would instead refer to marriage, family, older adult, and child counseling authorize the requisite coursework related to developmental issues and life events to include coursework in abuse and neglect of older and dependent adults.

(3)

(4) Existing law requires an applicant for licensure as a marriage and family therapist under (2) (3) to complete a minimum of 10 contact hours of coursework in aging and long-term care, which may include the biological, social, and psychological aspects of aging.

This bill, on and after January 1, 2012, would require the coursework to include instruction on the assessment and reporting of elder and dependent adult abuse and neglect, and associated treatment.

(4)

(5) Existing law requires an applicant for licensure as a marriage and family counselor, prior to applying for a licensure examination, to complete certain hours of experience, including, among other things, not less than 500 total hours of experience in diagnosing and treating couples, families, and children.

This bill would include diagnosing and treating older adults within this encourage those hours of experience requirement to include working with elders and dependent adults.


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

1 SECTION 1. Section 28 of the Business and Professions Code is amended to read:

3 28. The Legislature finds that there is a need to ensure that
4 professionals of the healing arts who have demonstrable contact
with victims and potential victims of child, elder, and dependent adult abuse, and abusers and potential abusers of children, elders, and dependent adults are provided with adequate and appropriate training regarding the assessment and reporting of child, elder, and dependent adult abuse which will ameliorate, reduce, and eliminate the trauma of abuse and neglect and ensure the reporting of abuse in a timely manner to prevent additional occurrences.

The Board of Psychology and the Board of Behavioral Sciences shall establish required training in the above-referenced areas of area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage and family therapist. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal. With respect to elder and dependent adult abuse, the requirement for training shall apply on and after January 1, 2012.

All persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage and family therapist shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in the above-referenced areas of child abuse assessment and reporting that meets the requirements of this section, including detailed knowledge of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code. With respect to elder and dependent adult abuse, the requirement shall apply on and after January 1, 2012: Section 11165 of the Penal Code. The training shall meet all of the following requirements:

(a) Be obtained from one of the following sources:
   (1) An accredited or approved educational institution, as defined in Sections 2902, 4980.36, 4980.37, and 4996.18, including extension courses offered by those institutions.
   (2) A continuing education provider approved by the responsible board.
   (3) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved by the responsible board.
   (b) Have a minimum of seven contact hours.
   (c) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury,
and abuse in out-of-home care. The training shall also include
physical and behavioral indicators of abuse, crisis counseling
techniques, community resources, rights and responsibilities of
reporting, consequences of failure to report, caring for the needs
of a child, elder, or dependent adult’s needs after a report
is made, sensitivity to previously abused children and adults, and
implications and methods of treatment for children and adults.
(d) An applicant shall provide the appropriate board with
documentation of completion of the required child, elder, and
dependent adult abuse training.
The Board of Psychology and the Board of Behavioral Sciences
shall exempt an applicant who applies for an exemption from the
requirements of this section and who shows to the satisfaction of
the board that there would be no need for the training in his or her
practice because of the nature of that practice.
It is the intent of the Legislature that a person licensed as a
psychologist, clinical social worker, or marriage and family
therapist have minimal but appropriate training in the areas of
child, elder, and dependent adult abuse assessment and reporting.
It is not intended that by solely complying with the requirements
of this section, a practitioner is fully trained in the subject of
treatment of child, elder, and dependent adult abuse victims and
abusers.
The Board of Psychology and the Board of Behavioral Sciences
are encouraged to include coursework regarding the assessment
and reporting of elder and dependent adult abuse in the required
training on aging and long-term care issues prior to licensure or
license renewal.
SEC. 2. Section 2915.5 of the Business and Professions Code
is amended to read:
2915.5. (a) Any applicant for licensure as a psychologist who
began graduate study on or after January 1, 2004, shall complete,
as a condition of licensure, a minimum of 10 contact hours of
coursework in aging and long-term care, which could include, but
is not limited to, the biological, social, and psychological aspects
of aging. On and after January 1, 2012, this coursework shall
include instruction on the assessment and reporting of, as well as
treatment related to, elder and dependent adult abuse and neglect.
(b) Coursework taken in fulfillment of other educational
requirements for licensure pursuant to this chapter, or in a separate
course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution’s required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

SEC. 3. Section 2915.7 of the Business and Professions Code is amended to read:

2915.7. (a) A licensee who began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care during his or her first renewal period after the operative date of this section, and shall submit to the board evidence acceptable to the board of the person’s satisfactory completion of that course.

(b) The course should include, but is not limited to, the biological, social, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(c) Any person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken prior to the operative date of this section, or proof of equivalent teaching or practice experience. The board, in its discretion, may accept that certification as meeting the requirements of this section.

(d) The board may not renew an applicant’s license until the applicant has met the requirements of this section.

(e) A licensee whose practice does not include the direct provision of mental health services may apply to the board for an exception to the requirements of this section.

(f) This section shall become operative on January 1, 2005.

SEC. 4. Section 4980.37 of the Business and Professions Code is amended to read:
4980.37. (a) This section shall apply to applicants for licensure or registration who begin graduate study before August 1, 2012, and complete that study on or before December 31, 2018. Those applicants may alternatively qualify under paragraph (2) of subdivision (a) of Section 4980.36.

(b) To qualify for a license or registration, applicants shall possess a doctor’s or master’s degree in marriage, family, elder, adult, and child counseling, marriage and family therapy, psychology, clinical psychology, counseling psychology, or counseling with an emphasis in either marriage, family, and child counseling or marriage and family therapy, obtained from a school, college, or university accredited by a regional accrediting agency recognized by the United States Department of Education or approved by the Bureau for Private Postsecondary and Vocational Education. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation or approval. In order to qualify for licensure pursuant to this section, a doctor’s or master’s degree program shall be a single, integrated program primarily designed to train marriage and family therapists and shall contain no less than 48 semester or 72 quarter units of instruction. This instruction shall include no less than 12 semester units or 18 quarter units of course work in the areas of marriage, family, and child counseling, and marital and family systems approaches to treatment. The coursework shall include all of the following areas:

1. The salient theories of a variety of psychotherapeutic orientations directly related to marriage and family therapy, and marital and family systems approaches to treatment.
2. Theories of marriage and family therapy and how they can be utilized in order to intervene therapeutically with couples, families, adults, children, and groups.
3. Developmental issues and life events from infancy to old age and their effect on individuals, couples, and family relationships. This may include coursework that focuses on specific family life events and the psychological, psychotherapeutic, and health implications that arise within couples and families, including, but not limited to, childbirth, child rearing, childhood, adolescence, adulthood, marriage, divorce, blended families,
stepparenting, abuse and neglect of older and dependent adults, and geropsychology.

(4) A variety of approaches to the treatment of children.

The board shall, by regulation, set forth the subjects of instruction required in this subdivision.

(c) (1) In addition to the 12 semester or 18 quarter units of coursework specified in subdivision (b), the doctor’s or master’s degree program shall contain not less than six semester or nine quarter units of supervised practicum in applied psychotherapeutic technique, assessments, diagnosis, prognosis, and treatment of premarital, couple, family, and child relationships, including dysfunctions, healthy functioning, health promotion, and illness prevention, in a supervised clinical placement that provides supervised fieldwork experience within the scope of practice of a marriage and family therapist.

(2) For applicants who enrolled in a degree program on or after January 1, 1995, the practicum shall include a minimum of 150 hours of face-to-face experience counseling individuals, couples, families, or groups.

(3) The practicum hours shall be considered as part of the 48 semester or 72 quarter unit requirement.

(d) As an alternative to meeting the qualifications specified in subdivision (b), the board shall accept as equivalent degrees those master’s or doctor’s degrees granted by educational institutions whose degree program is approved by the Commission on Accreditation for Marriage and Family Therapy Education.

(e) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage and family therapists, a degree program that meets the educational qualifications for licensure or registration under this section shall do all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.
(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(7) Prepare students to be familiar with cross-cultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California’s population, including, but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(f) Educational institutions are encouraged to design the practicum required by this section to include marriage and family therapy experience in low-income and multicultural mental health settings.

(g) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

SEC. 5.

Section 4980.39 of the Business and Professions Code is amended to read:

(a) An applicant for licensure whose education qualifies him or her under Section 4980.37 shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. This coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the
applicant graduated stating that the coursework required by this
section is included within the institution’s required curriculum for
graduation, or within the coursework, that was completed by the
applicant.
(d) The board shall not issue a license to the applicant until the
applicant has met the requirements of this section.
(e) This section shall remain in effect only until January 1, 2019,
and as of that date is repealed, unless a later enacted statute, that
is enacted before January 1, 2019, deletes or extends that date.
SEC. 4.
SEC. 6. Section 4980.43 of the Business and Professions Code
is amended to read:
4980.43. (a) Prior to applying for licensure examinations, each
applicant shall complete experience that shall comply with the
following:
(1) A minimum of 3,000 hours completed during a period of at
least 104 weeks.
(2) Not more than 40 hours in any seven consecutive days.
(3) Not less than 1,700 hours of supervised experience
completed subsequent to the granting of the qualifying master’s
or doctor’s degree.
(4) Not more than 1,300 hours of supervised experience obtained
prior to completing a master’s or doctor’s degree.
The applicant shall not be credited with more than 750 hours of
counseling and direct supervisor contact prior to completing the
master’s or doctor’s degree.
(5) No hours of experience may be gained prior to completing
either 12 semester units or 18 quarter units of graduate instruction
and becoming a trainee except for personal psychotherapy.
(6) No hours of experience gained more than six years prior to
the date the application for examination eligibility was filed, except
that up to 500 hours of clinical experience gained in the supervised
practicum required by subdivision (c) of Section 4980.37 and
subparagraph (B) of paragraph (1) of subdivision (d) of Section
4980.36 shall be exempt from this six-year requirement.
(7) Not more than a combined total of 1,250 hours of experience
in the following:
(A) Direct supervisor contact.
(B) Professional enrichment activities. For purposes of this
chapter, “professional enrichment activities” include the following:
(i) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant’s supervisor. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.

(ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.

(C) Client centered advocacy.

(8) Not more than 500 hours of experience providing group therapy or group counseling.

(9) Not more than 250 hours of experience administering and evaluating psychological tests, writing clinical reports, writing progress notes, or writing process notes.

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, older adults, and children. For the first 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telemedicine in accordance with Section 2290.5.

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to
employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern’s employment as a volunteer upon application for licensure.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, “one hour of direct supervisor contact” means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervisees and in segments lasting no less than one continuous hour.

(6) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:
(A) Lawfully and regularly provides mental health counseling or psychotherapy.
(B) Provides oversight to ensure that the trainee’s work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.
(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:
(A) Lawfully and regularly provides mental health counseling or psychotherapy.
(B) Provides oversight to ensure that the intern’s work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.
(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.
(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.
(4) Except for periods of time during a supervisor’s vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern’s employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor’s vacation or sick leave if the supervision meets the requirements of this section.
(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.
(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in order to be credited for postdegree hours of supervised experience gained toward licensure.
(g) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master’s or doctor’s degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers’ businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.
SEC. 7. Section 4996.25 of the Business and Professions Code is amended to read:

4996.25. (a) Any applicant for licensure as a licensed clinical social worker who began graduate study on or after January 1, 2004, shall complete, as a condition of licensure, a minimum of 10 contact hours of coursework in aging and long-term care, which could include, but is not limited to, the biological, social, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(b) Coursework taken in fulfillment of other educational requirements for licensure pursuant to this chapter, or in a separate course of study, may, at the discretion of the board, fulfill the requirements of this section.

(c) In order to satisfy the coursework requirement of this section, the applicant shall submit to the board a certification from the chief academic officer of the educational institution from which the applicant graduated stating that the coursework required by this section is included within the institution’s required curriculum for graduation, or within the coursework, that was completed by the applicant.

(d) The board shall not issue a license to the applicant until the applicant has met the requirements of this section.

SEC. 8. Section 4996.26 of the Business and Professions Code is amended to read:

4996.26. (a) A licensee who began graduate study prior to January 1, 2004, shall complete a three-hour continuing education course in aging and long-term care during his or her first renewal period after the operative date of this section, and shall submit to the board evidence acceptable to the board of the person’s satisfactory completion of the course.

(b) The course shall include, but is not limited to, the biological, social, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(c) Any person seeking to meet the requirements of subdivision (a) of this section may submit to the board a certificate evidencing completion of equivalent courses in aging and long-term care taken...
prior to the operative date of this section, or proof of equivalent
teaching or practice experience. The board, in its discretion, may
accept that certification as meeting the requirements of this section.
(d) The board may not renew an applicant’s license until the
applicant has met the requirements of this section.
(e) Continuing education courses taken pursuant to this section
shall be applied to the 36 hours of approved continuing education
required in Section 4996.22.
(f) This section shall become operative on January 1, 2005.
SEC. 9. Section 4999.32 of the Business and Professions Code
is amended to read:
4999.32. (a) This section shall apply to applicants for
examination eligibility or registration who begin graduate study
before August 1, 2012, and complete that study on or before
December 31, 2018. Those applicants may alternatively qualify
under paragraph (2) of subdivision (a) of Section 4999.33.
(b) To qualify for examination eligibility or registration,
applicants shall possess a master’s or doctoral degree that is
counseling or psychotherapy in content and that meets the
requirements of this section, obtained from an accredited or
approved institution, as defined in Section 4999.12. For purposes
of this subdivision, a degree is “counseling or psychotherapy in
content” if it contains the supervised practicum or field study
experience described in paragraph (3) of subdivision (c) and, except
as provided in subdivision (d), the coursework in the core content
areas listed in subparagraphs (A) to (I), inclusive, of paragraph (1)
of subdivision (c).
(c) The degree described in subdivision (b) shall contain not
less than 48 graduate semester or 72 graduate quarter units of
instruction, which shall, except as provided in subdivision (d),
include all of the following:
(1) The equivalent of at least three semester units or four and
one-half quarter units of graduate study in each of following core
content areas:
(A) Counseling and psychotherapeutic theories and techniques,
including the counseling process in a multicultural society, an
orientation to wellness and prevention, counseling theories to assist
in selection of appropriate counseling interventions, models of
counseling consistent with current professional research and
practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors’ roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors’ roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.

(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of
research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession’s scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner’s sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(2) In addition to the course requirements described in paragraph (1), a minimum of 12 semester units or 18 quarter units of advanced coursework to develop knowledge of specific treatment issues, special populations, application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.

(B) Assessment.

(C) Diagnosis.

(D) Prognosis.

(E) Treatment.

(F) Issues of development, adjustment, and maladjustment.

(G) Health and wellness promotion.

(H) Other recognized counseling interventions.

(I) A minimum of 150 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) (1) An applicant whose degree is deficient in no more than two of the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master’s or
postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (I), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.

(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.

(e) In addition to the degree described in this section, or as part of that degree, an applicant shall complete the following coursework or training prior to registration as an intern:

(1) A minimum of 15 contact hours of instruction in alcoholism and other chemical substance abuse dependency, as specified by regulation.

(2) A minimum of 10 contact hours of training or coursework in human sexuality as specified in Section 25, and any regulations promulgated thereunder.

(3) A two semester unit or three quarter unit survey course in psychopharmacology.

(4) A minimum of 15 contact hours of instruction in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics.

(5) A minimum of seven contact hours of training or coursework in child abuse assessment and reporting as specified in Section 28 and any regulations adopted thereunder.

(6) A minimum of 18 contact hours of instruction in California law and professional ethics for professional clinical counselors. When coursework in a master’s or doctoral degree program is acquired to satisfy this requirement, it shall be considered as part of the 48 semester unit or 72 quarter unit requirement in subdivision (c).

(7) A minimum of 10 contact hours of instruction in aging and long-term care, which may include, but is not limited to, the biological, social, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.
(8) A minimum of 15 contact hours of instruction in crisis or trauma counseling, including multidisciplinary responses to crises, emergencies, or disasters, and brief, intermediate, and long-term approaches.

(f) This section shall remain in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

SEC. 10. Section 4999.33 of the Business and Professions Code is amended to read:

4999.33. (a) This section shall apply to the following:

1. Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and do not complete that study on or before December 31, 2018.

2. Applicants for examination eligibility or registration who begin graduate study before August 1, 2012, and who graduate from a degree program that meets the requirements of this section.

3. Applicants for examination eligibility or registration who begin graduate study on or after August 1, 2012.

(b) To qualify for examination eligibility or registration, applicants shall possess a master’s or doctoral degree that is counseling or psychotherapy in content and that meets the requirements of this section, obtained from an accredited or approved institution, as defined in Section 4999.12. For purposes of this subdivision, a degree is “counseling or psychotherapy in content” if it contains the supervised practicum or field study experience described in paragraph (3) of subdivision (c) and, except as provided in subdivision (f), the coursework in the core content areas listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c).

(c) The degree described in subdivision (b) shall contain not less than 60 graduate semester or 90 graduate quarter units of instruction, which shall, except as provided in subdivision (f), include all of the following:

1. The equivalent of at least three semester units or four and one-half quarter units of graduate study in all of the following core content areas:
   - Counseling and psychotherapeutic theories and techniques, including the counseling process in a multicultural society, an orientation to wellness and prevention, counseling theories to assist in selection of appropriate counseling interventions, models of
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counseling consistent with current professional research and practice, development of a personal model of counseling, and multidisciplinary responses to crises, emergencies, and disasters.

(B) Human growth and development across the lifespan, including normal and abnormal behavior and an understanding of developmental crises, disability, psychopathology, and situational and environmental factors that affect both normal and abnormal behavior.

(C) Career development theories and techniques, including career development decisionmaking models and interrelationships among and between work, family, and other life roles and factors, including the role of multicultural issues in career development.

(D) Group counseling theories and techniques, including principles of group dynamics, group process components, group developmental stage theories, therapeutic factors of group work, group leadership styles and approaches, pertinent research and literature, group counseling methods, and evaluation of effectiveness.

(E) Assessment, appraisal, and testing of individuals, including basic concepts of standardized and nonstandardized testing and other assessment techniques, norm-referenced and criterion-referenced assessment, statistical concepts, social and cultural factors related to assessment and evaluation of individuals and groups, and ethical strategies for selecting, administering, and interpreting assessment instruments and techniques in counseling.

(F) Multicultural counseling theories and techniques, including counselors’ roles in developing cultural self-awareness, identity development, promoting cultural social justice, individual and community strategies for working with and advocating for diverse populations, and counselors’ roles in eliminating biases and prejudices, and processes of intentional and unintentional oppression and discrimination.

(G) Principles of the diagnostic process, including differential diagnosis, and the use of current diagnostic tools, such as the current edition of the Diagnostic and Statistical Manual, the impact of co-occurring substance use disorders or medical psychological disorders, established diagnostic criteria for mental or emotional disorders, and the treatment modalities and placement criteria within the continuum of care.
(H) Research and evaluation, including studies that provide an understanding of research methods, statistical analysis, the use of research to inform evidence-based practice, the importance of research in advancing the profession of counseling, and statistical methods used in conducting research, needs assessment, and program evaluation.

(I) Professional orientation, ethics, and law in counseling, including California law and professional ethics for professional clinical counselors, professional ethical standards and legal considerations, licensing law and process, regulatory laws that delineate the profession’s scope of practice, counselor-client privilege, confidentiality, the client dangerous to self or others, treatment of minors with or without parental consent, relationship between practitioner’s sense of self and human values, functions and relationships with other human service providers, strategies for collaboration, and advocacy processes needed to address institutional and social barriers that impede access, equity, and success for clients.

(J) Psychopharmacology, including the biological bases of behavior, basic classifications, indications, and contraindications of commonly prescribed psychopharmacological medications so that appropriate referrals can be made for medication evaluations and so that the side effects of those medications can be identified.

(K) Addictions counseling, including substance abuse, co-occurring disorders, and addiction, major approaches to identification, evaluation, treatment, and prevention of substance abuse and addiction, legal and medical aspects of substance abuse, populations at risk, the role of support persons, support systems, and community resources.

(L) Crisis or trauma counseling, including crisis theory; multidisciplinary responses to crises, emergencies, or disasters; cognitive, affective, behavioral, and neurological effects associated with trauma; brief, intermediate and long-term approaches; and assessment strategies for clients in crisis and principles of intervention for individuals with mental or emotional disorders during times of crisis, emergency, or disaster.

(M) Advanced counseling and psychotherapeutic theories and techniques, including the application of counseling constructs, assessment and treatment planning, clinical interventions, therapeutic relationships, psychopathology, or other clinical topics.
In addition to the course requirements described in paragraph (1), 15 semester units or 22.5 quarter units of advanced coursework to develop knowledge of specific treatment issues or special populations.

(3) Not less than six semester units or nine quarter units of supervised practicum or field study experience, or the equivalent, in a clinical setting that provides a range of professional clinical counseling experience, including the following:

(A) Applied psychotherapeutic techniques.
(B) Assessment.
(C) Diagnosis.
(D) Prognosis.
(E) Treatment.
(F) Issues of development, adjustment, and maladjustment.
(G) Health and wellness promotion.
(H) Professional writing including documentation of services, treatment plans, and progress notes.
(I) How to find and use resources.
(J) Other recognized counseling interventions.
(K) A minimum of 280 hours of face-to-face supervised clinical experience counseling individuals, families, or groups.

(d) The 60 graduate semester units or 90 graduate quarter units of instruction required pursuant to subdivision (c) shall, in addition to meeting the requirements of subdivision (c), include instruction in all of the following:

(1) The understanding of human behavior within the social context of socioeconomic status and other contextual issues affecting social position.
(2) The understanding of human behavior within the social context of a representative variety of the cultures found within California.
(3) Cultural competency and sensitivity, including a familiarity with the racial, cultural, linguistic, and ethnic backgrounds of persons living in California.
(4) An understanding of the effects of socioeconomic status on treatment and available resources.
(5) Multicultural development and cross-cultural interaction, including experiences of race, ethnicity, class, spirituality, sexual orientation, gender, and disability and their incorporation into the psychotherapeutic process.
(6) Case management, systems of care for the severely mentally ill, public and private services for the severely mentally ill, community resources for victims of abuse, disaster and trauma response, advocacy for the severely mentally ill and collaborative treatment. The instruction required in this paragraph may be provided either in credit level coursework or through extension programs offered by the degree-granting institution.

(7) Human sexuality, including the study of the physiological, psychological, and social cultural variables associated with sexual behavior, gender identity, and the assessment and treatment of psychosexual dysfunction.

(8) Spousal or partner abuse assessment, detection, intervention strategies, and same-gender abuse dynamics.

(9) Child abuse assessment and reporting.

(10) Aging and long-term care, including biological, social, cognitive, and psychological aspects of aging. On and after January 1, 2012, this coursework shall include instruction on the assessment and reporting of, as well as treatment related to, elder and dependent adult abuse and neglect.

(e) A degree program that qualifies for licensure under this section shall do all of the following:

(1) Integrate the principles of mental health recovery-oriented care and methods of service delivery in recovery-oriented practice environments.

(2) Integrate an understanding of various cultures and the social and psychological implications of socioeconomic position.

(3) Provide the opportunity for students to meet with various consumers and family members of consumers of mental health services to enhance understanding of their experience of mental illness, treatment, and recovery.

(f) (1) An applicant whose degree is deficient in no more than three of the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) may satisfy those deficiencies by successfully completing post-master’s or postdoctoral degree coursework at an accredited or approved institution, as defined in Section 4999.12.

(2) Coursework taken to meet deficiencies in the required areas of study listed in subparagraphs (A) to (M), inclusive, of paragraph (1) of subdivision (c) shall be the equivalent of three semester units or four and one-half quarter units of study.
(3) The board shall make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements, regardless of accreditation.
Existing Law:

1) Requires specified agencies, including the Board, to require applicants to furnish a full set of fingerprints for the purpose of conducting criminal history record checks. (Business and Professions Code §144)

2) Allows the Board to obtain and receive criminal history information from the Department of Justice (DOJ) and the United States Federal Bureau of Investigation (FBI). (BPC §144)

3) Allows the board to deny a license or a registration, or suspend or revoke a license of registration for unprofessional conduct, including the conviction of a crime substantially related to the qualifications, functions or duties of a licensee or registrant. (BPC 4982(a), 4989.54(a) and 4992.3(a))

4) Requires a licensee upon renewal to notify the Board whether he or she has been convicted of a misdemeanor or a felony. (BPC §4996.6)

5) Requires all Board licensees and registrants that have not previously submitted fingerprints to DOJ, or for whom an electronic record of the submission of the fingerprints does not exist with the DOJ, to complete a state and federal level criminal offender record information search through the DOJ before his or her license renewal date, effective June 19, 2009. (Title 16, California Code of Regulations, Section 1815)

This Bill:

1) States that specified Boards under the Department of Consumer Affairs (DCA) shall require applicants for licensure and petitioners for reinstatement of a revoked, surrendered, or canceled license to successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice (DOJ). (BPC §144(a) and (b))

2) Requires specified boards to direct applicants for a license and renewal to submit to DOJ fingerprints for the purpose of obtaining information as to the existence and content of a state or federal criminal record. (BPC §144(c) and BPC §144.5(d))

3) Requires DOJ to charge a fee sufficient to cover the cost of processing the criminal record search pursuant to this bill. (BPC §144(c) and BPC §144.5(d))
4) States that specified agencies shall require a licensee who has not previously submitted fingerprints or for whom a record of the submission of fingerprints no longer exists to, as a condition of license renewal, successfully complete a state and federal level criminal offender record information search conducted through DOJ. (BPC §144.5(a))

5) Requires a licensee subject to the fingerprint submission requirements upon renewal to certify on the renewal application that he or she has successfully complete a state and federal level criminal offender record information search. (BPC §144.5(b)(1))

6) Requires a licensee subject to the licensure renewal provisions of this bill to retain for at least three years, either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ or a receipt evidencing that the licensee’s fingerprints were taken. (BPC §144.5(b)(2))

7) Makes failure to certify the successful completion of a criminal offender record information search renders an application for renewal incomplete and prohibits an agency from renewing the license until a complete application is submitted. (BPC §144.5(c))

8) Allows an agency to waive the license renewal requirements contained in this bill if a license is inactive or retired, or if the licensee is actively serving in the military. (BPC §144.5(e))

9) Makes a licensee who falsely certifies completion of a state and federal level criminal record information search may be subject to disciplinary action by the Board. (BPC §144.5(f))

10) Requires specified boards to require a licensee, as a condition of renewal, to notify the respective board of any felony or misdemeanor since his or her last renewal. (BPC §144.6(a))

11) Makes the provisions related to fingerprint submission as a condition of licensure renewal operative on January 1, 2011. (BPC §144.5(h))

12) Deletes related obsolete language. (BPC §144(c))

Comment:

1) Author’s Intent. According to the Author’s office, the purpose of this legislation is to create a consistent fingerprinting policy for all licensees under the DCA umbrella.

2) Background. On April 1, 1992, the Board began requiring Marriage and Family Therapist, Marriage and Family Therapist Intern, Clinical Social Worker, Associate Clinical Social Worker and Educational Psychologist applicants to submit fingerprint cards for the purpose of conducting criminal history background investigations through DOJ and the FBI. The fingerprinting of applicants allows the Board a mechanism to enhance public protection by conducting a more thorough screening of applicants for possible registration or licensure. All registrants were required to submit a fingerprint card and processing fee with their applications. Candidates already in the examination cycle were required to submit fingerprints by set dates that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board.

Subsequent arrests and/or convictions reports regarding licensees are reported electronically to the Board on individuals fingerprinted with DOJ. Upon receipt of subsequent information, the Board’s Enforcement staff follows the same procedures as in the denial process (police and court documents are ordered and the licensee is asked to
provide an explanation of the facts and circumstances surrounding the incident). Once all the information is received, the Board’s Executive Officer will make a determination of whether the subsequent conviction warrants disciplinary action. The Board evaluates any evidence of rehabilitation as identified in 16 CCR Section 1814. If disciplinary action is warranted, the case will be forwarded to the Office of the Attorney General for filing of an Accusation. The licensee has the right to request an Administrative Hearing.

Sometime after implementing the fingerprint process in 1992, information was received by the Department of Consumer Affairs (DCA) that the FBI questioned the authority given to State agencies to conduct fingerprint checks through the FBI. Legislation was sponsored and in 1997, the California Legislature gave the Board and other entities under the umbrella of the DCA the authority under BPC Section 144, to require a DOJ and FBI criminal history background check on all applicants seeking registration and/or licensure (SB 1346, Chapter 758, Statutes of 1997).

Since 1998, all applicants for registration and licensure must submit a full set of fingerprints as part of the application process. With limited exceptions, all applicants are required to submit their prints via Live Scan. Traditional fingerprint cards (hard cards) are accepted only in those cases where the applicant is located outside of California, or demonstrates a hardship approved by the board.

Although the Board implemented a fingerprinting process in 1992, the fingerprint requirement related to candidates already in the examination cycle by set dates that were tied to their scheduled licensure examination. Individuals licensed before April 1, 1992 were not required to submit fingerprints to the Board. Legislation creating BPC 144 in 1998 allowed the Board to require applicants to submit fingerprints for the purpose of conducting criminal history records check. Due to the narrow interpretation of the language of BPC 144, the Board has only required applicants for registration and licensure to meet the fingerprint requirement and therefore, those board registrants in the examination cycle before 1992 or individuals licensed with the Board before 1992 have not met the fingerprint requirement set forth in BPC 144. Those licensees and registrants that have not been fingerprinted do not generate a subsequent arrest notification by the DOJ and therefore, the board is not notified, except by licensee and registrant self-disclosure on renewal, of arrests and/or criminal convictions. It is necessary for the board to have the knowledge of unprofessional conduct, including arrests and criminal convictions, in order to proceed with disciplinary action.

3) **Board Regulation.** The Board’s regulation requiring all Board licensees and registrants for whom an electronic record of his or her fingerprints does not exist in the DOJ’s criminal offender record identification database to successfully complete a state and federal level criminal offender record information search conducted through the DOJ went into effect June 19, 2009.

Specifically the Board’s regulation does the following:

- Require all licensees on or after October 31, 2009 who have not previously submitted fingerprints to the DOJ or for whom an electronic record of the submission of the fingerprints does not exist with DOJ, to complete a state and federal level criminal offender record information search conducted through the DOJ before his or her license renewal date. The purpose of this provision is to ensure the board receives criminal background and subsequent conviction information on Board registrants and licensees in order to protect the public from unprofessional practitioners and fully implement the
Board’s mandate to enforce the unprofessional conduct statutes of Board licensing law (BPC 4982(a), 4989.54(a) and 4992.3(a)).

- Requires a license or registration that has been revoked to not be reinstated until the licensee or registrant has submitted fingerprints for a criminal records search conducted through DOJ. The purpose of this provision is to make certain that all licensees, irrespective of licensure status, meets the fingerprinting requirements set forth in this regulation before resuming practice with the public.

- Exempts from the requirements of this proposed regulation licensees or registrants actively serving in the United States military. The purpose of this provision is to allow those licensees or registrants not in active practice to only meet the requirement before returning to active practice with the public.

- Requires licensees and registrants to retain for at least three years either a receipt showing that he or she has electronically transmitted his or her fingerprint images to DOJ, or for those licensees or registrants who did not use an electronic fingerprinting system, a receipt evidencing that the licensees or registrants fingerprints were taken. The purpose of this provision is to permit the licensee or registrant to demonstrate compliance with the fingerprinting requirement in the event that fingerprint reports are not processed correctly by DOJ.

- Requires licensees and registrants to pay, as directed by the board, the actual cost of compliance with the fingerprinting requirements of this regulation. The purpose of this provision is to make certain that the licensee or registrant pays the full cost of the service provided.

- Allows the Board to take disciplinary action against a licensee or registrant if he or she fails to comply with the fingerprinting requirements set forth in this regulation. The purpose of this provision is to ensure compliance with this new regulation.

- Makes failure to submit fingerprints to DOJ a citable fine and allows the executive officer of the board to assess fines not to exceed five thousand ($5,000) for each investigation for the violation. The purpose of this provision is to better ensure compliance and enforceability of this regulation and to further implement the Board’s authority under BPC 125.9.

4) **Differences in Proposed Legislation and Board Rulemaking.** The language in SB 389 and the Board’s fingerprint regulation are very similar. However, one major difference is that the Board’s regulation is NOT tied to license renewal. If a licensee fails to comply with the fingerprint requirements as set forth in the Board’s regulation it is a citable offense; fingerprint submission is not a condition of renewal.

Another significant difference between the Board regulation and the bill before the Committee is the implementation timeline. SB 389 fingerprint submission requirement as a condition of renewal becomes operative for those renewing after January 1, 2011. The Board’s regulation went into effect June 19, 2009 and all licensees and registrants subject to the regulatory requirements (those that have not submitted fingerprints previously or for whom an electronic record of their fingerprints do not exist with DOJ) began submitting fingerprints November 1, 2009. As of April 1, 2010, the Board had processed 8,238 fingerprint submissions for those licensees subject to the regulation, accounting for 14% of the population that did not have an electronic record of his or her fingerprints on file with DOJ.
5) Fingerprint Submission and Certification as a Condition of License Renewal. The Board’s regulation does not make fingerprint submission a condition of licensure or registration for a number of reasons. First, due to the nature of the work Board licensees perform and the populations they serve, the Board did not feel that it was appropriate to take these professionals out of the workforce for failure to submit fingerprints by their renewal date. Many people and entities rely on Board licensees, including some communities that may only have one mental health practitioner serving the entire area/region.

Section 144.5(a) of this legislation states that renewal is contingent on successful completion of the process necessary for a Criminal Offender Record Information (CORI) search by DOJ. Subdivision (b) of the same section makes certification of completion of CORI an additional condition of renewal. Therefore, if a licensee fails to check the box (certify that he or she has completed the requirement) their licenses may not be renewed (though they have actually completed a CORI search with DOJ). This can mean a delay in the ability of a licensee to practice.

The Board of Behavioral Sciences is one of the boards under DCA that have proposed fingerprint regulations either already in place or in the rulemaking process. Each board is different and serves a unique population of consumers and licensees and therefore, creating a one size fits all solution, as with this proposed legislation, may not be the best way to address the fingerprinting problem.

If this bill were to go into effect as currently written it would hamper the Board's ability to protect consumers from professionals with related convictions in an expedient and efficient manner. It is important that the Board be able to continue to ensure that all Board licensees meet the current licensing standards and consumers are not unduly put into harm's way.

6) SB 389 Implementation Issues.

Linking fingerprint submission to licensure renewal creates a significant workload problem for the Board, in addition to creating confusion to the licensees. Currently the Employment Development Department (EDD) sends Board renewal notices (automatically 90 days before license expiration) to all licensees and registrants. If fingerprint submission is a condition of renewal, and certification is required on the renewal form, then all licensees, 90 days before the expiration of their license, would get a renewal form asking for certification of fingerprint submission. In the Board’s case, that means that 40,000 licensee that do not need to meet the new requirement (because they have already been fingerprinted) will get a renewal form that asks for certification of fingerprint submission. The volume of inquires that would result would be overwhelming to the Board staff and would take time away from processing new licenses and renewals. This of course could lead to less professionals being able to practice.

As currently written, this bill stipulates that the fingerprint submission upon renewal requirement becomes operative in January 1, 2011. In actuality this means that a licensee could go nearly three years from now before the Board would have a CORI report on a licensee (renewal is biennial; last possible renewal with fingerprints would be due December 31, 2012). The Board’s regulation currently in place will allow the board to receive all fingerprint submissions by October, 2011.

7) Past Board Action. On May 22, 2009 the Board took an oppose position on this bill unless the measure was amended to remove the Board from BPC sections 144.5 and 144.6 of the bill that relates to the fingerprinting of licensees as a condition of renewal. Technical
amendments have since been made to the bill, though the concerns have not been addressed with those amendments.

8) Policy and Advocacy Committee Recommendation. On April 9, 2010, the Policy and Advocacy Committee voted to recommend the Board oppose this bill unless the Board is exempted from the provisions of this bill.

9) Support and Opposition. (As of July 7, 2009)
Support: California Association of Nurse Practitioners
California Medical Board
California Board of Accountancy
California Chiropractic Association

Opposition: Construction Industry Legislative Counsel
Southern California Contractors Association

10) History

2009
July 7 Set, first hearing. Failed passage in committee. Reconsideration granted.
June 30 From committee: Do pass, but first be re-referred to Com. on PUB.S
(Ayes 6, Noes 0.) Re-referred to Com. on PUB. S. (Heard in committee on June 30.)
June 18 To Coms. on B. & P. and PUB. S.
June 3 In Assembly. Read first time. Held at Desk.
June 3 Read third time. Passed. (Ayes 37, Noes 1. Page 1178.) To Assembly.
June 1 From committee: Do pass as amended. (Ayes 12, Noes 0. Page 1070.) Read second time. Amended. To third reading.
May 22 Set for hearing May 28. (Suspense - for vote only.)
May 18 Placed on APPR suspense file.
May 8 Set for hearing May 18.
May 5 Read second time. Amended. Re-referred to Com. on APPR.
May 4 From committee: Do pass as amended, but first amend, and re-refer to Com. on APPR. (Ayes 7, Noes 0. Page 705.)
Apr. 24 Set for hearing April 28.
Apr. 21 From committee: Do pass, but first be re-referred to Com. on PUB.S.
(Ayes 9, Noes 0. Page 580.) Re-referred to Com. on PUB.S.
Mar. 27 Set for hearing April 20.
Mar. 12 To Coms. on B., P. & E.D. and PUB. S.
Feb. 27 From print. May be acted upon on or after March 28.
Feb. 26 Introduced. Read first time. To Com. on RLS. for assignment. To print.

ATTACHMENTS
16 CCR, Section 1815 – Board fingerprinting regulations
An act to amend Section 144 of, and to add Sections 144.5 and 144.6 to, the Business and Professions Code, relating to professions and vocations.

LEGISLATIVE COUNSEL’S DIGEST

SB 389, as amended, Negrete McLeod. Professions and vocations.
Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law authorizes a board to suspend or revoke a license on various grounds, including, but not limited to, conviction of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. Existing law requires applicants to certain boards to provide a full set of fingerprints for the purpose of conducting criminal history record checks.

This bill would make that fingerprinting requirement applicable to the Dental Board of California, the Dental Hygiene Committee of California, the Professional Fiduciaries Bureau, the Osteopathic Medical Board of California, the California Board of Podiatric Medicine, and the State Board of Chiropractic Examiners. The bill would require new applicants for a license and petitioners for reinstatement of a revoked, surrendered, or canceled license, to successfully complete a state and federal level criminal record information search. The bill would also require, commencing January 1, 2011, licensees who have
not previously submitted fingerprints, or for whom a record of the submission of fingerprints no longer exists, to successfully complete the process necessary for a state and federal level criminal offender record information search, as specified. The bill would require licensees applying for license renewal to certify compliance with that requirement, as specified, and would subject a licensee to disciplinary action for making a false certification. The bill would also require a licensee to, as a condition of renewal of the license, notify the board on the license renewal form if he or she, or any member of the personnel of record of the licensee, has been convicted, as defined, of a felony or misdemeanor since the last renewal, or if this is the licensee’s first renewal, since the initial license was issued. The bill would provide that the Contractors’ State License Board shall implement the provisions pertaining to renewal licenses on a specified schedule, after an appropriation is made for this purpose, utilizing its applicable fees.


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

SECTION 1. Section 144 of the Business and Professions Code is amended to read:
1 144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant for a license or a petitioner for reinstatement of a revoked, surrendered, or canceled license to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks and shall require the applicant or petitioner to successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice as provided in subdivision (c) or as otherwise provided in this code.
2 (b) Subdivision (a) applies to the following:
3 (1) California Board of Accountancy.
4 (2) State Athletic Commission.
5 (3) Board of Behavioral Sciences.
6 (4) Court Reporters Board of California.
7 (5) State Board of Guide Dogs for the Blind.
8 (6) California State Board of Pharmacy.
9 (7) Board of Registered Nursing.
10 (8) Veterinary Medical Board.
(9) Registered Veterinary Technician Committee.
(10) Board of Vocational Nursing and Psychiatric Technicians.
(11) Respiratory Care Board of California.
(12) Hearing Aid Dispensers Bureau.
(13) Physical Therapy Board of California.
(14) Physician Assistant Committee of the Medical Board of California.
(15) Speech-Language Pathology and Audiology Board.
(16) Medical Board of California.
(17) State Board of Optometry.
(18) Acupuncture Board.
(19) Cemetery and Funeral Bureau.
(20) Bureau of Security and Investigative Services.
(21) Division of Investigation.
(22) Board of Psychology.
(23) California Board of Occupational Therapy.
(24) Structural Pest Control Board.
(25) Contractors’ State License Board.
(26) Bureau of Naturopathic Medicine.
(27) Dental Board of California.
(28) Dental Hygiene Committee of California.
(29) Professional Fiduciaries Bureau.
(30) California Board of Podiatric Medicine.
(31) Osteopathic Medical Board of California.
(32) State Board of Chiropractic Examiners.

(c) Except as otherwise provided in this code, each agency listed in subdivision (b) shall direct applicants for a license or a petitioner for reinstatement of a revoked, surrendered, or canceled license to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal. The Department of Justice shall forward the fingerprint images and related information received to the Federal Bureau of Investigation and request federal criminal history information. The Department of Justice shall compile and disseminate state and federal responses to the agency.
pursuant to subdivision (p) of Section 11105 of the Penal Code.

The agency shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision. The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

SEC. 2. Section 144.5 is added to the Business and Professions Code, to read:

144.5. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) of Section 144 shall require a licensee who has not previously submitted fingerprints or for whom a record of the submission of fingerprints no longer exists to, as a condition of license renewal, complete the process necessary for a state and federal level criminal offender record information search to be conducted through the Department of Justice as provided in subdivision (d).

(b)(1) A licensee described in subdivision (a) shall, as a condition of license renewal, certify on the renewal application that he or she has successfully completed a state and federal level criminal offender record information search pursuant to subdivision (d).

(2) The licensee shall retain for at least three years, as evidence of the certification made pursuant to paragraph (1), either a receipt showing that he or she has electronically transmitted his or her fingerprint images to the Department of Justice or, for those licensees who did not use an electronic fingerprinting system, a receipt evidencing that the licensee’s fingerprints were taken.

(b) (1) As a condition of license renewal, a licensee described in subdivision (a) shall complete the process necessary for a state and federal level criminal offender record information search to be conducted as provided in subdivision (d).

(2) No license of a licensee described in subdivision (a) shall be renewed until certification by the licensee is received by the agency verifying that the licensee has complied with this subdivision. The certification shall be made on a form provided by the agency not later than the renewal date of the license.

(3) As evidence of the certification made pursuant to paragraph (2), the licensee shall retain either of the following for at least three years:
(A) The receipt showing that the fingerprint images required by this section were electronically transmitted to the Department of Justice.

(B) For those licensees who did not use an electronic fingerprinting system, the receipt evidencing that the fingerprint images required by this section were taken.

(c) Failure to provide the certification required by subdivision (b) renders an application for license renewal incomplete. An agency shall not renew the license until a complete application is submitted.

(d) Each agency listed in subdivision (b) of Section 144 shall direct licensees described in subdivision (a) to submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her recognizance pending trial or appeal. The Department of Justice shall forward the fingerprint images and related information received to the Federal Bureau of Investigation and request federal criminal history information. The Department of Justice shall compile and disseminate state and federal responses to the agency pursuant to subdivision (p) of Section 11105 of the Penal Code. The agency shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision. The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

(e) An agency may waive the requirements of this section if the license is inactive or retired, or if the licensee is actively serving in the military. The agency may not activate an inactive license or return a retired license to full licensure status for a licensee described in subdivision (a) until the licensee has successfully completed a state and federal level criminal offender record information search pursuant to subdivision (d).

(f) With respect to licensees that are business entities, each agency listed in subdivision (b) of Section 144 shall, by regulation, determine which owners, officers, directors, shareholders,
members, agents, employees, or other natural persons who are
representatives of the business entity are required to submit
fingerprint images to the Department of Justice and disclose the
information on its renewal forms, as required by this section.

(f) A licensee who falsely certifies completion of a state and
federal level criminal record information search under subdivision
(b) may be subject to disciplinary action by his or her licensing
agency. (b) shall be subject to disciplinary action.

(g) (1) As it relates to the Contractors’ State License Board,
the provisions of this section shall become operative on the date
on which an appropriation is made in the annual Budget Act to
fund the activities of the Contractors’ State License Board to
accommodate a criminal history record check pursuant to this
section. If this section becomes operative with respect to the
Contractors’ State License Board on or before July 1, 2012, the
Contractors’ State License Board shall implement this section
according to the following schedule, and shall utilize the fees under
its fee cap accordingly:

(A) For licenses initially issued between January 1, 2000, and
December 31, 2005, inclusive, the certification required under
subdivision (b) shall be submitted during the license renewal period
that commences on January 1, 2013.

(B) For licenses initially issued between January 1, 1990, and
December 31, 1999, inclusive, the certification required under
subdivision (b) shall be submitted during the license renewal period
that commences on January 1, 2015.

(C) For licenses initially issued prior to January 1, 1990, the
certification required under subdivision (b) shall be submitted
during the license renewal period that commences on January 1,
2017.

(2) If this section becomes operative with respect to the
Contractors’ State License Board after July 1, 2012, the license
renewal period commencement dates specified in subparagraphs
(A), (B), and (C) of paragraph (1) shall be delayed one year at a
time until this section becomes operative with respect to the
Contractors’ State License Board.

(h) This section shall become operative on January 1, 2011.

SEC. 3. Section 144.6 is added to the Business and Professions
Code, to read:
144.6. (a) An agency described in subdivision (b) of Section 144 shall require a licensee, as a condition of license renewal, to notify the board on the license renewal form if he or she has been notify the agency on the license renewal form if he or she, or any member of the personnel of record of the licensee, has been convicted, as defined in Section 490, of a felony or misdemeanor since his or her last renewal, or if this is the licensee’s first renewal, since the initial license was issued, since the license was last renewed, or since the license was initially issued if it has not been previously renewed.

(b) The reporting requirement imposed under this section shall apply in addition to any other reporting requirement imposed under this code.
§1815 FINGERPRINT SUBMISSION.

(a) All licensees and registrants who have not previously submitted fingerprints as a condition of licensure or registration or for whom an electronic record of the licensee’s fingerprints does not exist in the Department of Justice’s criminal offender record identification database shall successfully complete a state and federal level criminal offender record information search conducted through the Department of Justice by the licensee’s or registrant’s renewal date that occurs on or after October 31, 2009.

(b) Failure of a licensee or registrant to comply with subdivision (a) is grounds for disciplinary action by the board against the license or registration.

(c) Licensees and registrants shall retain, for at least three years, as evidence of their having complied with subdivision (a) either a receipt showing that he or she has electronically transmitted his or her fingerprint images to the Department of Justice or, for those licensees or registrants who did not use an electronic fingerprinting system, a receipt evidencing that the licensee’s or registrant’s fingerprints were taken.

(d) Licensees and registrants shall pay the actual costs for furnishing the fingerprints and conducting the searches in compliance with subdivision (a).

(e) As a condition of petitioning the board for reinstatement of a revoked or surrendered license or registration, an applicant shall comply with subsection (a).

(f) The board may waive the requirements of this section for licensees or registrants who are actively serving in the United States military. The board may not return a license or registration to active status until the licensee or registrant has complied with subdivision (a).

Note: Authority cited: Sections 4990.16, 4990.18, 4990.20 and 4996.6, Business and Professions Code. Reference: Sections 4982(a), 4989.54(a), 4992.3(a), and 4996.6, Business and Professions Code; and Sections 11105(b)(10), and 11105(e), Penal Code.

§1886.40. AMOUNT OF FINES.

(a) For purposes of this section, a “citable offense” is defined as any violation of the statutes and regulations enforced by the Board of Behavioral Sciences, including Chapters 13 and 14 of Division Two of the Business and Professions Code and Title 16, Division 18, California Code of Regulations.

(b) The executive officer of the board may assess fines for citable offenses which shall not exceed two thousand five hundred dollars ($2,500) for each investigation except as otherwise provided in this section. The executive officer shall not impose any duplicate fines for the same violation.

(c) The executive officer of the board may assess fines for citable offenses which shall not exceed five thousand ($5,000) for each investigation if the violation or count includes one or more of the following circumstances:
(1) The cited person has a history of two or more prior citations for similar violations, except for citations withdrawn or dismissed after appeal.

(2) The citation involves multiple violations that demonstrate a willful disregard of the statutes or regulations.

(3) The citation is for a violation or violations involving a minor, elder or dependent adult, or a person with a physical or mental disability as defined in Section 12926 of the Government Code.

(4) The citation involves unlicensed practice.

(5) The citation involves an unlawful or unauthorized breach of confidentiality.

(6) The citation is for failure to submit fingerprints to the Department of Justice as required by the Board.

(d) The executive officer of the board may assess fines which shall not exceed five thousand dollars ($5,000) for each violation or count if the violation or count involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare.

Note: Authority cited: Sections 125.9, 148, 149, 4980.60, 4987 and 4990.14, Business and Professions Code.
Reference: Sections 123, 125, 125.9, 136, 141, 148, 149, 480, 651, 654.2, 703, 728, 4980, 4980.02, 4980.30, 4980.43, 4980.44, 4980.45, 4980.46, 4980.48, 4982, 4982.25, 4984, 4986.40, 4986.50, 4986.70, 4987.7, 4987.8, 4987.9, 4988, 4988.1, 4988.5, 4992.3, 4992.36, 4996, 4996.5, 4996.7, 4996.8, 4996.9, 4996.16, 4996.18, 4996.19, 4996.20, 4998.2, 4998.3, and 4998.4, Business and Professions Code; and Section 15630, Welfare and Institutions Code.
Existing Law:

1) Defines a “professional person” related to mental health treatment or counseling services in the treatment of minors on an outpatient basis or in a residential shelter as any of the following: (Family Code §6924 (a)(2))
   a) A psychiatrist;
   b) A psychologist, licensed by the State Board of Medical Quality Assurance;
   c) A Licensed Clinical Social Worker (LCSW), with specified exemptions for continuous employment in the same class in the same program facility, or enrollment in an accredited doctoral program in social work, social welfare or social science;
   d) A Licensed Marriage and Family Therapist (MFT);
   e) A Licensed Educational Psychologist (LEP);
   f) A credentialed school psychologist;
   g) A clinical psychologist;
   h) A MFT Intern, while working under the supervision of a licensed professional; and,
   i) A chief administrator of at a mental health treatment or counseling entity described or a residential shelter.

2) Defines “mental health treatment or counseling services” as the provision of mental health treatment or counseling on an outpatient basis by any of the following: (Family Code §6924 (a)(1))
   a) A governmental agency;
   b) A person or agency having a contract with a governmental agency to provide those services;
   c) An agency that receives funding from community united funds;
d) A runaway house or crisis resolution center; or,

e) A professional person, as defined.

3) Defines a “residential shelter service” as any of the following: (Family Code §6924 (a)(3))

a) A provision of residential and other support services to minors on a temporary emergency basis in a facility that services only minors by a governmental agency, a person or agency having a contract with a governmental agency to provide these services, an agency that receives funding from community funds, or a licensed community care facility or crisis resolution center.

b) The provision of other support services on a temporary or emergency basis by any professional person, as defined.

4) Allows a minor who is 12 years of age or older to consent to mental health services on an outpatient basis or to a residential shelter facility if the minor is mature enough to participate intelligently in the counseling services and if the minor either would present a danger of serious physical or mental harm to self or others without receiving the services or if the minor is an alleged victim of incest of child abuse. (Family Code §6924 (b))

5) Requires a professional person offering residential shelter services to make his or her best efforts to notify the parent or guardian of the provision of services. (Family Code §6924 (c))

6) Requires the mental health treatment or counseling of a minor authorized by this section of law to include the involvement of the minor’s parent or guardian unless, in the opinion of the professional person who is treating or counseling the minor, the involvement would be inappropriate. (Family Code §6924 (c))

This Bill:

1) Defines a “professional person” related to mental health treatment or counseling services in the treatment of minors on an outpatient basis as any of the following: (Welfare and Institutions Code Section 5849.10(a)(2))

a) A psychiatrist;

b) A psychologist, licensed by the State Board of Medical Quality Assurance;

c) A Licensed Clinical Social Worker (LCSW),

d) A Licensed Marriage and Family Therapist (MFT);

e) A Licensed Educational Psychologist (LEP);

f) A credentialed school psychologist;

g) A clinical psychologist; and,

h) A MFT Intern, while working under the supervision of a licensed professional.

2) Defines “mental health treatment or counseling services” as outpatient mental health treatment or counseling by a professional person, as defined. (WIC §5849.10(a)(1))
3) Allows a minor who is 12 years of age or older to consent to mental health services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services. (WIC §5849.10(b))

4) Requires the mental health treatment or counseling of a minor authorized by this bill to include the involvement of the minor's parent or guardian unless, the professional person who is treating or counseling the minor, after consulting with the minor, determines that the involvement would be inappropriate. (WIC §5849.10(c))

5) Requires the professional person treating or counseling a minor to state in the client record whether and when the person attempted to contact the minor's parent or guardian, and whether the attempt to contact was successful. (WIC §5849.10(c))

6) Requires a professional person treating a minor pursuant to the provisions of this bill, that determines that involvement of a parent or guardian is inappropriate, to note the reason why, in the opinion of that professional person, it would be inappropriate to contact the minor's parent or guardian. (WIC §5849.10(c))

7) States that a parent or guardian is not liable for payment for mental health treatment or counseling services provided pursuant to the provisions of this bill unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian. (WIC §5849.10(d))

8) Clarifies that the provisions of this bill do not authorize a minor to receive convulsive therapy or psychosurgery or psychotropic drugs without the consent of the minor's parent or guardian. (WIC §5849.(e))

Comment:

1) Author's Intent. According to the author's office, this bill addresses the identified barrier of parental consent for minor youth seeking mental health services and increases accessibility to mental health programs, particularly prevention and early intervention programs, which have better results, reduce future costs and are less expensive to administer.

Currently, youth age 12-17 must receive parental consent for mental health treatment or counseling, unless they present a danger of serious physical or mental harm to themselves or others. According to the author, parental consent for mental health services can create a barrier, especially in prevention and early intervention programs where youth may not be experiencing serious physical or mental harm. This barrier is especially harmful to certain populations of youth including lesbian, gay, bisexual, and transgender (LGBT) youth.

Many LGBT youth do not seek prevention or early intervention services due to the need for parental consent. Requiring parental consent can force LGBT youth into emotionally damaging and sometimes physically threatening situations of coming out to their parents prematurely and without support.

2) Expanded population of individuals that may receive services. This bill will allow a minor 12 -17 years of age to participate in mental health treatment or counseling, if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in that treatment. Currently a minor would not only have to meet this requirement, but also be found to present a danger of serious physical or mental harm to self or others without receiving the services or be an alleged victim of incest or child abuse (essentially specifying that the youth must be in crisis to receive services without parental
Also, current law requires these services to be offered in specified settings. This bill does not limit the settings in which services to minors without parental consent may be offered. By lowering the threshold for services and removing the limitation of applicable settings, more minors will be eligible for mental health services without parental consent. Additionally, meeting the requirement of being able to participate intelligently in the services is subjective. If a minor is able to locate mental health services that he or she perceives they need, one could assume that the individual would be able to participate intelligently in those services. Therefore, it could be stated that by allowing these minors to meet only one of the current requirements to consent to mental health services (participating intelligently), this bill will effectively open up services for a majority of all youth 12-17 years of age.

3) **Parental Rights.** Current law requires a professional person offering residential shelter services to make his or her best effort to notify the parent and guardian of the minor receiving services. Also, current law requires a practitioner to involve the minor’s parent or guardian in those services, unless the practitioner believes that the involvement would be inappropriate. This bill has similar parental notification provisions but expands the applicable settings from specified outpatient settings to any setting a minor may receive the mental health treatment or counseling. Additionally, as discussed in the second comment (above), this bill expands the population of minors that may be eligible for services without the consent of his or her parents. This bill will remove the right of a parent to consent or be notified of mental health services that his or her child is receiving in any case where the minor can participate intelligently in services and the practitioner deems involvement of the parent inappropriate. This takes considerable discretion away from the parent and gives that discretion to a minor and a mental health practitioner. Current law allows for this type of delegation of consent only in situations where the minor is found to present a danger of serious physical or mental harm to self or others without receiving the services or the minor is an alleged victim of incest or child abuse.

4) **Confidentiality.** Patient privilege exists with the patient that consents to services. This bill presents questions as to the subsequent involvement of a minor’s parent or guardian in services. If a practitioner deems it appropriate to involve a parent or guardian in a minor patient’s mental health services, what information can the practitioner release to the parent or guardian, and to what extent can that parent or guardian be involved without the consent of the minor?

5) **Existing Youth Consent Laws.** Current law allows minors of varying ages to seek many services without parental consent, including: reproductive health, treatment of communicable diseases and alcohol or drug abuse counseling. Specifically, current law allows:

a) Minors of any age to consent to medical care related to the prevention or treatment of pregnancy (Family Code §6925).

b) Minors 12 years of age or older to consent to medical care related to the diagnosis or treatment of an infectious, contagious or communicable disease, as described. (FC §6926)

c) Minors 12 years of age or older to consent to medical care and counseling related to the diagnosis and treatment of a drug or alcohol related problem. This treatment may involve the minor’s parent or guardian, if appropriate, as determined by the treatment
professional. (FC §6929)

d) A minor who is alleged to have been sexually assaulted to consent to medical care related to the diagnosis and treatment of the condition, however, the professional person providing treatment must attempt to contact the minor’s parent or guardian (unless it is believed that the parent or guardian committed the sexual assault on the minor). (FC §6928)

e) A minor 15 years or age or older to consent to medical care or dental care if the minor is living separate and apart from the minor’s parents or guardians and the minor manages his or her own financial affairs. (FC § 6922)

6) Suggested Technical Amendment. As written subdivision (g) of Welfare and Institutions Code Section 5849.10, specifies that a professional person, defined in this section of law, may be an MFT Intern while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code, as that subdivision read on January 1, 2003. According to the author’s office, this language was added during the drafting on the bill and was intended to clarify the supervision provision. However, inserting the reference to law as it appeared in 2003 adds confusion; this code section has been amended four times since the reference date of January 1, 2003, making it difficult to ascertain what requirements were in effect on that date. Additionally, supervision requirements evolve as does the requirements for registration as a MFT intern, making a reference to outdated requirements not consistent with current law or the Board’s mandate to hold consumer protection as its highest priority. Staff recommends amending this subdivision to reference the correct code section (Business and Professions Code Section 4980.03(g)), or simply reference Chapter 13.

7) Past Board Action. This bill came before the Board for review on May 22, 2009. The Policy and Advocacy Committee did not make a position recommendation to the Board when it heard the bill on April 10, 2009. The full Board discussed the measure at length. The Board voted to take an oppose position on the bill, with four members voting for an oppose position and two members abstaining from the vote. This version of the bill differs from that discussed at the May 22, 2009 Board meeting in two significant ways:

a) The previous version of this bill limited the settings in which a professional person could provide services to a minor to the following: a governmental agency, persons or agency contracting with the government, a runaway house or crisis resolution center, or residential shelter.

b) The previous version of this bill stated that a professional person providing services described therein must involve a parent or guardian if appropriate. Current law, and this bill, states that the parent or guardian shall be involve unless, in the opinion of the professional person, it is determined to be inappropriate. The language shifts the burden for the practitioner to involve the parent or guardian. The previous version changed the assumption that the parent would be involved to an assumption that they would not be involved. This provision was a point of concern for the Board. The bill version before the Committee today has removed this controversial language.

8) Policy and Advocacy Committee Recommendation. On April 9, 2010, the Policy and Advocacy Committee did not recommend a position to the Board on this bill, but instead requested that the Board further discuss the policy implications of this legislation.
9) Support and Opposition. (as of June 30, 2009)

Support: Equality California (co-sponsor)
       Gay-Straight Alliance Network (co-sponsor)
       Mental Health America of Northern California (co-sponsor)
       National Association of Social Workers, California Chapter (co-sponsor)
       Asian & Pacific Islander American Health Forum
       California Adolescent Health Collaborative
       California Association of Marriage and Family Therapists
       California Primary Care Association
       California Society for Clinical Social Work
       California Youth Empowerment Network
       Children's Law Center of Los Angeles
       Mental Health Association in California
       National Alliance on Mental Health

Opposition: Capitol Resource Family Impact

10) History

2009
   Sept. 11 Placed on inactive file on request of Assembly Member Torrico.
   Sept. 3 Read third time. Amended. To third reading.
   July 8 Read second time. To third reading.
   July 7 Read second time. Amended. To second reading.
   July 6 From committee: Do pass as amended. (Ayes 7. Noes 3.) (Heard in committee on June 30.)
   June 25 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on JUD.
   June 22 To Com. on JUD.
   June 3 In Assembly. Read first time. Held at Desk.
   May 22 Set for hearing May 28.
   May 21 Re-referred to Com. on RLS. Withdrawn from committee. Re-referred to Com. on APPR.
   May 13 Read second time. Amended. To third reading.
   May 12 From committee: Do pass as amended. (Ayes 3. Noes 0. Page 808.)
   Apr. 23 Set for hearing May 5.
   Mar. 12 To Com. on JUD.
   Mar. 2 Read first time.
   Feb. 28 From print. May be acted upon on or after March 30.
   Feb. 27 Introduced. To Com. on RLS. for assignment. To print.

ATTACHMENTS
Family Code Sections relating to existing youth consent laws
Family Code Section 6924 relating to current mental health services and minor consent
An act to add Part 3.9 (commencing with Section 5849.10) to Division 5 of the Welfare and Institutions Code, relating to mental health.

LEGISLATIVE COUNSEL’S DIGEST


Existing law authorizes a minor who is 12 years of age or older to consent to mental health treatment or counseling, except as specified, on an outpatient basis, or to residential shelter services, as specified.

This bill would, notwithstanding any provision of law, instead, provide that a minor who is 12 years of age or older may consent to outpatient mental health services, if, in the opinion of the professional person, as defined, the minor is mature enough to participate intelligently in the mental health treatment or counseling services. The bill would expand the definition of a professional person to include a licensed clinical social worker, as specified, and a board certified or board eligible psychiatrist.

SECTION 1. Part 3.9 (commencing with Section 5849.10) is added to Division 5 of the Welfare and Institutions Code, to read:

PART 3.9. MENTAL HEALTH SERVICES FOR MINORS

5849.10. (a) As used in this section:
(1) “Mental health treatment or counseling services” means the provision of outpatient mental health treatment or counseling by a professional person, as defined in paragraph (2).
(2) “Professional person” means any of the following:
(A) A person designated as a mental health professional in Sections 622 to 626, inclusive, of Title 9 of the California Code of Regulations.
(B) A marriage and family therapist as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
(C) A licensed educational psychologist as defined in Chapter 13.5 (commencing with Section 4989.10) of Division 2 of the Business and Professions Code.
(D) A credentialed school psychologist as described in Section 49424 of the Education Code.
(E) A clinical psychologist as defined in Section 1316.5 of the Health and Safety Code.
(F) A licensed clinical social worker as defined in Chapter 14 (commencing with Section 4991) of Division 2 of the Business and Professions Code.
(G) A marriage and family therapist registered intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, while working under the supervision of a licensed professional specified in subdivision (f) of Section 4980.40 of the Business and Professions Code as that subdivision read on January 1, 2003.
(H) A board certified, or board eligible, psychiatrist.

(b) Notwithstanding any provision of law to the contrary, a minor who is 12 years of age or older may consent to mental health treatment or counseling services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services.
(c) The mental health treatment or counseling of a minor authorized by this section shall include involvement of the minor’s parent or guardian, unless the professional person who is treating or counseling the minor, after consulting with the minor, determines that the involvement would be inappropriate. The professional person who is treating or counseling the minor shall state in the client record whether and when the person attempted to contact the minor’s parent or guardian, and whether the attempt to contact was successful or unsuccessful, or the reason why, in the professional person’s opinion, it would be inappropriate to contact the minor’s parent or guardian.

(d) The minor’s parents are not liable for payment for mental health treatment or counseling services provided pursuant to this section unless the parent or guardian participates in the mental health treatment or counseling, and then only for services rendered with the participation of the parent or guardian.

(e) This section does not authorize a minor to receive convulsive therapy or psychosurgery as defined in subdivisions (f) and (g) of Section 5325 of the Welfare and Institutions Code, or psychotropic drugs without the consent of the minor’s parent or guardian.
Existing Law:

1) Defines several types of professionals used in regional centers for functions related to behavioral analysis for persons with developmental disabilities as follows: (17CCR§54342(a)(8),(11),(12),(13)):

A. **Behavior Analyst**
   - Assesses the function of a consumer’s behavior and designs, implements, and evaluates modifications to produce socially significant improvements in behavior through skill acquisition and the reduction of behavior.
   - Engages in functional assessments or analyses to identify environmental factors of which behavior is a function.
   - Prohibited from practicing psychology.
   - Must be certified by the National Behavior Analyst Certification Board.

B. **Behavior Management Consultant**
   Designs or implements behavior modification intervention services and possesses all of the following:
   - 12 semester units in applied behavior analysis;
   - Valid license as a Psychologist, Clinical Social Worker, Marriage and Family Therapist, or other professional whose California licensure permits the design or implementation of behavior modification intervention services; and,
   - Two years of experience designing and implementing behavior modification intervention services.

C. **Associate Behavior Analyst**
   Performs the same functions as a Behavior Analyst (see A. above), but under the direct supervision of a Behavior Analyst or Behavior Management Consultant and:
   - Is prohibited from practicing psychology.
   - Must be certified by the National Behavior Analyst Certification Board.

D. **Behavior Management Assistant**
   - Designs or implements behavior modification intervention services under the direct supervision of a Behavior Management Consultant.
   - May perform the same functions as a Behavior Analyst under direct supervision of a Behavior Analyst or Behavior Management Consultant, if the individual meets either of the following requirements:
1. Possesses a Bachelor's degree and one of the following:
   - 12 semester units in applied behavior analysis and one year of experience in designing or implementing behavior modification intervention services; OR
   - Two years of experience in designing or implementing behavior modification intervention services.
   OR
2. Is registered as either a psychological assistant or an associate clinical social worker.

2) Defines "Applied behavioral analysis" as the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction. (WIC § 4686.2(d)(1), GC § 95021(d)(1))

3) Defines "Intensive behavioral intervention" as any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. (WIC § 4686.2(d)(2), GC § 95021(d)(2))

4) Defines "Behavioral intervention case manager" as a designated certificated school/district/county/nonpublic school or agency staff member(s) or other qualified contracted personnel trained in behavioral analysis with an emphasis on positive behavioral interventions. Permits such work to be performed by any staff member with specific training in this area and may include but is not limited to, a teacher, resource specialist, school psychologist, or program specialist. (5 CCR § 3001(f))

5) Defines "Behavioral intervention plan" as a document developed when the individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the pupil's individual education plan (IEP). (5 CCR § 3001(g))

6) Permits a Behavioral intervention plan to only be implemented by, or under the supervision of, staff with documented training in behavior analysis, including the use of positive behavioral interventions. (5 CCR § 3052(a)(2))

7) Requires a Functional analysis assessment to be conducted by, or under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions. A functional analysis assessment shall occur after the individualized education program team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective. (5 CCR § 3052(b))

8) Requires nonpublic school and agency personnel who design or plan behavior intervention services to possess one of the following: (5 CCR § 3065(d))
   - Pupil personnel services credential in school counseling or school psychology
   - Special education instruction credential
   - Marriage and Family Therapist, Clinical Social worker, Educational Psychologist or Psychologist license
   - Master's degree issued by a regionally accredited post-secondary institution in education, psychology, counseling, behavior analysis, behavioral science, human development, social work, rehabilitation, or a related field.

9) Requires nonpublic school and agency personnel who provide behavior intervention to meet one of the following: (5 CCR § 3065(e))
   - The qualifications under subdivision (d); OR
• Work under the supervision of personnel qualified under subdivision (d); AND
  o Possess a high school diploma or its equivalent; AND
  o Receive the specific level of supervision required in the pupil's IEP.

This Bill:

1) Establishes the California Behavioral Certification Organization (CBCO), a nonprofit organization that provides for the certification and registration of applied behavioral analysis practitioners. (Business and Professions Code § 2529.7(a))

2) States that a person qualified to provide applied behavioral analysis services, as defined in this bill, may do all of the following: (BPC §2529.55(a))
   a) Design, implement, and evaluate systematic instructional and environmental modifications to produce social improvements in the behavior of individuals or groups.
   b) Apply the principles, methods, and procedures of behavior analysis.
   c) Utilize contextual factors and establish operations, antecedent stimuli, positive reinforcement, other consequences, and other behavior analysis procedures to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.
   d) Assess functional relations between behavior and environmental factors, known as functional assessment and functional analysis.
   e) Use procedures based on scientific research and the direct observation and measurement of behavior and environment.

3) Provides that the practice of applied behavioral analysis does not include psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling. (BPC §2529.55(b))

4) States that the following licensed professionals are recognized as qualified to provide applied behavior analysis services: physicians and surgeons, psychologists, social workers, marriage and family therapists, speech-language pathologists, occupational therapists, physical therapists, or counselors, when acting within the scope of their license, formal training, experience, and accepted standards of their profession. (BPC §2529.6(a)(1))

5) Sets forth requirements for certification and registration as a Behavior Analysis Professional by the CBCO and states that specified certification or registration deems the individual qualified to provide applied behavioral analysis services, as defined. (BPC §2529.6(c))

6) Prohibits any person from holding himself or herself out as a Board Certified Behavior Analyst (BCBA) unless the person is currently certified as such by the Behavior Analyst Certification Board. (BPC §2529.9(a)).

7) Prohibits any person from holding himself or herself out as a Board Certified Assistant Behavior Analyst (BCaBA) unless the person is currently certified as such by the Behavior Analyst Certification Board. (BPC §2529.9(b)).
8) Prohibits any person from holding himself or herself out to have state recognition, certification, or registration as a California Certified Behavior Services Professional, California Applied Behavior Analysis Professional, or a California Certified Assistant Services Professional by the California Association for Behavior Analysis, or the Behavior Analyst Certification Board or the CBCO unless that individual holds that recognition from that entity. (BPC §2529.9(c))

9) States that nothing in the provisions of this bill shall be construed to require certification, licensure, recognition, or authorization to provide applied behavior analysis services nor to add to or increase requirements for providing those service. (BPC §2529.13(c))

Comments:

1) Author’s Intent. Uncodified legislative intent language in section one of this bill states that this bill is intended “to create an additional pathway for certification through the establishment of a private nonprofit organization that will enable consumers to identify qualified providers of applied behavioral analysis services.”

2) Current Certification. A nonprofit corporation, The Behavior Analyst Certification Board (BACB) provides the following certification for behavioral analysts: Board Certified Behavior Analyst (BCBA) and Board Certified Assistant Behavior Analyst (BCaBA). The Behavior Analyst Certification Board's BCBA and BCaBA credentialing programs are accredited by the National Council for Certifying Agencies in Washington, DC.

   The BACB credentials practitioners at three levels. Individuals who wish to become a BCBA must possess at least a Masters Degree, have 225 classroom hours of specific graduate-level coursework, meet experience requirements, and pass the Behavior Analyst Certification Examination. Persons wishing to be Board Certified BCaBA must have at least a Bachelors Degree, have 135 classroom hours of specific coursework, meet experience requirements, and pass the Assistant Behavior Analyst Certification Examination. Board Certified Behavior Analyst-Doctoral must be BCBA with doctorate degrees and meet other criteria. BACB certificants must accumulate continuing education credit to maintain their credentials.

3) Unclear purpose. The need for this bill unclear. This bill creates a new nonprofit organization to issue registration and certification to individuals providing behavior analysis services. However, a national nonprofit certifying body already exists with that purpose. Additionally, this bill does not provide for practice protection, or in any way regulates the practice of behavior analysis. This bill does provide title protection for those certifications issued by the national certifying body, the Behavior Analyst Certification Board, as well as the newly established California Behavioral Certification Organization.

4) Affect of Board Licensees. Provisions of this bill provide that marriage and family therapists and licensed clinical social workers are recognized as qualified to provide applied behavior analysis services, as defined. Additionally, as explained in comment three (above), this bill does not provide that an individual must have certification or registration to practice behavior analysis services, but only that an individual cannot use the protected titles specified in the bill (unless that individual is so registered or certified). Therefore, all Board licensees would be able to practice behavior analysis (if it is within that practitioner's scope of competency) but could not use the specified titles that imply certification or registration by either the private certifying board described or by the established nonprofit CBCO.
5) **Consumer Confusion.** By creating a private nonprofit entity that provides a certification which allows the individual to represent themselves as a “California Certified Behavior Service Professional”, this bill may cause confusion as to what that certification really means. The words “California Certified” has the connotation that the State is the entity certifying the practitioner. In general, consumers have certain expectations of liability and protections afforded by the government when an individual is assumed to be regulated by the state. One such expectation is an established course of action by the regulating entity for unprofessional conduct by a certificate holder.

6) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee did not recommend a position to the Board on this bill, but instead requested that the Board further discuss the policy implications of this legislation.

7) **Support and Opposition.**

   *None on file*

8) **History**

   2010
   Apr. 9       Set for hearing May 3.
   Apr. 8       Hearing postponed by committee.
   Apr. 7       Set for hearing April 12.
   Mar. 25      Re-referred to Com. on B., P. & E.D.
   Mar. 23      From committee with author's amendments. Read second time.
                Amended. Re-referred to Com. on RLS.
   Mar. 4       To Com. on RLS.
   Feb. 20      From print. May be acted upon on or after March 22.
   Feb. 19      Introduced. Read first time. To Com. on RLS. for assignment. To print.
An act to add Chapter 5.2 (commencing with Section 2529.50) to Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST

SB 1282, as amended, Steinberg. Applied behavioral analysis therapists services: California Behavioral Certification Organization.

Existing law provides for the licensure and regulation of various healing arts practitioners, including, but not limited to, marriage and family therapists, clinical social workers, educational psychologists, and professional clinical counselors, by the Board of Behavioral Sciences in the Department of Consumer Affairs.

This bill would state the intent of the Legislature to enact legislation that would provide for the certification of applied behavioral analysis therapists by a California Behavioral Certification Organization, which would be a nonprofit organization meeting specified requirements, and would impose certain duties on the organization. The bill would specify which individuals would be considered as qualified to practice applied behavior analysis services, and would prohibit an individual from holding himself or herself out as a practitioner unless he or she has complied with the act or another applicable licensing provision or is otherwise certified by certain nationally recognized entities. The bill would authorize the organization...
to establish specified curriculum and continuing education standards, 
and establish a certification and registration process, in conjunction 
with the California Association for Behavior Analysis (CalABA). The 
bill would require CalABA to implement the certification or registration 
process until the organization is established. The bill would set forth 
other disciplinary standards and hearing requirements.

State-mandated local program: no.

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

SECTION 1. It is the intent of the Legislature in enacting this 
act to provide state recognition of educated, trained, and 
experienced individuals that provide applied behavior analysis 
services to individuals with medical conditions such as autism 
spectrum disorder and other conditions that are responsive to 
behavior analysis. This act recognizes those professionals 
practicing with existing licenses issued by the state and those 
certified by nationally accredited organizations, and is intended 
to create an additional pathway for certification through the 
establishment of a private nonprofit organization that will enable 
consumers to identify qualified providers of applied behavior 
analysis services. These pathways for recognition of qualified 
providers will ensure that providers have completed sufficient 
training at approved institutions of higher education and follow 
nationally recognized standards for recognition of these 
professionals upon which consumers and those who pay for applied 
behavior analysis services, including private entities, governmental 
entities, nonprofit organizations, health care service plans, or 
insurers, may rely.

SEC. 2. Chapter 5.2 (commencing with Section 2529.50) is 
added to Division 2 of the Business and Professions Code, to read:

CHAPTER 5.2. APPLIED BEHAVIOR ANALYSIS SERVICES

2529.50. For purposes of this chapter, the following terms 
have the following meanings:
(a) “ANSI” means the American National Standards Institute.
(b) “BACB” means the Behavior Analyst Certification Board.
(c) “CalABA” means the California Association for Behavior Analysis.
(d) “CBCO” or “organization” means the California Behavioral Certification Organization established by this chapter.
(e) “NCCA” means the National Commission for Certifying Agencies.

2529.55. (a) A person who is qualified to provide applied behavior analysis services, as enumerated in Section 2529.6, may do all of the following:
(1) Design, implement, and evaluate systematic instructional and environmental modifications to produce social improvements in the behavior of individuals or groups.
(2) Apply the principles, methods, and procedures of behavior analysis.
(3) Utilize contextual factors and establish operations, antecedent stimuli, positive reinforcement, other consequences, and other behavior analysis procedures to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.
(4) Assess functional relations between behavior and environmental factors, known as functional assessment and functional analysis.
(5) Use procedures based on scientific research and the direct observation and measurement of behavior and environment.
(6) Determine whether a nonlicensed or noncertified individual shall be deemed as qualified to provide applied behavior analysis services, exclusive of paragraph (7), subject to his or her supervision and solely for the purpose of implementing the services of applied behavior analysis developed by a person described in subdivision (a) of Section 2529.6.
(7) Supervise the delivery of applied behavior analysis services by nonlicensed or noncertified individuals as described in paragraph (6).

(b) The practice of applied behavior analysis excludes psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling.

2529.6. (a) The following persons shall be recognized as qualified to provide applied behavior analysis services as described in Section 2529.55:
(1) Licensed professionals, including, but not limited to, physicians and surgeons, psychologists, social workers, marriage and family therapists, speech-language pathologists, occupational therapists, physical therapists, or counselors, when acting within the scope of their license, formal training, experience, and accepted standards of their profession.

(2) An individual with certification in applied behavior analysis from the BACB or another organization that is accredited by the NCCA or ANSI whose mission is to meet professional credentialing needs identified by behavior analysts, governments, and consumers of behavior analysis services.

(3) An individual specializing in the treatment of autism spectrum disorder who meets all of the following requirements if verified on or before December 31, 2014, by one of the organizations specified in Section 2529.8:
  (A) Possesses a master’s or doctorate degree in applied behavior analysis or a related field.
  (B) Demonstrates three years of experience in the last five years of providing, on a consistent rather than an episodic basis, applied behavior analysis services to individuals with autism spectrum disorder, either as an independent professional or as an employee of an organization providing services to those with autism spectrum disorder.
  (C) Submits references from at least two individuals who meet the requirements of paragraph (1) or (2).

(4) An individual certified by the CBCO pursuant to subdivision (f) of Section 2529.7.

(5) An individual who holds a bachelor’s degree and meets the requirements of subparagraphs (B) and (C) of paragraph (3), subject to registration by one of the organizations specified in Section 2529.8.

(b) The following persons shall be recognized as qualified to provide applied behavior analysis services as described in Section 2529.55, so long as supervised by a person described in paragraph (1), (2), (3), or (4) of subdivision (a):

(1) A person who is certified as an Assistant Behavior Analyst by the BACB.

(2) A person who is certified as a California certified assistant services professional by the CBCO pursuant to subdivision (g) of Section 2529.7.
(c) (1) Pursuant to subdivisions (a) and (b), all of the following shall apply:

(A) Persons meeting the requirements of paragraph (1) of subdivision (a) may hold themselves out as licensed professionals according to the conditions of their professional license and shall be deemed by the state as qualified to provide the services set forth in Section 2529.55. These persons may also hold themselves out as certified behavior analysis professionals if they meet any of the criteria specified in paragraph (2), (3), or (4) of subdivision (a).

(B) Persons meeting the requirements of paragraph (2), (3), or (4) of subdivision (a) may hold themselves out as certified behavior analysis professionals and shall be deemed by the state as qualified to provide the services set forth in Section 2529.55.

(C) Persons meeting the requirements of paragraph (5) of subdivision (a) may hold themselves out as registered behavior analysis professionals and shall be deemed by the state as qualified to provide the services set forth in Section 2529.55.

(D) Persons meeting the requirements of subdivision (b) may hold themselves out as certified assistant behavior analysis professionals and shall be deemed by the state as qualified to provide the services set forth in Section 2529.55.

(E) Persons meeting the requirements of paragraph (6) of Section 2529.55 may hold themselves out as qualified by the state solely for the purpose of implementing the services of applied behavior analysis, as set forth in Section 2529.55.

(2) Paragraph (1) shall apply regardless of whether the services provided by those persons are paid for by private entities, governmental entities, nonprofit organizations, health care service plans, or insurers.

2529.7. (a) There is hereby established a California Behavioral Certification Organization, which shall be a nonprofit corporation exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and subdivision (d) of Section 23701 of the Revenue and Taxation Code.

(b) The organization may commence activities as authorized by this chapter once it has submitted a request to the Internal Revenue Service and the Franchise Tax Board seeking tax exemption. The tax exempt application shall include information necessary to illustrate that the organization will operate in a manner consistent
with the requirements imposed upon, and authority given to, the
organization pursuant to this chapter.
(c) The organization shall have until January 1, 2016, to receive
accreditation from either ANSI or NCCA.
(d) If the organization does not obtain national accreditation
by January 1, 2016, it may not certify any additional individuals.
However, any individuals certified during the five-year period
commencing with the enactment of this section may retain their
certification indefinitely provided they continue to meet any
requirements established by the organization for certification
maintenance and ethical compliance.
(e) The CBCO board of directors shall be comprised of 12
members who shall be residents of the state.
(f) The CBCO board of directors shall determine through a
process involving public input the specific standards necessary to
receive certification as a certified behavior analysis professional,
as described in paragraph (4) of subdivision (a) of Section 2529.6.
However, in the interest of consumer protection, the specific
standards shall include one of the following:
(1) Option one, which minimum requirements shall include all
of the following:
   (A) A doctoral or master’s degree in applied behavior analysis
   or a related field from a nationally accredited institution of higher
   learning and a course sequence in applied behavior analysis that
   is approved by the CBCO. The course sequence shall be at least
   equivalent to or more rigorous than an approved course sequence
   of the BACB.
   (B) The successful completion of an approved practicum or
   supervised experience in the practice of applied behavior analysis,
totaling at least 1,500 hours over a period of not less than one
   calendar year, of which at least 75 hours are in direct one-to-one
   contact with the supervisor, or which is equivalent to or more
   rigorous than the approved practicum requirements of the BACB.
   (C) To ensure mastery of the material, successful completion
   of an examination administered by the BACB or the CBCO, which
   is at least as rigorous or equivalent to the examination
   administered by the BACB.
(2) Option two, which minimum requirements shall include all
of the following:
(A) A doctoral or master’s degree from a recognized educational program accredited by the Association for Behavior Analysis International, or from a program at a recognized educational institution that is approved by the third organization and that substantially meets the educational standards of the accreditation board of the Association for Behavior Analysis International. The program shall also include an approved course sequence of the BACB.

(B) The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,500 hours over a period of not less than one calendar year, of which at least 75 hours are in direct one-to-one contact with the supervisor.

(C) To ensure mastery of the material, successful completion of an examination administered by the BACB or the CBCO, which is at least as rigorous or equivalent to the examination administered by the BACB.

(g) The CBCO board of directors shall determine through a process involving public input the specific standards necessary to receive certification as a California certified assistant services professional, as described in paragraph (2) of subdivision (b) of Section 2529.6. However, in the interest of consumer protection, the specific standards shall meet all the following minimum requirements:

(1) A bachelor’s degree from a nationally accredited institution of higher learning and a course sequence in applied behavior analysis that is approved by the CBCO. The course sequence shall be at least equivalent to or more rigorous than an approved course sequence for an Assistant Behavior Analyst from the BACB.

(2) The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,000 hours over a period of not less than six months, of which at least 50 hours are in direct one-to-one contact with the supervisor, or which is equivalent to or more rigorous than the approved practicum requirements for an Assistant Behavior Analyst from the BACB.

(3) To ensure mastery of the material, successful completion of an examination administered by the CBCO, which is equivalent to or more rigorous than the examination for an Assistant Behavior Analyst administered by the BACB.
(h) The CBCO may charge applicants a fee not to exceed the costs of implementation of the chapter.

2529.8. (a) (1) Until December 31, 2014, the CBCO shall have the primary responsibility for verifying the qualifications of persons submitting the information set forth in paragraph (3) of subdivision (a) of Section 2529.6.

(2) The CBCO shall have the primary responsibility for verifying the qualifications of persons submitting the information set forth in paragraph (5) of subdivision (a) of Section 2529.6.

(b) (1) Prior to the establishment and operation of the CBCO or through December 31, 2014, whichever is earlier, CalABA or its designee shall be authorized to verify the qualifications of persons submitting the information set forth in paragraph (3) of subdivision (a) of Section 2529.6.

(2) Prior to the establishment and operation of the CBCO, CalABA or its designee shall be authorized to verify the qualifications of persons submitting the information set forth in paragraph (5) of subdivision (a) of Section 2529.6.

(c) (1) Prior to December 31, 2014, an individual meeting the requirements of paragraph (3) of subdivision (a) of Section 2529.6 may submit to the CBCO, or to CalABA, if the latter is accepting submissions, information necessary to establish that the individual meets the requirements set forth in paragraph (3) of subdivision (a) of Section 2529.6.

(2) If submitted to CalABA under subdivision (b), CalABA shall issue to an individual that meets the qualifications a certificate of temporary certification as a California Certified Behavior Services Professional, which shall be valid for one year or until the CBCO is accepting submissions from those seeking certification pursuant to paragraph (3) of subdivision (a) of Section 2529.6, whichever is later. Once the CBCO commences accepting applications, CalABA shall finish processing all the submissions it has received and shall notify the CBCO of all individuals previously receiving certification from CalABA. Those individuals shall automatically receive CBCO certification.

(3) If an individual submits information to the CBCO, the CBCO shall issue to an individual that meets the qualifications, certification as a California Certified Behavior Services Professional.
(d) (1) An individual meeting the requirements of paragraph (5) of subdivision (a) of Section 2529.6 may submit to the CBCO, or to CalABA, if the latter is accepting submissions, information necessary to establish that the individual meets the requirements set forth in paragraph (5) of subdivision (a) of Section 2529.6.

(2) If submitted to CalABA under subdivision (b), CalABA shall issue to an individual that meets the qualifications a certificate of temporary registration as a California Applied behavior analysis professional, which shall be valid for one year or until the CBCO is accepting submissions from those seeking registration pursuant to paragraph (5) of subdivision (a) of Section 2529.6, whichever is later. Once the CBCO commences accepting applications, CalABA shall finish processing all the submissions it has received and shall notify the CBCO of all individuals previously receiving registration from CalABA. Those individuals shall automatically receive CBCO registration, which shall be valid for five years from the original date of issuance by CalABA.

(3) If an individual submits information to the CBCO, the CBCO shall issue to an individual who meets the qualifications, registration as a California Applied behavior analysis professional, which shall be valid for five years.

(e) No later than January 1, 2016, individuals who have received certification pursuant to subdivision (c), shall maintain that certification only if they meet the requirements established by the CBCO for compliance with continuing education and ethical standards. If the CBCO is not in operation, those previously certified by the CBCO shall no longer be able to represent themselves as California Certified Behavior Services Professionals, but may represent that they are recognized by the state as qualified to provide applied behavior analysis services.

2529.9. (a) It shall be unlawful for any person to hold himself or herself out as a Board Certified Behavior Analyst (BCBA) unless the person is currently certified as a Board Certified Behavior Analyst by the BACB.

(b) It shall be unlawful for any person to hold himself or herself out as a Board Certified Assistant Behavior Analyst (BCaBA) unless the person is currently certified as a Board Certified Assistant Behavior Analyst by the BACB.

(c) It shall be unlawful to claim to have state recognition, certification, or registration as a California Certified Behavior
Services Professional, California Applied behavior analysis professional, or California certified assistant services professional by CalABA, the CBCO, or the BACB, unless the person is otherwise recognized, certified, or registered by that entity.

2529.10. The CBCO shall implement this chapter in conformity with accepted standards for professional credentialing programs, including, but not limited to, doing all of the following:

(a) Conducting certification activities in a manner that upholds standards for the competent practice of the profession of behavior analysis.

(b) Structuring and governing the certification program in ways that are appropriate for the profession of behavior analysis and ensure autonomy in decision making over certification activities.

(c) Including certified behavior analysts and at least one consumer or public member on the CBCO board of directors.

(d) Having adequate financial and human resources to conduct effective and thorough certification, registration, recertification, and reregistration activities.

(e) Establishing, publishing, applying, and reviewing policies and procedures for key certification or registration activities, such as determining eligibility criteria, applying for certification or registration, administering assessment instruments, establishing performance domains, appeals confidentiality, certification and registration statistics, and discipline, and complying with applicable laws.

(f) Publishing a description of the assessment instruments used to make certification and registration decisions and the research methods used to ensure that the assessment instruments are valid.

(g) Awarding certification or registration only after the applicant’s knowledge and skill have been evaluated and found to be acceptable.

(h) Maintaining a publicly available list of certified behavior analysts and verifying their certification.

(i) Analyzing, defining, and publishing performance domains and tasks and associated knowledge and skills for the practice of behavior analysis, and using them to develop the assessment instruments.

(j) Using assessment instruments that are derived from the job or practice analysis and are consistent with accepted psychometric principles and procedures, such as for setting passing scores,
scoring and interpreting assessment results, ensuring reliability
of scores, or establishing that different forms of the assessment
instruments are equivalent.

(k) Developing, adhering to, and publishing appropriate,
standardized, and secure procedures for developing and
administering the assessment instruments and for retaining all
evidence of the validity and reliability of the assessment
instruments, assessment results, and scores of all candidates.

(l) Requiring periodic recertification and establishing,
publishing, applying, and periodically reviewing policies and
procedures for recertification or reregistration.

(m) Requiring adequate continuing education.

(n) Monitoring the practicing of applied behavioral analysis
services consistent with the accepted standards of their respective
professions and that the practice of applied behavior analysis is
commensurate with their level of formal training and experience.

(o) Maintaining accreditation by demonstrating continued
compliance with accreditation standards.

(p) Demonstrating that recertification or reregistration
requirements measure or enhance the competence of those certified
or registered.

(q) Developing appropriate supervision guidelines for the
provision of applied behavior analysis services.

(r) (1) Establishing and maintaining a process to receive,
review, and take corrective action, when necessary, with regard
to complaints by consumers of applied behavior analysis or other
interested parties against certificate holders or registrants and to
make available to the public current status of those persons, such
as whether they are in good standing or their certificate or
registration has been suspended or revoked and details of any
complaints or corrective action taken.

(2) Maintaining on the organization’s Internet Web site
information updated annually related to implementation of this
chapter.

(s) Establishing a disciplinary and hearing process pursuant
to Sections 2529.11 and 2529.12.

(t) Requiring an applicant for certification or registration to
submit fingerprint images to the CBCO, and establishing a
procedure consistent with state law to obtain background
information on the applicant.
2529.11. (a) The CBCO may discipline a certificate holder or registrant by any, or a combination, of the following methods:

1. Placing the certificate holder or registrant on probation.
2. Suspending the certificate or registration and the rights conferred by this chapter on a certificate holder or registrant for a period not to exceed one year.
3. Revoking the certificate or registration.
4. Suspending or staying the disciplinary order, or portions of it, with or without conditions.
5. Taking other action as the organization, as authorized by this chapter or its bylaws, deems proper.

(b) The CBCO may issue an initial certificate or registration on probation, with specific terms and conditions, to any applicant.

2529.12. (a) No certificate holder, registrant, or applicant may be disciplined or denied a certificate or registration pursuant to Section 2529.11 except according to procedures satisfying the requirements of this section. A denial or discipline not in accord with this section shall be void and without effect.

(b) Any applicant denial or discipline shall be done in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the denial or discipline are considered.

(c) A procedure is fair and reasonable if all of the following apply:

1. The provisions of the procedure have been set forth in the CBCO articles or bylaws, or copies of those provisions are sent annually to certificate holders or registrants if required by the articles or bylaws.
2. It provides the giving of 15 days prior notice of the denial or discipline and the reasons therefor.
3. It provides an opportunity for the applicant or certificate holder or registrant to be heard, orally or in writing, not less than five days before the effective date of the denial or discipline by a person or body authorized to decide that the proposed denial or discipline not take place.
4. Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to
the last address of the applicant or certificate holder or registrant shown on the organization’s records.

(e) Any action challenging a denial or discipline, including any claim alleging defective notice, shall be commenced within one year after the date of the denial or discipline. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.

(f) This section governs only the procedures for denial or discipline and not the substantive grounds therefor. A denial or discipline based upon substantive grounds that violates contractual or other rights or is otherwise unlawful is not made valid by compliance with this section.

(g) An applicant or certificate holder or registrant who is denied or disciplined shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments, or fees incurred before the denial or discipline or arising from contract or otherwise.

2529.13. (a) Nothing in this chapter shall be interpreted to prohibit individuals not recognized in Section 2529.6 from providing the services defined as applied behavior analysis services, as set forth in Section 2529.55, provided those individuals do not hold themselves out to be Certified Behavior Analysts or claim to have state recognition or certification by the CBCO or CalABA pursuant to this chapter.

(b) Nothing in this chapter shall be construed to prevent behavior analysis service providers who are vendorized by one of the California Regional Centers or hold state accredited nonpublic agency status from developing, providing, or supervising applied behavior analysis consistent with the requirements of their Regional Center vendorization or nonpublic agency certification or accreditation, provided their practice of behavior analysis is commensurate with their level of training and experience, and they do not hold themselves out to the public by any title or description stating or implying that they are Certified Behavior Analysts, that they are “certified” to practice behavior analysis if they are not in fact certified, or that they are recognized or certified by the state to practice applied behavior analysis.

(c) Nothing in this chapter shall be construed to require certification, licensure, recognition, or authorization to provide
applied behavior analysis services nor to add to or increase
requirements for providing those services.

SEC. 3. Nothing in this act shall be construed as interpreting
an existing statutory or regulatory requirement.

SECTION 1. It is the intent of the Legislature to enact
legislation that would provide for the certification of applied
behavioral analysis therapists.
Background
The Board of Behavioral Sciences (Board) receives numerous inquiries and requests from licensees regarding a retired license status. Currently, if a licensee retires from practice, he or she can do either of the following:

1) Request that his or her license be placed on inactive status and pay a biennial fee of one half the standard active renewal fee (inactive license fees are $65 for marriage and family therapists, $50 for licensed clinical social workers, and $40 for licensed educational psychologists). Renewing with an inactive status, by definition, means that a licensee may not engage in practice and is exempt from continuing education requirements.

2) Not pay a fee and allow his or her license to expire. Allowing a license to expire means that the license will go into delinquent status and will ultimately be cancelled after three years.

The two primary complaints from licensees with respect to the license status options that are available to them upon retirement are as follows:

- Renewing with an inactive status requires paying an inactive renewal fee every two years when an individual does not intend to ever practice again; and,
- If a licensee allows his or her license to expire, the Board’s web site labels his or her license status as “Delinquent” until the license is cancelled after three years.

Previous Board Action
On January 23, 2010, the Board approved the draft legislative proposal to create a retired license status for all Board licensees. On February 18, 2010, Assemblymember Bill Emmerson introduced AB 2191, which contained the Board’s retired license proposal. AB 2191 was amended on March 18, 2010, to make the following revisions approved by the Board on January 23rd:

1) Delete the “retired License” title protection; and,
2) Allow a licensee to restore his or her license to active status within five years (instead of three years), without re-examination.

**Amendments**
The following issues occurred during the drafting of AB 2191:

1) Language in AB 2191 lacks clarity relating to the amount of continuing education that would be needed to restore a retired license to full active status;
2) Language drafted by legislative counsel relating to the timeframe to restore a retired license is confusing; and,
3) Language related to required fingerprint submission was not included.

Attached are draft proposed amendments to correct the above cited issues. Specifically, the amendments do the following:

1) Codify the continuing education requirements for restoring a retired license to active status based on those set forth for restoring an inactive license to full active status;
2) Recast provisions related to restoring a retired license in order to add clarity; and
3) Insert provisions related to mandatory fingerprint submission consistent with current law.

**Recommendation**
At its April 9, 2010 meeting the Policy and Advocacy Committee voted to recommend to the Board that staff be directed to make the attached proposed amendments to AB 2191.

**ATTACHMENTS**
A. Proposed Amendments to AB 2191
B. Assembly Bill 2191, As Amended March 18, 2010
SECTION 1. Section 4984.41 is added to the Business and Professions Code, to read:

4984.41. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a marriage and family therapist who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active marriage and family therapist license is required.

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice marriage and family therapy if that retired license was issued less than five years prior to the application date, and the applicant meets all of the following requirements:

1. The applicant has not committed an act or crime constituting grounds for denial of licensure.

2. Pays the renewal fee required by this chapter.

3. Completes the required continuing education as specified in Section 4980.54.

4. Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4980.54.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of the application, shall complete 36 hours of continuing education as specified in Section 4980.54.

(g) The holder of a retired license may apply to restore to active status his or her license to practice marriage and family therapy if that retired license was issued more than five or more years prior to the application date, and the applicant meets all of the following requirements:

1. The applicant has not committed an act or crime constituting grounds for denial of licensure.

2. Applies for licensure and paying the fee required by this chapter.

3. Passes the examinations required for licensure.
(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

SEC. 2. Section 4984.7 of the Business and Professions Code is amended to read:

4984.7. (a) The board shall assess the following fees relating to the licensure of marriage and family therapists:

(1) The application fee for an intern registration shall be seventy-five dollars ($75).

(2) The renewal fee for an intern registration shall be seventy-five dollars ($75).

(3) The fee for the application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be one hundred dollars ($100). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fee.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred eighty dollars ($180).

(7) The fee for license renewal shall be a maximum of one hundred eighty dollars ($180).

(8) The fee for inactive license renewal shall be a maximum of ninety dollars ($90).

(9) The renewal delinquency fee shall be a maximum of ninety dollars ($90). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(12) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 3. Section 4989.45 is added to the Business and Professions Code, to read:

4989.45. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed educational psychologist who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active educational psychologist license is required.

(c) The holder of a retired license shall not be required to renew
that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice educational psychology if that retired license was issued less than five years prior to the application date, and the applicant meets all of the following requirements:

who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice educational psychology restored to active status by:

1. Paying the renewal fee fixed by this chapter.
2. Completing the required continuing education as specified in Section 4989.34.
3. Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4989.34.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section on or more years from the date of the application, shall complete 36 hours of continuing education as specified in Section 4989.34.

(g) The holder of a retired license may apply to restore to active status his or her license to practice educational psychology if that retired license was issued more than five years prior to the application date, and the applicant meets all of the following requirements:

who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice educational psychology restored to active status by:

1. Applying for licensure and paying the required fee.
2. Passing the examinations required for licensure.
3. Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

SEC. 4. Section 4989.68 of the Business and Professions Code is amended to read:

4989.68. (a) The board shall assess the following fees relating to the licensure of educational psychologists:

1. The application fee for examination eligibility shall be one hundred dollars ($100).
2. The fee for issuance of the initial license shall be a maximum amount of one hundred fifty dollars ($150).
3. The fee for license renewal shall be a maximum amount of one hundred fifty dollars ($150).
4. The delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to become delinquent may have it restored only upon payment of all the fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.
5. The written examination fee shall be one hundred dollars
($100). An applicant who fails to appear for an examination, once having been scheduled, shall forfeit any examination fees he or she paid.

(6) The fee for rescoring a written examination shall be twenty dollars ($20).

(7) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(8) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(9) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 5. Section 4996.3 of the Business and Professions Code is amended to read:

4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:

(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).

(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).

(3) The fee for application for examination eligibility shall be one hundred dollars ($100).

(4) The fee for the standard written examination shall be a maximum of one hundred fifty dollars ($150). The fee for the clinical vignette examination shall be one hundred dollars ($100).

(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(8) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).

(9) The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(12) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.
SEC. 6. Section 4997.1 is added to the Business and Professions Code, to read:

4997.1. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed clinical social worker who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active clinical social worker license is required.

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice clinical social work if that retired license was issued less than five years prior to the application date, and the applicant meets all of the following requirements:

1. Has not committed an act or crime constituting grounds for denial of licensure.

2. Pays the required renewal fee.

3. Completes the required continuing education as specified in Section 4996.22.

4. Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

SEC. 7. Section 4999.113 is added to the Business and Professions Code, to read:

4999.113. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a
professional clinical counselor who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active professional clinical counselor license is required.

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license may apply to restore to active status his or her license to practice professional clinical counseling if that retired license was issued less than five years prior to the application date, and that applicant meets all of the following requirements:

(1) who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice professional clinical counseling restored to active status by:

(1)(2) Paying the required renewal fee.

(2)(3) Completing the required continuing education as specified in Section 4999.76.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

(e) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section less than one year from the date of the application, shall complete 18 hours of continuing education as specified in Section 4999.76.

(f) An applicant requesting to restore his or her license pursuant to subdivision (d), whose license was issued in accordance with this section one or more years from the date of the application, shall complete 36 hours of continuing education as specified in Section 4999.76.

(g) The holder of a retired license may apply to restore to active status his or her license to practice professional clinical counseling if that retired license was issued more than five or more years prior to the application date, and the applicant meets the following requirements:

(1) who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice professional clinical counseling restored to active status by:

(1)(2) Applying for licensure and paying the required fees.

(2)(3) Passing the examinations required for licensure.

(4) Complies with the fingerprint submission requirements set forth in Section 1815 of Title 16 of the California Code of Regulations.

SEC. 8. Section 4999.120 of the Business and Professions Code is amended to read:

4999.120. The board shall assess fees for the application for and the issuance and renewal of licenses and for the registration of interns to cover administrative and operating expenses of the board related to this chapter. Fees assessed pursuant to this section shall not exceed the following:

(a) The fee for the application for examination eligibility shall
be up to two hundred fifty dollars ($250).

(b) The fee for the application for intern registration shall be up to one hundred fifty dollars ($150).

(c) The fee for the application for licensure shall be up to one hundred eighty dollars ($180).

(d) The fee for the jurisprudence and ethics examination required by Section 4999.54 shall be up to one hundred fifty dollars ($150).

(e) The fee for the examination described in subdivision (b) of Section 4999.54 shall be up to one hundred dollars ($100).

(f) The fee for the written examination shall be up to two hundred fifty dollars ($250).

(g) The fee for the issuance of a license shall be up to two hundred fifty dollars ($250).

(h) The fee for annual renewal of licenses issued pursuant to Section 4999.54 shall be up to one hundred fifty dollars ($150).

(i) The fee for annual renewal of an intern registration shall be up to one hundred fifty dollars ($150).

(j) The fee for two-year renewal of licenses shall be up to two hundred fifty dollars ($250).

(k) The fee for issuance of a retired license shall be forty dollars ($40).
Introduced by Assembly Member Emmerson

February 18, 2010

An act to amend Sections 4984.7, 4989.68, 4996.3, and 4999.120 of, and to add Sections 4984.41, 4989.45, 4997.1, and 4999.113 to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL’S DIGEST


Existing law provides for the licensure and regulation of marriage and family therapists, clinical social workers, educational psychologists, and professional clinical counselors by the Board of Behavioral Sciences within the Department of Consumer Affairs. Existing law fixes the license fees and creates the Behavioral Sciences Fund in the State Treasury into which these license fees are deposited. Existing law specifies requirements for renewal of these licenses, including completing continuing education, as specified.

This bill would require the board to issue a retired license to a marriage and family therapist, clinical social worker, educational psychologist, and professional clinical counselor who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action. The bill would prohibit a retired license holder from engaging in any activity for which an active license in his or her respective profession is required. The bill would provide that a retired license holder may have his or her license restored to active
status if the holder has not committed an act or crime constituting
grounds for denial of licensure, and the holder applies for licensure,
pays the required fee, passes the examination required for licensure,
and completes specified continuing education requirements. The bill
would fix the retired license fee at $40.
State-mandated local program: no.

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

SECTION 1. Section 4984.41 is added to the Business and
Professions Code, to read:

4984.41. (a) The board shall issue, upon application and
payment of the fee fixed by this chapter, a retired license to a
marriage and family therapist who holds a license that is current
and active or capable of being renewed, and whose license is not
suspended, revoked, or otherwise punitively restricted by the board
or subject to disciplinary action under this chapter.
(b) The holder of a retired license issued pursuant to this section
shall not engage in any activity for which an active marriage and
family therapist license is required. A marriage and family therapist
holding a retired license shall be permitted to use the titles “retired
marriage and family therapist” or “marriage and family therapist,
retired.”
(c) The holder of a retired license shall not be required to renew
that license.
(d) The holder of a retired license issued less than three
years prior to the application date, who has not committed an act
or crime constituting grounds for denial of licensure, may restore
his or her license to practice marriage and family therapy to active
status by:
(1) Paying the renewal fee required by this chapter.
(2) Completing the required continuing education as specified
in Section 4980.54.
(e) The holder of a retired license issued more than three
years prior to the application date, who has not committed an act
or crime constituting grounds for denial of licensure may have his
or her license to practice marriage and family therapy restored to
active status by:
(1) Applying for licensure and paying the fee required by this chapter.
(2) Passing the examinations required for licensure.

SEC. 2. Section 4984.7 of the Business and Professions Code is amended to read:

4984.7. (a) The board shall assess the following fees relating to the licensure of marriage and family therapists:

(1) The application fee for an intern registration shall be seventy-five dollars ($75).
(2) The renewal fee for an intern registration shall be seventy-five dollars ($75).
(3) The fee for the application for examination eligibility shall be one hundred dollars ($100).
(4) The fee for the standard written examination shall be one hundred dollars ($100). The fee for the clinical vignette examination shall be one hundred dollars ($100).
(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fee.
(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.
(5) The fee for resoring an examination shall be twenty dollars ($20).
(6) The fee for issuance of an initial license shall be a maximum of one hundred eighty dollars ($180).
(7) The fee for license renewal shall be a maximum of one hundred eighty dollars ($180).
(8) The fee for inactive license renewal shall be a maximum of ninety dollars ($90).
(9) The renewal delinquency fee shall be a maximum of ninety dollars ($90). A person who permits his or her license to expire is subject to the delinquency fee.
(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).
(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).
(12) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 3. Section 4989.45 is added to the Business and Professions Code, to read:

4989.45. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed educational psychologist who holds a license that is current and active or capable of being renewed, and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active educational psychologist license is required. A licensed educational psychologist holding a retired license shall be permitted to use the titles “retired licensed educational psychologist” or “licensed educational psychologist, retired.”

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license issued less than three five years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice educational psychology restored to active status by:

1. Paying the renewal fee fixed by this chapter.
2. Completing the required continuing education as specified in Section 4989.34.

(e) The holder of a retired license issued more than three five years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice educational psychology restored to active status by:

1. Applying for licensure and paying the required fee.
2. Passing the examinations required for licensure.

SEC. 4. Section 4989.68 of the Business and Professions Code is amended to read:

4989.68. (a) The board shall assess the following fees relating to the licensure of educational psychologists:
(1) The application fee for examination eligibility shall be one hundred dollars ($100).
(2) The fee for issuance of the initial license shall be a maximum amount of one hundred fifty dollars ($150).
(3) The fee for license renewal shall be a maximum amount of one hundred fifty dollars ($150).
(4) The delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to become delinquent may have it restored only upon payment of all the fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all delinquency fees.
(5) The written examination fee shall be one hundred dollars ($100). An applicant who fails to appear for an examination, once having been scheduled, shall forfeit any examination fees he or she paid.
(6) The fee for rescoring a written examination shall be twenty dollars ($20).
(7) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).
(8) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).
(9) The fee for issuance of a retired license shall be forty dollars ($40).
(b) With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.
SEC. 5. Section 4996.3 of the Business and Professions Code is amended to read:
4996.3. (a) The board shall assess the following fees relating to the licensure of clinical social workers:
(1) The application fee for registration as an associate clinical social worker shall be seventy-five dollars ($75).
(2) The fee for renewal of an associate clinical social worker registration shall be seventy-five dollars ($75).
(3) The fee for application for examination eligibility shall be one hundred dollars ($100).
(4) The fee for the standard written examination shall be a maximum of one hundred fifty dollars ($150). The fee for the clinical vignette examination shall be one hundred dollars ($100).
(A) An applicant who fails to appear for an examination, after having been scheduled to take the examination, shall forfeit the examination fees.

(B) The amount of the examination fees shall be based on the actual cost to the board of developing, purchasing, and grading each examination and the actual cost to the board of administering each examination. The written examination fees shall be adjusted periodically by regulation to reflect the actual costs incurred by the board.

(5) The fee for rescoring an examination shall be twenty dollars ($20).

(6) The fee for issuance of an initial license shall be a maximum of one hundred fifty-five dollars ($155).

(7) The fee for license renewal shall be a maximum of one hundred fifty-five dollars ($155).

(8) The fee for inactive license renewal shall be a maximum of seventy-seven dollars and fifty cents ($77.50).

(9) The renewal delinquency fee shall be seventy-five dollars ($75). A person who permits his or her license to expire is subject to the delinquency fee.

(10) The fee for issuance of a replacement registration, license, or certificate shall be twenty dollars ($20).

(11) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

(12) The fee for issuance of a retired license shall be forty dollars ($40).

(b) With regard to license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 6. Section 4997.1 is added to the Business and Professions Code, to read:

4997.1. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a licensed clinical social worker who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active clinical social worker license is required. A licensed clinical social worker holding
a retired license shall be permitted to use the titles “retired licensed clinical social worker” or “licensed clinical social worker, retired.”

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license issued less than three five years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice clinical social work restored to active status by:

(1) Paying the required renewal fee.

(2) Completing the required continuing education as specified in Section 4996.22.

(e) The holder of a retired license issued more than three five years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice clinical social work restored to active status by:

(1) Applying for licensure and paying the required fees.

(2) Passing the examinations required for licensure.

SEC. 7. Section 4999.113 is added to the Business and Professions Code, to read:

4999.113. (a) The board shall issue, upon application and payment of the fee fixed by this chapter, a retired license to a professional clinical counselor who holds a license that is current and active or capable of being renewed and whose license is not suspended, revoked, or otherwise punitively restricted by the board or subject to disciplinary action under this chapter.

(b) The holder of a retired license issued pursuant to this section shall not engage in any activity for which an active professional clinical counselor license is required. A licensed professional clinical counselor holding a retired license shall be permitted to use the titles “retired licensed professional clinical counselor” or “licensed professional clinical counselor, retired.”

(c) The holder of a retired license shall not be required to renew that license.

(d) The holder of a retired license issued less than three years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice professional clinical counseling restored to active status by:
Paying the required renewal fee.

(2) Completing the required continuing education as specified in Section 4999.76.

(e) The holder of a retired license issued more than three years prior to the application date, who has not committed an act or crime constituting grounds for denial of licensure, may have his or her license to practice professional clinical counseling restored to active status by:

(1) Applying for licensure and paying the required fees.

(2) Passing the examinations required for licensure.

SEC. 8. Section 4999.120 of the Business and Professions Code is amended to read:

4999.120. The board shall assess fees for the application for and the issuance and renewal of licenses and for the registration of interns to cover administrative and operating expenses of the board related to this chapter. Fees assessed pursuant to this section shall not exceed the following:

(a) The fee for the application for examination eligibility shall be up to two hundred fifty dollars ($250).

(b) The fee for the application for intern registration shall be up to one hundred fifty dollars ($150).

(c) The fee for the application for licensure shall be up to one hundred eighty dollars ($180).

(d) The fee for the jurisprudence and ethics examination required by Section 4999.54 shall be up to one hundred fifty dollars ($150).

(e) The fee for the examination described in subdivision (b) of Section 4999.54 shall be up to one hundred dollars ($100).

(f) The fee for the written examination shall be up to two hundred fifty dollars ($250).

(g) The fee for the issuance of a license shall be up to two hundred fifty dollars ($250).

(h) The fee for annual renewal of licenses issued pursuant to Section 4999.54 shall be up to one hundred fifty dollars ($150).

(i) The fee for annual renewal of an intern registration shall be up to one hundred fifty dollars ($150).

(j) The fee for two-year renewal of licenses shall be up to two hundred fifty dollars ($250).
(k) The fee for issuance of a retired license shall be forty dollars ($40).
To: Board Members
From: Tracy Rhine
Assistant Executive Officer

Subject: Rulemaking Update

To: Board Memebers  
Date: April 22, 2010

From: Tracy Rhine  
Assistant Executive Officer

Subject: Rulemaking Update

PENDING REGULATORY PROPOSALS

**Title 16, CCR Sections 1800, 1802, 1803, 1804, 1805, 1805.1, 1806, 1807, 1807.2, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1816.1, 1816.2, 1816.3, 1816.4, 1816.5, 1816.6, 1816.7, 1819.1, 1833.1, 1850.6, 1850.7, 1870, 1870.1, 1874, 1877, 1880, 1881, 1886, 1886.10, 1886.20, 1886.30, 1886.40, 1886.50, 1886.60, 1886.70, 1886.80, 1887, 1887.1, 1887.2, 1887.3, 1887.4, 1887.5, 1887.6, 1887.7, 1887.8, 1887.9, 1887.10, 1887.11, 1887.12, 1887.13, 1887.14, 1888, and adding 1820, 1821, and 1822, Licensed Professional Clinical Counselors, Exceptions to Continuing Education Requirements**

This proposal would implement all provisions related to SB 788, Chapter 619, Statutes of 2009, and the creation of Licensed Professional Clinical Counselors. **This proposal is before the Policy and Advocacy Committee April 9, 2010.**

**Title 16, CCR Sections 1807, 1807.2, 1810, 1819.1, 1887 to 1887.14, Continuing Education Requirements: Licensed Educational Psychologists**

This proposal would implement a continuing education program for Licensed Educational Psychologists. **The board approved the originally proposed text at its February 26, 2009 meeting.** The rulemaking package was published in the Office of Administrative Law’s Notice Registry on October 30, 2009. The public comment period closed on December 14, 2009 and a public comment hearing was conducted on December 17, 2009. The full regulatory package will go before the Board for final approval on May 6, 2010.

**Title 16, CCR Section 1887.2, Exceptions to Continuing Education Requirements**

This regulation sets forth continuing education exception criteria for MFT and LCSW license renewals. This proposal would amend the language in order to clarify and better facilitate the request for exception from the CE requirement. **The board approved the originally proposed text at its meeting on May 31, 2007.** This proposed regulation was incorporated into the rulemaking package relating Licensed Professional Clinical Counselors.
**Title 16, CCR Sections 1887, 1887.2, 1887.3, and 1887.7, Minor Clean-Up of Continuing Education Regulations**

This proposal would make minor clean-up amendments to continuing education regulations. The Board approved the originally proposed text at its meeting on May 31, 2007. This proposed regulation will be incorporated into the rulemaking package relating to Licensed Professional Clinical Counselors.

**Title 16, CCR Section 1811, Revision of Advertising Regulations**

This proposal revises the regulatory provisions related to advertising by Board Licensees. The Board approved the originally proposed text at its meeting on November 18, 2009. Staff is currently preparing the rulemaking package for Notice with the Office of Administrative Law.
To: Board Members  
From: Kim Madsen  
Date: April 22, 2010  
Telephone: (916) 574-7841  

Subject: Licensing and Exam Committee

The Licensing and Exam Committee (formerly the Examination Program Review Committee) met on April 12, 2010, in Sacramento, CA. Committee members were provided an update regarding the analysis to determine if an additional exam is necessary for MFTs and LCSWs applying for a Licensed Professional Clinical Counselor.

Committee members also reviewed and discussed a draft proposal to revise the Board's current examination process.

The next meeting is scheduled for June 14, 2010, in Sacramento, CA.
To: Board Members

From: Sean O’Connor
Board of Behavioral Sciences

Subject: Potential Modifications to Proposed Examination Process Re-Structure

Date: April 28, 2010

Telephone: (916) 574-7830

Background

At the January 23, 2010 Board meeting, Board members, staff, and the audience discussed the implementation of recommendations from the Examination Program Review Committee (Committee) relating to restructuring the Board’s examination process. The Committee recommended requiring Marriage and Family Therapist (MFT) Interns and Associate Clinical Social Workers (ASW) to complete and pass an examination on California Law and Ethics. The framework of this examination would consist of legal and ethical issues that a recent program graduate would be reasonably expected to know.

After passage of the Law and Ethics Exam, the Committee recommended that, as a condition of licensure after reaching examination eligibility (i.e. completing all supervised experience and education requirements), applicants would complete and pass a new Standard Written Examination (New Standard). The framework of the New Standard would consist of practice-oriented and vignette questions with some law and ethics questions integrated as well.

Implementation Concerns

Upon discussion among staff, Board members, and stakeholders at the April 12, 2010 Licensing and Examination Committee meeting, staff has identified several key issues:

1. **Requirement to Pass the Law and Ethics Exam in the First Year of Registration** – Originally, the Committee made passing of the new Law and Ethics Exam mandatory in the first renewal period. Since this is mandatory, staff presumed someone who did not pass the examination would not be eligible for renewal. This could potentially create a mental health workforce issue.

   Many employment settings require a current registration in order to see clients, including county, school, and non-profit settings. Because insurance reimbursement requirements require a client be seen by registered or licensed individuals, this will force many registrants out of practice. The Board will likely face harsh criticism for disrupting continuity and access to care and eliminating the livelihood of mental health professionals from consumer and professional advocacy groups.
Furthermore, registrants cannot gain supervised work experience hours towards license requirements under an expired registration, so the ability to complete the licensing process in a timely manner would be affected should an individual be required to pass an examination before renewing a registration number.

2. **Integration of New Exam Structure with Individuals Currently in the Licensing and Examination Process** – The implementation of the Committee’s recommendations requires significant changes to the current exam structure. Upon implementation, BBS registrants and applicants will be at different stages of the process, and the BBS will need to ensure fair treatment for those caught “in-between” the new structure and the old.

3. **Calculation of “Six-Year Rule” for Examination Eligibility** – Currently, the date the Board receives an application for examination eligibility determines the statute of limitations for qualifying supervised work experience. With one minor exception, all hours of supervised work experience must be earned in the most recent six years preceding the Board’s receipt of an application for examination eligibility. Under current requirements, once approved for examination eligibility, an applicant only needs to take a licensing examination once a year to maintain eligibility.

Because the proposed restructure of the examination process requires one examination at the beginning of the licensing process (California Law and Ethics) and another at the conclusion of meeting all education and supervised experience requirements (New Standard), the proposed examination restructure must include a revision of the application of the six-year rule.

4. **Relevance of Seven-Year Limit Currently Applied to the Existing Standard Written Examination** – Currently, law requires an applicant pass the Clinical Vignette Examination (the second examination required under current law) within seven years of passing the current Standard Written Examination (the first examination required under current law). If an individual cannot comply with this requirement, he or she will be required to again pass the current standard written examination. The proposed modification will need to address how this seven-year requirement will apply in the proposed restructure.

**Proposed Solutions**

Staff has identified several potential modifications to the proposal to revise the Board’s examination process to address these issues.

First, registrants will be *required* to take the Law and Ethics Examination each year in order to renew their registration number until successful completion of this examination. If the registrant does not successfully complete the Law and Ethics Examination before the end of his or her third year of registration, the registration number will automatically be cancelled. The individual will be required to prove completion of the Law and Ethics Examination before the Board will issue another registration number to the individual.

Second, registrants who do not pass the Law and Ethics Examination within the first year of registration will be required to complete an 18-hour law and ethics course in order to be eligible to take the examination in their second year of registration. This requirement would apply to the third year of registration as well if an individual cannot pass the Law and Ethics Examination in the second year of registration. Like any pre-licensure educational requirement, the law and ethics course could be taken through a Board-approved continuing education provider; county, state, or governmental entity; or a college or university. For an example of how the proposed solution would affect new registrants after implementation, please see Scenario 1 of Attachment A. The requirement to pass the Law and Ethics Examination within a three-year period can also be applied to individuals currently registered with the Board. Please see Scenario 2 of Attachment A for an example.
For individuals who are currently in the examination process but not registered with the Board, after implementation of the proposed examination structure, the Law and Ethics Examination would replace the current Standard Written Examination, and the New Standard would replace the current Clinical Vignette Examination. For examples, please refer to Scenarios 3 and 4 of Attachment A.

Third, in order to implement some form of statute of limitations to hours of supervised work experience, the six-year rule relating to acceptable hours of supervised work experience would now be calculated based upon the date the Board receives an application for examination eligibility for the New Standard Written Examination. Upon an individual’s completion of the education and experience required for New Standard Written examination eligibility, he or she could apply for eligibility and, upon the Board’s approval, become eligible to take the New Standard Written Examination. Similar to requirements under current law, continued examination eligibility would be contingent on the individual taking the New Standard Written Examination each year until successfully passing it.

Potentially, an individual could qualify for the New Standard Written Examination prior to passing the Law and Ethics Examination. Recall that an individual can retain a registration number for up to three years without successfully passing the Law and Ethics Examination. Since supervised experience requirements for MFTs and LCSWs can be met in less than three years, a person could conceivably be taking the Law and Ethics Examination and the New Standard Written Examination at the same time. In order to qualify for licensure, an individual would have to successfully complete both examinations, but the restructure eliminates the traditional examination sequencing (e.g. Standard Written Examination followed by the Clinical Vignette Examination) existing under current law.

An application of a rule similar to the current seven-year limit in existing law would be applied to the New Standard Written Examination, meaning if an individual does not successfully complete the Law and Ethics Examination within seven years of passing the New Standard Written Examination, the applicant would have to pass the New Standard Written Examination again in order to be license eligible. An application of this seven year limit to the Law and Ethics Examination would penalize those individuals who pass the Law and Ethics Examination in the first registration period but take six years to gain the required supervised work experience hours.

**Recommendation**

Conduct an open discussion on the proposed modifications to require Board registrants to complete and pass an examination on California Law and Ethics and the New Standard Written Examination, and, if approved, direct staff to draft language and initiate Board-sponsored legislation.

**Attachment A – Sample Scenarios for Implementation of Proposed Examination Restructure**
Attachment A - Sample Scenarios for Implementation of Proposed Examination Restructure

Scenario 1. New Registrants after Implementation of Proposed Structural Changes (Implementation 1/2012). Individual is issued a registration number on 1/7/2012.

<table>
<thead>
<tr>
<th>Year</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years Registered</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Registrant Action</td>
<td>Individual is registered with the BBS on 1/7/2012.</td>
<td>Individual does not pass the examination by the expiration date of 1/31/2013.</td>
<td>Individual does not pass the examination by the expiration date of 1/31/2014.</td>
<td>Individual does not pass the examination by the expiration date of 1/31/2015.</td>
</tr>
<tr>
<td>Outcome</td>
<td>The individual's initial registration is due to renew on 1/31/2013. The individual is also eligible to take the BBS Law and Ethics Exam. The individual must take the examination in each renewal period until passing to be eligible for renewal. If the individual does not pass the Law and Ethics Exam by 1/31/2013, he or she must complete a remedial 18-hour law and ethics course from a university, CE provider, or county, state, or governmental entity in order to take the exam in the next renewal cycle.</td>
<td>The individual must submit a copy of his or her certificate proving completion of the 18-hour law and ethics course in order to take an exam in this renewal period.</td>
<td>The individual must submit a copy of his or her certificate proving completion of the 18-hour law and ethics course in order to take an exam in this renewal period.</td>
<td>Because the individual has not passed the Law and Ethics Exam by the end of his or her third year of registration, the registration is now automatically cancelled. Before issuance of a new registration number, this individual must pass the Law and Ethics Exam.</td>
</tr>
</tbody>
</table>
### Scenario 2. Current registrants after Implementation of Proposed Structural Changes (Implementation 1/2012).

Individual was issued a registration number on 1/7/2010.

<table>
<thead>
<tr>
<th>Year</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years Registered</td>
<td>2</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
<tr>
<td>Registrant Action</td>
<td>Individual is due to renew registration number on 1/31/2012.</td>
<td>Individual does not pass the examination by the expiration date of 1/31/2013.</td>
<td>Individual does not pass the examination by the expiration date of 1/31/2014.</td>
<td>Individual does not pass the examination by the expiration date of 1/31/2015.</td>
</tr>
<tr>
<td>Outcome</td>
<td>With the renewal notice for the 1/31/2012 expiration date, the individual receives notification of the new BBS Law and Ethics Exam. The individual is also automatically eligible to take the BBS Law and Ethics Exam. The individual must take the examination in each renewal period until passing to be eligible for renewal. If the individual does not pass the BBS Law and Ethics Exam by 1/31/2013, he or she must complete a remedial 18-hour law and ethics course from a university, CE provider, or county, state, or governmental entity in order to take the exam in the next renewal cycle.</td>
<td>The individual must submit a copy of his or her certificate proving completion of the 18-hour law and ethics course in order to take an exam in this renewal period.</td>
<td>The individual must submit a copy of his or her certificate proving completion of the 18-hour law and ethics course in order to take an exam in this renewal period.</td>
<td>Because the individual has not passed the Law and Ethics Exam by the end of his or her third year of registration after the implementation of the new Law and Ethics exam, the registration is now automatically cancelled. Before applying for a new registration number, this individual must pass the Law and Ethics Exam.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Year</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years Registered</td>
<td>Individual must take an exam by 3/1/2012 to maintain examination eligibility. Individual does not take Old Standard by its sunset date of 12/31/2011.</td>
<td>Individual takes the BBS Law and Ethics Exam on 2/1/2012 and passes the examination. Individual takes the New Standard Written Examination on 2/15/2012 and fails.</td>
</tr>
<tr>
<td>Registrant Action</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Outcome</td>
<td>Individual is automatically eligible for the New Standard Written examination and the Law and Ethics examination. Individual must take the New Standard Written examination by 3/1/2012 to maintain examination eligibility.*</td>
<td>The individual must re-take the New Standard Written Examination by 2/15/2013. If he or she does not take the exam by this date, examination eligibility will be abandoned.</td>
</tr>
</tbody>
</table>

* In order to provide consistency, continuing New Standard Written Examination eligibility will be linked to participation in the New Standard Written Examination on a yearly basis until passing.
### Scenario 4. Non-Registered Exam Candidates Who Have Passed the Old Standard Written Examination before Implementation of Proposed Structural Changes (Implementation 1/2012)

Individual took and passed the Old Standard Written Examination on 12/1/2011.

<table>
<thead>
<tr>
<th>Year</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years Registered</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Outcome</td>
<td>Individual must take New Standard Written Exam by 12/1/2012 to maintain examination eligibility. The individual is automatically eligible to take the New Standard Written Exam. If the individual does not take the New Standard Written Exam by 12/1/2012, the examination eligibility will be abandoned.</td>
<td>The individual must now re-take the New Standard Written Examination by 2/1/2013. If he or she does not take the exam by this date, examination eligibility will be abandoned. From this point forward, current exam rules of taking the exam once a year to maintain eligibility apply.</td>
</tr>
</tbody>
</table>
To: Board Members                                      Date: April 22, 2010

From: Kim Madsen                                      Telephone: (916) 574-7841
       Executive Officer

Subject: Strategic Plan Update

Background
At the February 2009 board meeting, recommendations to the Board’s 2007 Strategic Plan were presented. The recommended changes to the Strategic Plan were in response to the anticipated impact on staff resources as a result of California’s budget deficit and implementation of the retroactive fingerprinting program. Board members reviewed and approved the recommended changes.

Objective Update
The Board is pleased to report that some objectives are completed or have had significant accomplishments to date.

- Objective 1.6, Conduct 45 outreach events per fiscal year with 5% specific to consumer education and awareness by July 1, 2012. The Board attended 53 outreach events by June 30, 2009.
- Objective 2.3, Secure the passage of legislation to revise the curriculum for Marriage and Family Therapists by January 1, 2009. The passage of Senate Bill 33, revisions to Marriage and Family Therapy curriculum, was signed by Governor Schwarzenegger on August 5, 2009.
- Objective 3.2, Provide three new publications in at least two additional languages by July 1, 2012. One publication, The Self Empowerment Brochure, was published in two additional languages, Spanish and Korean.

Current Status
Since the revisions to the plan in February 2009, furloughs have increased to three days a month, the Consumer Protection Enforcement Initiative was introduced, and Senate Bill 788 implementing a new licensing program, Licensed Professional Clinical Counselors, was enacted.

The management team reflected on the core business practices of the Board, our responsibility to our stakeholders and consumers, and the current operating environment within State Government. The team reviewed each of the initial goals and decided to develop a Strategic Plan that is more reflective of our primary goal to become a Model State Licensing Agency. This goal provided the vision to establish new goals which reflect our mission and values. The revisions to the Strategic Plan were completed in December 2009 and are attached for your review.

Staff Recommendation
Upon review and discussion of the revisions to the Strategic Plan, staff requests approval of the revised Strategic Plan.
## STATUS OF STRATEGIC OBJECTIVES
As of February 1, 2009

<table>
<thead>
<tr>
<th>GOAL/OBJECTIVE</th>
<th>STATUS</th>
<th>NOTES</th>
<th>Suggested Action</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GOAL 1: Be a Model State Agency</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Increase the board’s accessibility rating on the customer satisfaction survey to 85% by July 1, 2012.</td>
<td>Active</td>
<td>Monthly reports are generated from the customer satisfaction survey.</td>
<td>Consider rephrasing this objective to measure customer’s overall satisfaction.</td>
</tr>
<tr>
<td>1.2 Improve internal communications by 33% as measured by the internal communications survey by July 1, 2011.</td>
<td>Active</td>
<td>Communication Training Class scheduled in May for BBS staff. Communication Survey in development.</td>
<td></td>
</tr>
<tr>
<td>1.3 Increase staff productivity index by 10% by July 1, 2012.</td>
<td>Inactive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.4 Improve complainant satisfaction by 50% by July 1, 2012.</td>
<td>Active</td>
<td>Developing baseline. Anticipate improvement as a result of hiring 2 BBS Field Investigators.</td>
<td></td>
</tr>
<tr>
<td>1.5 Have all employees complete BBS certification by July 1, 2010.</td>
<td>Inactive</td>
<td></td>
<td>Extend due date to 2012.</td>
</tr>
<tr>
<td>1.6 Conduct 45 outreach events per fiscal year by July 1, 2012.</td>
<td>Active</td>
<td>Conducted 26 events to date. 15 events remain this FY. Mandated furloughs will require BBS to reduce participation until June 2010.</td>
<td></td>
</tr>
<tr>
<td>1.7 Increase Board appointees’ effectiveness index by 10% by July 1, 2012.</td>
<td>Active</td>
<td>Survey model built. Implementation March 2009.</td>
<td></td>
</tr>
<tr>
<td>1.8 Implement a plan that enables the Board and its professions to assist Californians during an emergency by July 1, 2012.</td>
<td>Inactive</td>
<td>BBS Emergency Protocol in place.</td>
<td></td>
</tr>
<tr>
<td><strong>Goal 2: Influence Changes in Mental Health Services throughout California</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Advocate for five laws that expand access to mental health services by July 1, 2012.</td>
<td>Active</td>
<td>An objective that will be achieved through the BBS legislation efforts.</td>
<td></td>
</tr>
<tr>
<td>2.2 Implement four (4) strategies to improve the quality of clinical supervision by July 1, 2012.</td>
<td>Inactive</td>
<td>Workgroup report completed. Approval pending. LCSW Education Committee and Exam Program Review Committee work must be completed before resuming work on this objective.</td>
<td></td>
</tr>
<tr>
<td>2.3 Secure passage of legislation to revise the curriculum for marriage and family therapist licensure by January 1, 2009.</td>
<td>Active</td>
<td>Curriculum changes submitted in SB 33. Bill introduced this year.</td>
<td></td>
</tr>
<tr>
<td>2.4 Implement 6 strategies to improve the quality of treatment for co-occurring disorders by July 1, 2012.</td>
<td>Inactive</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Key: Objectives in bold are priority as determined by management team
<table>
<thead>
<tr>
<th>GOAL/OBJECTIVE</th>
<th>STATUS</th>
<th>NOTES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Goal 3: Promote Quality Mental Health Services</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1 Implement four (4) consumer awareness initiatives on the roles of mental health services by July 1, 2012.</td>
<td>Active</td>
<td>Aging and Mental Health information on web site. Publication in design.</td>
</tr>
<tr>
<td>3.2 Provide 3 new publications in at least two (2) additional languages by July 1, 2012.</td>
<td>Active</td>
<td>Self Empowerment brochure to be translated into Spanish.</td>
</tr>
<tr>
<td>3.3 Implement four (4) strategies to address demographic disparities between providers of mental health services and consumers by July 1, 2012.</td>
<td>Active</td>
<td>Strategies identified and additional research ongoing.</td>
</tr>
<tr>
<td><strong>Goal 4: Expand the Board’s Access to Resources</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.1 Achieve 70% utilization of iLicensing in the first year of implementation.</td>
<td>Inactive</td>
<td>DCA project renamed BreEZe. Final project bid due Feb. 10, 2009. BBS continues to participate in ongoing meetings. <strong>Rephrase “iLicensing” to “BreEZe.”</strong></td>
</tr>
<tr>
<td>4.2 90% of BBS staff will participate in the Human Resource Management Plan by July 1, 2010.</td>
<td>Active</td>
<td>Readjust time line to 2012.</td>
</tr>
<tr>
<td>4.3 Obtain Access to Seven External Experts to Address Our Competency Gaps by July 1, 2009.</td>
<td>Active</td>
<td>One consultant contracted to work with Exam Committee. <strong>Readjust time line to 2012.</strong></td>
</tr>
</tbody>
</table>

Key: Objectives in bold are priority as determined by management team.
CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

Strategic Plan

Strong minds, lives, families and communities

December 2009
Draft
**Values**

The BBS Way:

*Be a person of Integrity*

*Be Professional and Dedicated*

*Serve with Excellence*

---

**Integrity** - Doing the right thing makes us proud of the end result.

**Professionalism** – Applying our knowledge, skill, and ability.

**Dedication** – Committed to providing quality service.

**Service** – The quality way the Board meets the needs of the public.

**Excellence** – Striving to achieve at the highest level.
GOAL 1: Be a Model State Licensing and Regulatory Board

Objective 1: Deliver the Highest Level of Service

Performance Measure: Increased Successful Service Rating and Overall Consumer Satisfaction

1.1 Increase the Board’s successful service rating from 72.5% to 80% by June 30, 2012.
   - Review DCA the Seven Cs of Customer Service Policy with all BBS Staff by March 1, 2010.
   - Implement the DCA Seven Cs of Customer Service Policy standards for email and telephone communications by March 1, 2010.
   - Continue review of stakeholder comments received through the website for opportunities to improve service, identify issues that adversely impact successful service, and initiate action or change to correct any issues within the Board’s direct control.

1.2 Conduct at least 24 outreach events per fiscal year with 5% specific to consumer education and awareness by July 1, 2012.
   - Annually, identify 3 consumer outreach events throughout California to attend.
   - Develop materials and publications to promote the existence of BBS and its services for consumers.
   - Develop materials and publications to educate and aid consumers in the selection of a mental health provider.

1.3 Increase the Board appointee’s effectiveness index 10% by July 1, 2012.
   - Establish goals for board appointee effectiveness by August 2010.
   - Establish mechanism to measure board appointee effectiveness by August 2010.
   - Conduct first assessment of goals and determine baseline index by December 2010.
Goal 2: Establish and Maintain Model Standards for Professional Licensing and Examinations

Objective 2: Ensure that all applications meet registration, examination, and licensure qualifications. All notices to applicants, registrations, and licenses are issued accurately and promptly.

Performance Measure: Percentage of applications, notices, registrations, and licenses processed within established timelines.

2.1 Licensing

- Evaluate all Intern/Associate applications and issue a registration to registrants if the application is complete or notify the applicant of the deficiency within 15 days.
- Evaluate all LEP applications and issue a license if the application is complete or notify the applicant of the deficiency within 15 days.
- Evaluate all Continuing Education Provider applications and issue a provider approval number to the provider if the application is complete or notify the applicant of the deficiency within 15 days.
- Issue examination eligibility notices within 7 days once applicant completes all the requirements to take the examination.
- Issue all initial licenses within 2 days of receipt of completed application.

2.2 Cashiering

- Process all renewal applications within 7 days of receipt.
- Process all new applications within 3 days of receipt.
**Goal 3:** Ensure the Examination Process is Effective, Fair, and Legally Defensible.

**Objective 3:** Assess the examination process to determine if the timing, intervals, and content are appropriate.

**Performance Measure:** Implementation of board approved recommendations

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Submit the Exam Program Review Committee’s recommendations to the Board by January 2010.</td>
</tr>
<tr>
<td>3.2</td>
<td>Implement approved recommendations by 2012.</td>
</tr>
<tr>
<td>3.3</td>
<td>Propose and secure passage of legislation required to implement the Exam Program Review Committee’s recommendations by 2012</td>
</tr>
<tr>
<td>3.4</td>
<td>Collaborate with Association of Social Work Board to consider the ASWB examination in the Board’s work as it relates to licensure for clinical social work.</td>
</tr>
<tr>
<td>3.5</td>
<td>Collaborate with the Association of Marriage and Family Therapy Regulatory Boards (AMFTRB) to jointly perform the Occupational Analysis to be used for both the California MFT exam and national exam.</td>
</tr>
<tr>
<td>3.6</td>
<td>Develop strategies to increase the number of Subject Matter Experts utilized for exam development.</td>
</tr>
<tr>
<td>---</td>
<td></td>
</tr>
<tr>
<td><strong>Objective 4:</strong> Timely resolution of consumer complaints and investigations.</td>
<td></td>
</tr>
<tr>
<td><strong>Performance Measure:</strong> Number of investigations and completed disciplinary actions completed within established timelines.</td>
<td></td>
</tr>
<tr>
<td>4.1 Complete consumer complaints investigations within 180 days of receipt.</td>
<td></td>
</tr>
<tr>
<td>4.2 Upon receipt of conviction information complete criminal conviction investigations within 120 days.</td>
<td></td>
</tr>
<tr>
<td>4.3 Complete adjudication of cases referred for disciplinary action within 180 days of referral date.</td>
<td></td>
</tr>
<tr>
<td>4.4 Evaluate and assess all procedures to identify process improvements.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Goal 5: Promote Staff Development and Recognition</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Objective 5:</strong> Develop an internal training and recognition program</td>
</tr>
<tr>
<td><strong>Measure:</strong> Number of staff with training completion certificates</td>
</tr>
<tr>
<td>5.1 Establish BBS Way Certification Program and implement program for all staff to complete by July 1, 2012.</td>
</tr>
<tr>
<td>5.2 Establish a program that recognizes employee length of service, achievements, and contributions to the Board.</td>
</tr>
<tr>
<td>5.3 Establish a standard of training for each classification to be completed by each employee in that classification.</td>
</tr>
<tr>
<td>5.4 Promote enrollment in training classes that prepare employees for promotional and testing opportunities.</td>
</tr>
</tbody>
</table>
To: Board Members

From: Kim Madsen
Executive Officer

Subject: Election of Officers

Date: April 23, 2010
Telephone: (916) 574-7841

Section 4990 of the Business and Professions Code requires the board to elect a Chair and Vice-Chair prior to June 1 of each year. Currently, Renee Lonner is the Board Chair and Elise Froistad is the Vice-Chair. Accordingly, the board should elect both a chair and a vice-chair at this meeting.

Below is a list of board members and the date on which their term will expire.

<table>
<thead>
<tr>
<th>Board Member</th>
<th>Type</th>
<th>Authority</th>
<th>Date Appointed</th>
<th>Term Expires</th>
<th>Grace Expires</th>
</tr>
</thead>
<tbody>
<tr>
<td>Renee Lonner, Chair</td>
<td>LCSW</td>
<td>Governor</td>
<td>1/15/2007</td>
<td>6/1/2010</td>
<td>8/1/2010</td>
</tr>
<tr>
<td>Elise Froistad, Vice Chair</td>
<td>MFT</td>
<td>Governor</td>
<td>5/24/2007</td>
<td>6/1/2010</td>
<td>8/1/2010</td>
</tr>
<tr>
<td>Samara Ashley</td>
<td>Public</td>
<td>Governor</td>
<td>1/13/2010</td>
<td>6/1/2013</td>
<td>8/1/2013</td>
</tr>
<tr>
<td>Jan Cone</td>
<td>LCSW</td>
<td>Governor</td>
<td>3/18/2010</td>
<td>6/1/2013</td>
<td>8/1/2013</td>
</tr>
<tr>
<td>Mona Foster</td>
<td>Public</td>
<td>Governor</td>
<td>1/12/2010</td>
<td>6/1/2013</td>
<td>8/1/2013</td>
</tr>
<tr>
<td>Judy Johnson</td>
<td>LEP</td>
<td>Governor</td>
<td>7/14/2008</td>
<td>6/1/2012</td>
<td>8/1/2012</td>
</tr>
<tr>
<td>Patricia Lock-Dawson</td>
<td>Public</td>
<td>Governor</td>
<td>1/5/2010</td>
<td>6/1/2013</td>
<td>8/1/2013</td>
</tr>
<tr>
<td>Christine Wietlisbach</td>
<td>Public</td>
<td>Senate</td>
<td>1/13/2010</td>
<td>6/1/2011</td>
<td>8/1/2011</td>
</tr>
<tr>
<td>Michael Webb</td>
<td>MFT</td>
<td>Governor</td>
<td>1/15/2010</td>
<td>6/1/2013</td>
<td>8/1/2013</td>
</tr>
</tbody>
</table>